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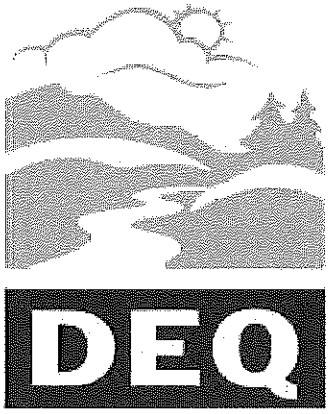
# OREGON
# ENVIRONMENTAL QUALITY
# COMMISSION MEETING
# MATERIALS 10/29/1998




State of Oregon
**Department of Environmental Quality**

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

## ENVIRONMENTAL QUALITY COMMISSION MEETING

October 29-30, 1998
Holiday Inn
1249 Tapadera Ave
Ontario, 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.** on October 30, 1998 for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

### *Thursday, October 29*

*The Commission will tour Ore-Ida Foods, Inc. before the meeting*

**4:30 – 6:00 pm** Meet with local officials

### *Friday, October 30*
### *Beginning at 8:30 am*

A. **Approval of Minutes**

~~B. †Rule Adoption: Fee Schedule for 401 Certifications~~
*Action on this item will not take place at this meeting*

C. **†Rule Adoption**: Solid Waste "Catchall" Rulemaking

D. **†Rule Adoption**: Underground Storage Tank Rule Revisions

E. **†Rule Adoption**: Underground Storage Tanks Compliance Rule Revisions

F. **†Rule Adoption:** Temporary Rulemaking to Align the State Land Disposal Restrictions with the Federal Land Disposal Restrictions

G. **Tax Credit**

H. **Informational Item:** Update on the Grande Ronde TMDL

I. **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

J. **Commissioners' Reports**

K. **Director's Report**

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

The Commission has set aside December 10-11, 1998, for their next meeting. The location has not been established.

Copies of staff reports for individual agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 229-5301, 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.

October 23, 1998

Approved_____
Approved with Corrections__X__

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 it's 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 anerobically 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:

$$\text{Penalty} = BP + [(.1 \times BP)(P + H + O + R + C)] + EB$$

where BP = 1000
P = 0
H = 0
O = 0
R = 6
C = -2
EB = 0

The motion was seconded by Commissioner Reeve and a role 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.

State of Oregon

# Department of Environmental Quality Memorandum

**To:** Environmental Quality Commission **Date:** October 23, 1998

**From:** Lang Marsh, Director

**Subject:** Agenda Item C, October 30, 1998 Meeting. Additional Proposed Rule Change, Solid Waste "Catchall" Rulemaking

After the above Rule Adoption Item staff report to the Commission was completed, two additional outdated statutory references came to staff attention. These statutes have been renumbered since the original rule was adopted.

Since the references are in a rule already proposed for amendment in the current rulemaking, OAR 340-064-0015, the Department would like to take this occasion to update these statutory references as well.

The additional proposed changes are shown in attachment A to this memo.

Attachment

ADDITIONAL PROPOSED SOLID WASTE RULE CHANGE
(HOUSEKEEPING)
10/23/98

Additional proposed changes shown in **bold underlining** and ~~**bold strikethrough.**~~ (Page 2, lines 12 and 13.)

**Waste Tire Storage Permit Required**

**340-064-0015** (1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or expand a waste tire storage site until the person owning or controlling the waste tire storage site obtains a permit or permit modification/addendum therefor from the Department. ~~A person who stores more than 100 waste tires or over 200 cubic yards of tire-derived products in this state is required to have a waste tire storage permit from the Department. The following are exempt from the permit requirement:~~

(2) Persons owning or controlling the following are exempted from the above requirement to obtain a waste tire storage permit, but shall comply with all other regulations regarding waste tire management and solid waste disposal:

(a) A person who stores fewer than 100 waste tires;

(b) A person who stores fewer than 200 cubic yards of tire-derived products;

~~(a)~~ (c) A tire retailer who stores not more than 1,500 waste tires for each retail business location;

~~(b)~~ (d) A tire retreader who stores not more than 3,000 waste tires for each individual retread operation so long as the waste tires are of the type the retreader is actively retreading;

~~(c)~~ (e) A wrecking business who stores not more than 1,500 waste tires for each retail business location;

~~(d)~~ (f) Storage of tire-derived products packaged in closed plastic bags.

~~(2)~~ (3) The exception allowed to a tire retailer under section ~~(1)~~ (2)(c) of this rule shall not apply unless the tire retailer submits the return required under ORS 459.519 and the return indicates the sale of new tires during the reporting period, so long as such returns are required to be submitted.

~~(3)~~ (4) Piles of tire-derived products are not subject to regulation as a waste tire storage site if the site actively consumes the following minimum tons of tire-derived products annually:

(a) For cement kilns: 1,500 tons;

(b) For pulp and paper mills: 1,500 tons.

~~(4)~~ (5) Manufacturers must obtain a waste tire storage permit if they are storing the following levels of tire-derived products:

(a) For manufacturers actively consuming crumb rubber:400 tons, or over 50 percent of the manufacturer's annual use of such materials;

(b) For manufacturers actively consuming other waste tire shreds or pieces: 100 tons or over 50 percent of the manufacturer's annual use of such materials.

~~(5)~~ (6) The Department may exempt a site owned by a federal, state or local government unit from the requirement to obtain a waste tire storage permit for tire-derived products if the following conditions are met:

(a) The government unit wants to store tire-derived products for use in fulfilling an existing contract, and requests an exemption from the Department for the waste tire storage permit requirement;

(b) The quantity of tire-derived products to be stored does not exceed the estimated quantity specified in the contract plus ten percent to allow for changes or discrepancies;

(c) The length of time the tire-derived products are to be stored does not exceed six months; and

(d) The Department determines that such storage will not create an environmental risk.

~~(6) After July 1, 1988, a~~ (7) A permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

~~(7)~~ (8) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a

"second-stage" or regular permit.

~~(8)~~ (9) ~~Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the Department by June 1, 1988 for a "first-stage" permit to store waste tires.~~ A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

~~(9)~~ (10) A person who is using or wants to use over 100 waste tires for a beneficial use must request the Department to determine whether that use constitutes "storage" pursuant to OAR 340-064-0010(25), and is thus subject to the waste tire storage site permit requirement. The Department may recommend remedial actions which, if implemented, will eliminate any environmental risk which would otherwise be caused by a beneficial use of waste tires.

~~(10)~~ (11) Use of waste tires which is regulated under ORS ~~468.750~~ **468B.070** or ~~541.605 through 541.695~~ **196.800 through 196.905** and for which a permit has been acquired is not subject to additional regulation under OAR Chapter 340, Division 64.

~~(11)~~ (12) Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

~~(12) After July 1, 1988 no~~ (13) No person shall advertise or represent himself/herself as being in the business of accepting waste tires for storage without first obtaining a waste tire storage permit from the Department.

~~(13)~~ (14) Failure to apply for or to obtain a waste tire storage permit, or failure to meet the conditions of such permit constitutes a nuisance.

## Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item C**
**October 30, 1998 Meeting**

**Title:**

Solid Waste "Catchall" Rulemaking

**Summary:**

The proposed rules incorporate changes in legislation passed by the 1997 Oregon Legislature, as well as others made necessary by changes in Federal regulations. They would also make some changes identified as necessary by the Department for effective administration of solid waste programs, and technical corrections to clarify program implementation. Major topic areas are: amending requirements for local government recycling programs; adding a new "program element" option for local government recycling programs; adding three new optional programs which local governments may implement concerning waste prevention, reuse, and home composting; changes in the container glass minimum recycled content requirements; changes in recycling program requirements for out-of-state jurisdictions that export solid waste to Oregon for disposal; changes in the existing corporate financial test for financial assurance for landfill closure, post-closure care and, if needed, corrective action; exempting "general permit" composting facility operators from having to provide financial assurance for facility closure; and changes in recordkeeping requirements for solid waste disposal site operators

**Department Recommendation:**

Adopt the proposed new rule and rule amendments as presented in Attachment A.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

**Date:** October 15, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh

**Subject:** Agenda Item C, Solid Waste "Catchall" Rulemaking, EQC Meeting October 30, 1998

## Background

On July 14, 1998 the Director authorized the Waste Management and Cleanup Division to proceed to rulemaking hearings on proposed rules which would incorporate changes in solid waste management required by legislation passed by the 1997 Oregon Legislature, as well as modifications made necessary by changes in Federal regulations. In addition it would make some changes identified as necessary by the Department for effective administration of solid waste programs, and technical corrections necessary to clarify program implementation.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on August 1, 1998. The Hearing Notice and informational materials were mailed on July 20, 1998 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.

Public Hearings were held at 7 pm on August 24, 1998 in Portland, August 25 in Medford and August 26 in Bend with Leslie Kochan, Zach Loboy and Steve Kirk respectively serving as Presiding Officers. Written comment was received through August 28, 1998. The Presiding Officers' Reports (Attachments C-1, C-2 and C-3) summarize the oral testimony presented at the hearings. Attachment C-4 lists all the written comments received. (A copy of the comments is available upon request.)

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

The following sections summarize the issues 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.

**Issues this Proposed Rulemaking Action is Intended to Address**

The 1997 Oregon Legislature passed several bills making a number of changes in recycling program and solid waste laws. The rule amendments are needed to bring the Department's regulations into conformance with the laws.

On April 10, 1998, the Environmental Protection Agency (EPA) adopted a new mechanism, a corporate financial test, under Subtitle D (40 CFR Part 258) that corporate operators of municipal solid waste landfills may use to provide financial assurance. This mechanism differs from a similar one in existing DEQ rule. The differences between the new EPA requirements and DEQ's rule need to be addressed.

In addition, the Department has identified several issues that need to be addressed as a result of a Department audit of reporting and fee payment procedures at a sampling of permitted solid waste facilities, and during regular program operations.

**Relationship to Federal and Adjacent State Rules**

Federal

The major part of this rule which relates to Federal requirements is the corporate financial test for financial assurance. The Environmental Protection Agency (EPA) recently adopted a new mechanism under Subtitle D (40 CFR Part 258) allowing corporate operators of municipal solid waste landfills to use a corporate financial test (or "corporate guarantee") to provide financial assurance. This mechanism differs from a similar one in existing DEQ rule.

DEQ proposes to follow federal requirements in some but not all areas. Those areas of the EPA regulation identified by DEQ as not providing sufficient security have not been adopted. For example, EPA allows an "investment grade" bond rating to serve as one of the measures of financial strength for determining whether a corporate guarantee will qualify as a financial assurance mechanism. Current DEQ regulations do not allow this. DEQ believes that fiscal prudence should dictate that our rule continue to ignore bond ratings in assessing corporate financial strength.

In general DEQ believes our current rule is working well, and that maintaining stringent financial assurance requirements is important to protect the public and the environment.

In addition, a few minor changes are proposed to put into rule practices now in Department guidance to conform to EPA requirements. These implement 1.) a requirement to use a Registered Professional Engineer to make landfill closure cost estimates; and 2.) procedures for municipal solid waste landfill permittees to make two "determinations" if they want to use a discount rate in calculating facility closure costs.

Washington State

Washington does not have comparable regulations to those in this rulemaking except in the following areas:

- Recycling program requirements for out-of-state waste. A state exporting waste to Washington for disposal must have program standards substantially equivalent to those in Washington. However the Washington program requirements are not very specific; they have a 50% statewide recycling goal (for 1995) that everybody is supposed to work towards. There is a general requirement to have recycling, waste reduction or education programs. Washington allows an equivalency certification to cover an entire state, so that any jurisdiction within that state is automatically certified. Information on the programs is submitted to the Washington Department of Ecology by the landfill operator.
- Financial assurance requirements: *corporate financial test.* Washington has not adopted the EPA "corporate financial test." They are bound by a 1986 state law that restricts financial assurance mechanisms to reserve accounts (for local governments) and trust accounts (for private operators). This exceeds the EPA requirements. There is however an indirect way that a corporate financial test would be allowed: it can be set up within a trust account structure. The financial information would be sent to a third party trustee (e.g., a bank), who would then be paid a percentage of the value of the account each year.
- Financial assurance requirements: *composting facilities.* Composting facility permits are required (administered by local health agencies). Financial assurance is not required.

California

California does not have comparable regulations to those in this rulemaking except in the following areas:

- Requirement for local governments to meet a recycling rate. Local governments must divert 25% of waste from landfills by 1995, and 50% by 2000, or face fines of $10,000 per day. (No specific requirements for local governments not meeting the rate to implement additional recycling programs.)
- Determination of recycling rate for rigid plastic containers. The California Integrated Waste Management Board conducts an annual survey to develop a rigid plastic container recycling rate for the past year. This is used to enforce state plastic recycling requirements. (25% recycling rate required for compliance.)
- Container glass minimum recycled content requirements. California requires 35% post-consumer recycled content in new glass containers made in California. California law allows an exclusion from this requirement if cullet is not available, and allows the California Department of Conservation to determine what is "available" (not defined in statute). California has not adopted administrative rules to define this. A bill which would have allowed secondary uses of glass to count towards the minimum recycled content requirement was introduced in the California legislature this year, but has not passed.
- Financial assurance requirements: *corporate financial test.* California has had a "financial means test" since 1989, modeled after EPA's Subtitle C financial means test for hazardous waste facilities. It is approved by EPA as equivalent to the Subtitle D test. California allows

use of a bond rating as one means test. California is more stringent than Subtitle D in a few areas. For example, California allows use of the "financial means test" only for costs of post closure care, not for closure costs.

- Financial assurance requirements: *composting facilities*. California requires composting facilities to be permitted, but has no financial assurance requirement for these facilities.

**Authority to Address the Issue**

The Department has the statutory authority to address this issue under ORS 459.045, 459.995, 459A.025 and 468.020. These rules implement ORS 459 and 459A.

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

Advisory Committee. The Department established a Solid Waste Advisory Group (SWAG) to help with this rulemaking (see Attachment F for SWAG membership). Before the rule was put forward for public comment, the full SWAG met twice (April 9 and June 11, 1998). In addition, a "Glass Sub-Group" of SWAG members met once on May 14, 1998 to discuss issues raised by SB 1044, the Container Glass Minimum Recycled Content bill, dealing with changes in recycled content legislation for glass containers (Topic II of this rulemaking). The recommendations of this Sub-Group were then forwarded to the SWAG for consideration at their June 11 meeting. The SWAG met again on September 29 after the August public hearings to discuss public comments received before a proposed final rule was developed by Department staff.

During their June 11 meeting the SWAG discussed all Topics addressed in this rule adoption other than some minor housekeeping changes, and reviewed draft rules for the same. They reached consensus on draft rule language for all Topics discussed, except for Topic II, Glass Minimum Content. The SWAG agreed that options on this could be put forward for public comment. (See "Alternatives..." below.)

At the SWAG September 29 meeting, members again failed to reach consensus on one of the two Glass issues (Lack of Available Cullet Exemption).

Although members were generally supportive, there was also some dissention about the Department's proposal to eliminate the requirement for financial assurance for "general permit" composting facilities. As a result of the discussions, the SWAG asked that DEQ raise the following issue to the Commission: there is a perceived inconsistency between Department Water Quality rules and Solid Waste rules. Oregon groundwater protection standards tolerate zero impact to groundwater from operations. Under that standard, no larger composting facility in Oregon (at least west of the mountains) should be considered to be "low risk," because their operation *will* impact groundwater – unless they are paved, have a stormwater collection system, and are roofed. Yet the Department composting facility "general permit" does not require these actions, and considers these facilities to be "low risk." Consistency would dictate that those

structures, and financial assurance, be required of all composting facilities. (It should be noted that the persons pointing this out were not *recommending* that action, but rather pointing out the belief that inconsistency existed in Department regulation.)

The general feeling of the group supported the Container Glass, composting facility and other recommendations in this report.

Alternatives Put Forward for Public Comment

**Topic II. Container Glass Minimum Recycled Content Requirements.**
Through 1997 SB 1044, glass container manufacturers outside Oregon whose containers are filled **before** shipment to Oregon to be sold are no longer subject to Oregon's minimum recycled content requirements. Glass container manufacturers in Oregon or manufacturers who ship empty glass containers to packagers in Oregon continue to be subject to the requirements. The requirements are to use 35% minimum recycled content by 1995, and 50% recycled content by the year 2000.

SB 1044 gives glass container manufacturers flexibility in meeting Oregon's recycled content requirements through 1.) a provision for secondary end uses of glass in Oregon to "count" towards the 50% glass recycled content requirement, and 2.) the provision for an enforcement exemption because of a lack of available glass cullet meeting the manufacturer's specifications.

*1. Secondary end uses of glass.* Issues included what secondary uses of recovered glass (i.e. other than being used to make new glass containers) should be allowed outright to count towards the glass manufacturers' 50% minimum content requirement; whether these uses should be actual products sold in commerce; whether specifications should be required for the use; and whether criteria should be established for DEQ approval of uses not on the "outright" list. An overall issue was how to distinguish between some "secondary uses" of glass such as in drainage trenches, and disposal.

DEQ put forward three Options for public comment. All three options listed certain secondary end uses *allowed outright*. In addition:
**Option A** allowed construction or road-base aggregate as an outright use; and other uses as approved by DEQ. (Option supported by most SWAG members)
**Option B** allowed construction or road-base aggregate as an outright use; and other uses as approved by DEQ if they are **products with actual specifications that are sold in commerce.** (Option developed by SWAG minority.)
**Option C** allowed road-base aggregate outright only if it met **Oregon Department of Transportation specifications**; and other uses as approved by DEQ. (Option supported by Glass Sub-Group.)

*2. Lack of available cullet exemption.* In order to receive the "lack of available cullet" enforcement exemption, a glass manufacturer must provide sufficient information for the Department to determine that appropriate cullet was not available. The statute does not define "available," nor specify a

procedure to request the exemption. A major issue was whether the rule should try to define the economic aspect of "availability;" if a buyer is willing to pay more, more product will become "available."

DEQ put forward two Options for public comment.
**Option A** set 300 miles "or another reasonable market distance as established by the Department" as the physical range within which cullet availability would be determined. (Option supported by most SWAG members.)
**Option B** kept that range, but added a provision that a glass manufacturer must demonstrate a **reasonable effort** to obtain glass cullet at a **price encouraging collection and delivery** of post-consumer glass within 300 miles of the manufacturing facility. (Option developed by SWAG minority.)

**Topic IV.2. Financial Assurance Requirements for "General Permit" Composting Facilities.**

DEQ rules for composting facilities were adopted in July 1997, including a requirement for financial assurance for closure, post-closure care, etc., for two of the three types of composting permittees: "general permits" and full permits. Comments at subsequent public hearings on the compost "general permit" format made the case that composting facility "general permit" sites are generally low risk operations. Commenters argued that it is therefore appropriate to require financial assurance for a general permit facility **only if** the Department determines that the site appears to hold potential to create environmental problems. This would require case-by-case analysis. Department Solid Waste managers agreed with public comment, and proposed that rule change on financial assurance to the SWAG at its June 11 meeting. The SWAG did not agree with the change. They commented that there were good reasons for the financial assurance requirement. The SWAG instead reached consensus that financial assurance should be required **unless** the Department determines it is not necessary.

As the Department staff had further in-house and legal discussions of these options, the Department concluded that neither of the preceding options should be preferred for dealing with this issue. "General permit" composting facilities have been determined by the Department to be low-risk by their nature. In addition, requiring the need for financial assurance to be assessed on a case-by-case basis is unworkable for two reasons. The Department has a Memorandum of Understanding (MOU) with the Metropolitan Service District (Metro) to administer the composting facility "general permit" in areas within Metro's jurisdiction. A review for financial assurance would not be workable under the MOU. In addition, the concept of a "general permit" is that the same permit provisions apply to *all* facilities, with no room for individual adjustments.

The Department has other alternatives for dealing with a "general permit" composting facility that becomes troublesome: 1.) Financial assurance could be required as part of a negotiated settlement in an enforcement action, among other required actions; and 2.) The existing composting facility rules contain a provision allowing the Department to require a "general permit" facility to apply for and comply with the provisions of a composting facility "full permit." This would happen upon a determination by the Department that the "general permit" facility is adversely affecting human health or the environment.

Among other requirements, "full permit" composting facilities must provide financial assurance (OAR 340-096-0024(2)(e)).

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

**I. Changes in Local Government and Other Recycling Programs (HB 3456):**

1. Amends two (of several) existing "recycling program elements" among which local governments choose in order to provide the opportunity to recycle: the Expanded Education and Promotion Program Element, and the Commercial Recycling Program Element. Implements new requirements and changes from HB 3456.
2. Adds to rule one new "recycling program element" established in HB 3456: the Commercial and Institutional Composting Program Element.
3. Adds to rule three new "Programs" created by HB 3456 which a wasteshed (usually a county) may choose to implement. For each Program implemented, the wasteshed receives a two percent "credit" on its recovery rate. The Programs are: Waste Prevention; Reuse; and Residential Composting. Establishes process for county to notify DEQ of program implementation. Allows wastesheds to receive these credits for 1997 for programs in place during that year.
4. Adds flexibility to local government recycling program reporting requirements to DEQ.
5. Adds to rule the requirement from HB 3456 for wastesheds to at least **maintain** their 1995 statutory (target) recovery rate; otherwise, cities over 4,000 population in the wasteshed must implement two additional recycling program elements.
6. Concerning DEQ's determination of a recycling rate for **rigid plastic containers**: adds to rule DEQ flexibility to calculate the rate on an as-needed basis rather than annually.

**II. Changes in Container Glass Minimum Recycled Content Requirements (SB 1044):**

1. Modifies how compliance may be determined with the 50% recycled glass content requirement in glass containers (effective in 2000). Requires the Department to credit toward that requirement the combined amount of recycled glass generated in Oregon for "secondary end uses" (uses other than in manufacturing new glass containers). Defines "secondary end uses" of glass.
2. Exempts a glass container manufacturer from enforcement of minimum content requirements if the manufacturer can demonstrate a lack of available glass cullet meeting the manufacturer's specifications. Adds criteria for the manufacturer's demonstration to DEQ.

**III. Changes in Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):**

- Exempts landfill owners from the requirement to demonstrate that out-of-state local jurisdictions exporting solid waste to Oregon have programs meeting the "opportunity to recycle" requirement, **unless** they export **over 75,000 tons annually** for disposal in Oregon.

**IV. Changes in Financial Assurance Requirements**

1. Concerning municipal and non-municipal *solid waste landfills*: Proposes changes in existing DEQ rule for "corporate financial test" for landfill owners and operators, a mechanism to provide financial assurance for closure, post-closure care and, if needed, corrective action. Changes are needed to comport with recently passed Federal rules under Subtitle D (40 CFR Part 258).
2. Concerning *composting facilities* required to obtain a permit: Proposes changing existing DEQ regulation which requires all "general permit" composting facilities to obtain financial assurance for closure, etc. The change would exempt "general permit" composting facilities from the requirement to provide financial assurance.

**V. Other Changes Identified by the Department:**

1. Requires more detailed recordkeeping by solid waste facilities as a result of a Department audit of reporting and fee payment procedures at a sampling of permitted solid waste facilities.
2. Other minor and housekeeping changes.

**Summary of Significant Public Comment and Changes Proposed in Response**

The two topic areas receiving the most public comment were the changes in the container glass minimum content requirements; and financial assurance for "general permit" composting facilities. In each of these areas, the Department had put forward options for public comment.

II. 1. Container Glass Minimum Content: Secondary End Uses of Glass

Two commenters (one representing Recycling Advocates) supported having secondary end uses of glass include the concepts of being an actual product sold in commerce and having specifications, so that they are not just beneficial ways of using waste.

Two commenters representing the Glass Packaging Institute noted that the Legislature intended "secondary end uses of glass" to be inclusive, and thus DEQ should retain discretion to approve a wide variety of secondary uses.

*Proposal:*

The Department agrees that secondary end uses of glass which count towards the minimum recycled content requirement for glass manufacturers should be real products and not just beneficial ways of using waste. Otherwise there is little benefit in collecting glass for "recycling." The Department proposes language which retains DEQ's full discretion to approve additional uses. But in the list of outright secondary end uses of glass "engineering specifications" would be required for glass used in construction and roadbase applications.

II.2. Container Glass Minimum Content: "Lack of Available Cullet Exemption."

Two commenters (one representing Recycling Advocates) supported DEQ's Option B, containing the provision that a glass manufacturer must demonstrate a **reasonable effort** to obtain glass cullet at a **price encouraging collection and delivery** of post-consumer glass within 300 miles of the manufacturing facility. Comment: this supports producer responsibility.

Two commenters (both representing the Glass Packaging Institute) supported DEQ's Option A over Option B, but recommended changes. They commented that Option B was more restrictive than legislative intent. They recommended that the economic aspect of "availability" be explicitly addressed, specifically by defining cullet as "unavailable" when its cost, including transportation, exceeded a manufacturer's "batch cost," or the cost of raw materials replaced by cullet. They felt that the 300-mile range (in Option A) within which cullet might be assumed to be available was vague, and did not sufficiently capture the "economic" issues. One of the commenters expressed concern about the possibility that local glass processors might demand unduly high prices for cullet.

*Proposal:*

DEQ agrees that it is desirable to clarify the area (or market range) from which glass manufacturers would be expected to seek available cullet. To address this, DEQ proposes changing the 300-mile criterion in the draft rule options. For glass manufacturers located in Oregon, this would be changed to "wastesheds in which container glass is a principal recyclable material." These wastesheds are designated in OAR 340-090-0070. For out of state glass manufacturers, a geographic market range would be established that would be the area within which the manufacturer sells new glass containers, but in no case further than 300 miles from the glass manufacturing plant.

The Department had considered adding a provision to allow glass manufacturers to request non-enforcement of the minimum content requirements if they could demonstrate that cullet meeting specifications is available only at an "unreasonable" price. However, during discussion of this issue at the September 29 SWAG meeting, SWAG members commented that it is not the collectors who set the price of cullet, but rather the glass manufacturer, as the buyer, who does. SWAG recommended that the rule not attempt to directly address the economic issue; this would be reaching beyond the plain concept of "availability" in the statute. The Department agrees with the SWAG recommendation, and is not proposing that the rule include the price of cullet as a consideration in the "availability" determination.

IV. 2. Financial Assurance for "General Permit" Composting Facilities

Four persons commented on this, one representing the Composting Council of Oregon. All commenters supported the Department's recommended option, which was to exempt these facilities from the requirement to provide financial assurance for closure, etc. The commenters pointed out that these are generally low-risk facilities; and that one purpose of the new DEQ rules for permitting composting facilities was to encourage composting as a means of waste reduction.

*Proposal:*

The Department proposes to exempt "general permit" composting facilities from the requirement to provide financial assurance. The Department will pursue the two alternatives discussed on page 6 above to deal with any facilities which may become problematic.

See Attachment D for more detailed discussion of public comments and Department response.

**Summary of How the Proposed Rules Will Work and How they Will be Implemented**

**I. Local Government and Other Recycling Programs (HB 3456):**

1., 2.,4. and 5. *Local Government Recycling Program Elements; Reporting; and Requirement to Maintain 1995 Recovery Rate.* The Department has already worked with wasteshed representatives and local governments to inform them of changes in and additions to recycling program elements and associated reporting requirements made by HB 3456. A summary of the new provisions will be sent to local governments. Counties will be notified by November 1 of a year if an "opportunity to recycle report" is required for that year.

3. *New 2% Credit Programs.* The Department has already communicated with wasteshed representatives and local governments about the opportunity for these new Programs. The proposed rule would allow credits for 1997, if existing programs meet the Program criteria in statute. In August the Department sent forms to wastesheds to use for claiming credits for 1997 for any qualifying programs being implemented during that year. They were informed that 1997 credits could not be "official" until rule adoption by the EQC, since no starting date is specified in statute. In the future, counties would claim the credit for a calendar year by submitting a form to DEQ by February 28 of the following year.

6. *Rigid Plastic Container Recycling Rate.* DEQ would calculate a rigid plastic container (RPC) recycling rate for compliance purposes if it appears that plastics recycling in general and recycling of RPCs in particular may be decreasing sufficiently to cause concern. DEQ would base that decision primarily on significant changes in the following: the Oregon recycling rate of #1 and #2 plastic resins; the level of recycling programs and activities in Oregon; and the estimated amount of RPCs in Oregon's waste stream.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044):** The Department is already required to conduct an annual survey of glass container manufacturers to determine compliance with the glass minimum recycled content law. This survey form will be modified to incorporate changes in SB 1044. A cover memo sent out with the survey on January 1, 1999, will outline changes made by SB 1044. The Department will review requests for exemption from enforcement for lack of available cullet, if any are received. Beginning in 2002, the Department will determine the amount of "secondary end uses of glass" which can be credited toward the 50% glass recycled content requirement. DEQ will base this on the list of eligible secondary end uses in rule, and determine whether other secondary end uses either identified by the Department or brought to its attention by others would qualify for this calculation.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):** Through this rulemaking process all landfill owners and operators have received notice that these requirements have changed. Most affected persons were already aware of the new provision. DEQ has changed its internal review procedures to conform to the new legislation.

**IV. Financial Assurance**

1. *Landfills.* All landfill permittees now using the corporate guarantee have been informed of pending changes. Through this rulemaking process all landfill owners and operators have received notice that these requirements are being changed. A revised format has been drafted for use by permittees incorporating proposed changes (see Attachment H). This will be made available to those interested in using this financial assurance mechanism.
2. *Composting facilities.* The Department's composting "interested persons" list will be notified of the change in the requirement for financial assurance for "general permit" composting facilities. The Department will also communicate the decision to Metro.

**V. Other minor and housekeeping changes.**

1. *DEQ Fee Audit.* These changes in recordkeeping, etc. will be part of a summary mailing to all solid waste permittees after rule adoption. DEQ is also considering whether to develop training for solid waste facility operators on what is required and "best management practices" for a recordkeeping and reporting system, perhaps including guidelines for internal control procedures.

Overall: the Department will issue revised administrative rules incorporating the adopted changes and make them available through all Department Offices to the general public on request.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the new rule and rule amendments regarding solid waste management as presented in Attachment A of the Department Staff Report.

**Attachments**

A. Rule Amendments Proposed for Adoption
B. Supporting Procedural Documentation:
    1. Legal Notice of Hearing
    2. Fiscal and Economic Impact Statement
    3. Land Use Evaluation Statement
    4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
    5. Cover Memorandum from Public Notice
C. Presiding Officers' Reports on Public Hearings and List of Written Comments

D. Department's Evaluation of Public Comment
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Advisory Committee Membership
G. Rule Implementation Plan
H. Revised standard format for Corporate Guarantee for Financial Assurance

**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment C-4)
1997 House Bill 3456
1997 Senate Bill 543
1997 Senate Bill 1044
Federal Register Vol. 63, No. 69, pp. 17706 to 17731
Meeting notes and agenda packets, Solid Waste Advisory Group and Glass Sub-Group

Approved:

Section: _____

Division: _____

Report Prepared By: Deanna Mueller-Crispin

Phone: 503-229-5808

Date Prepared: October 13, 1998

DM-C
Rule adoption memo, EQC.doc

Attachment A

**Oregon Department of Environmental Quality**
**Waste Management and Cleanup Division**

# PROPOSED SOLID WASTE RULE AMENDMENTS
**10/13/98**

## TABLE OF CONTENTS

# FULL TEXT,
# PROPOSED SOLID WASTE RULE AMENDMENTS
10/13/98

NOTE: The proposed rule amendments are grouped under the same Topic headings as are used in the October 15, 1998 Memo from Langdon Marsh to the Environmental Quality Commission on the Solid Waste "Catchall" Rulemaking. Topic areas not discussed in the Memo are grouped under Topic Area V, "Other Changes Identified by the Department."

Proposed additions shown underlined;
Proposed deletions shown ~~in strikethrough.~~

## Topic I: Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-1. Changes to Existing Recycling Program Elements; *and*
### Subtopic I-2. New Commercial and Institutional Composting Program Element

**Local Government Recycling Program Elements**
**340-090-0040**

In addition to the minimum requirements in OAR 340-090-0030 each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary shall implement additional recycling program requirements selected from section (3) of this rule in accordance with the following requirements:

(1) Each city with a population of at least 4,000 but not more than 10,000 that is not within a ~~m~~Metropolitan ~~s~~Service ~~d~~District and any county responsible for the area between the city limits and the urban growth boundary of such city shall implement one of the following, except where otherwise indicated:

(a) Implement subsections (3)(a), (b), and (c) of this rule; or

(b) Select and implement at least three program elements listed in section (3) of this rule; or

(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-090-0080.

(2) Each city with a population of more than 10,000 or that is within a ~~m~~Metropolitan ~~s~~Service ~~d~~District and any county responsible for the area within a ~~m~~Metropolitan ~~s~~Service ~~d~~District or the area between the city limits and the urban growth boundary of such city shall implement one of the following, except where otherwise indicated:

(a) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule; or

(b) Select and implement at least five program elements listed in section (3) of this rule; or

(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-090-0080.

(3) Program elements:

(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element a durable container shall be a rigid box or bucket with a volume of at least 12 gallons made of material that holds up under all weather conditions for at least five years, and is easily handled by the resident and the collector;

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3)~~.~~, and supports the management of solid waste in the

following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) The expanded program:

(i) Shall inform all solid waste generators of how to prevent waste, reuse, recycle and compost material;

(ii) Shall inform all solid waste generators of the benefits of preventing waste, reusing, recycling and composting materials;

(iii) Shall promote the use of available recycling services; and

(iv) Shall target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials shall encourage each commercial collection customer to have a goal to achieve 50 percent recovery from its solid waste stream by the year 2000.

(B) The expanded program shall be provided in one of the two following ways:

(i) A "Specified Action" program, which ~~The expanded program~~ shall include at a minimum the following elements:

~~(A)~~(I) All new residential and commercial collection service customers shall each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling should be done;

~~(B)~~(II) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-090-0040(3)(c)~~(A)~~(B)(i)(I) at least ~~quarterly~~ four times a calendar year through a written notice or ~~more~~ effective alternative to reach various solid waste generators, ~~notice~~ or combination of both;

~~(C)~~(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection;

~~(D)~~(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;

~~(E)~~(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste.; or

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan shall:

(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;

(II) Include such actions as necessary to fulfill the intent of this subsection;

(III) Include a timetable for implementation, which shall be implemented; and

(IV) Be submitted to the Department:

(i) By February 28 of the first year that the Plan is to be in effect, or

(ii) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county for each multi-family dwelling complex having five or more units. The collection program shall meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and

reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program for the collection and composting of residential yard debris. The program shall include the following elements:

(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either

(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or

(C) System of residential yard debris collection depots, for the production of compost or other marketable products, located such that there is at least one conveniently located depot for every 25,000 population and open to the public at least once a week.

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source separated principal recyclable materials from commercial entities, taking into consideration how the generator could achieve 50 percent recovery. ~~that employ ten or more persons and that occupy 1,000 square feet or more in a single location.~~ This program element does not apply to manufacturing, business or processing activities in residential dwellings; or to the generation of industrial solid waste. At a minimum the commercial recycling program:

(A) Shall be provided to commercial entities that employ 10 or more persons and occupy 1,000 square feet or more in a single location;

(B) Shall include an education and promotion program which:

(i) Uses materials and messages specifically designed for commercial generators of solid waste; and

(ii) Informs all commercial generators of solid waste of the benefits of recycling, the recycling opportunities available to them and how to recycle; and

(iii) If the local government is providing the expanded education and promotion program element, includes any additional requirements needed to meet OAR 340-090-0040(3)(c);

(iv) Includes information on the benefits of waste prevention to commercial generators;

(C) Shall be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;

(D) Shall encourage commercial generators to strive to achieve 50 percent recovery from their solid waste stream by the year 2000;

(E) Should provide other elements including but not limited to:

(i) Provision of waste assessments to businesses;

(ii) Provision of recycling receptacles to businesses at no or low cost;

(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials. This program shall provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1) and shall result in at least one (1) conveniently located depot for every 25,000 population. The expanded program shall include promotion and education that maximizes the use of the expanded depot program. The depots shall operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Open on the weekend days; and

(C) Be established in location(s) such that it is convenient for residential generators of solid waste to use the depot(s).

(h) Establish collection rates for residential solid waste from single family residences and single residential units in complexes of less than five units, that encourage waste prevention, reuse and recycling. The rates at a minimum, shall include the following elements:

(A) At least one rate for a container that is 21 gallons or less in size and costs less than larger containers; and

(B) Rates shall be based on the average weight, as determined in paragraph (E)of this subsection, of solid waste disposed per container for various sizes of containers; and

(C) Rates, as calculated on a per pound disposed basis shall not decrease per pound with the increasing size of the container or the number of containers; and

(D) Rates per container service shall be established such that each additional container beyond the first container for each residential unit shall have a fee charged that is at least the same fee and no less than the first container; and

(E) Rates, calculated on a per pound disposed basis, shall be established by the city or county through development of their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.

(i) An on-going system to collect food waste, paper that is not recyclable because of contamination, and other compostable waste from commercial and institutional entities that generate large amounts of such wastes, and compost it at facilities in compliance with Department composting facility rules and local government regulations.

(A) Before diverting edible (unwanted) foods to be composted, a local government should consider how to encourage making them available:

(i) To charity for human consumption;

(ii) Or if charity channels are not available, to farmers for animal feed.

(B) A commercial composting program shall include the following elements:

(i) On-going promotion of the commercial compost program through written material or other effective formats directed to targeted commercial and institutional generators within the local government (e.g. grocery stores, restaurants, wholesale flower warehouses, hotels, businesses and institutions with food service);

(ii) To avoid problems relating to human health and the environment, periodic collection of food wastes and other compostable materials is required from commercial and institutional generators on an appropriate schedule;

(C) Any composting facility to which collected compostable material is taken shall comply with Department composting facility rules.

(D) On-site commercial and institutional composting should be considered if the location is appropriate, space is available and the entity is in compliance with Department composting facility rules and local government regulations.

(**340-090-0040** is continued below under **Subtopic I-5**)

## Topic I (con't): Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-5. Maintain 1995 Wasteshed Recovery Rates

**Local Government Recycling Program Elements (continued)**
**340-090-0040**

(4) Effective January 1, 1996, in addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a ~~m~~Metropolitan ~~s~~Service ~~d~~District or the area between the city limits and the urban growth boundary of such city in any wasteshed that is required to meet a 25, 30, 40 or 45 percent recovery rate in OAR 340-090-0050 shall provide the opportunity to recycle rigid plastic containers if the conditions set forth in section (5)of this rule are met.

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when ~~the Recycling Markets Development Council determines that~~ a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

(6) If a wasteshed fails to achieve in any calendar year the recovery rate set forth in OAR 340-090-0050, any city with a population of 4,000 or more, or a county responsible for the area between the city limits and the urban growth boundary of such city shall implement~~, not later than January 1, 1998~~ two additional program elements selected from section (3) of this rule. The Department shall notify a wasteshed if it failed

to meet the recovery rate in OAR 340-090-0050 for any given calendar year. The notification shall be made no later than November 1 of the year following the calendar year in which the rate is not met. The two additional program elements shall be implemented by July 1 of the calendar year following the year in which the Department so notifies a wasteshed.

~~(7) If a wasteshed achieves the recovery rate in OAR 340-090-0050 for calendar year 1996, section (6) of this rule shall not apply.~~

(7) Notwithstanding section (6) of this rule, even if a wasteshed fails for more than one year to meet its recovery rate, a city or county within the wasteshed shall not be required to implement more than two additional program elements beyond those required in sections (1) and (2) of this rule, provided that the chosen program elements are being effectively implemented.

**Wasteshed Designation and Recovery Rates**

**340-090-0050** The purpose of this rule is to define the wastesheds as designated in ORS 459A.010, and state the recovery rate that each wasteshed shall achieve by calendar year 1995 and maintain:

(1) Baker wasteshed is all of the area within Baker County; recovery rate of 15 percent.

(2) Benton wasteshed is all of the area within Benton County excluding the City of Albany; recovery rate of 30 percent.

(3) Clatsop wasteshed is all of the area within Clatsop County; recovery rate of 25 percent.

(4) Columbia wasteshed is all of the area within Columbia County; recovery rate of 25 percent.

(5) Coos wasteshed is all of the area within Coos County; recovery rate of 15 percent.

(6) Crook wasteshed is all of the area within Crook County; recovery rate of 15 percent.

(7) Curry wasteshed is all of the area within Curry County; recovery rate of 15 percent.

(8) Deschutes wasteshed is all of the area within Deschutes County; recovery rate of 25 percent.

(9) Douglas wasteshed is all of the area within Douglas County; recovery rate of 25 percent.

(10) Gilliam wasteshed is all of the area within Gilliam County; recovery rate of 7 percent.

(11) Grant wasteshed is all of the area within Grant County; recovery rate of 7 percent.

(12) Harney wasteshed is all of the area within Harney County; recovery rate of 7 percent.

(13) Hood River wasteshed is all of the area within Hood River County; recovery rate of 25 percent.

(14) Jackson wasteshed is all of the area within Jackson County; recovery rate of 25 percent.

(15) Jefferson wasteshed is all of the area within Jefferson County; recovery rate of 7 percent.

(16) Josephine wasteshed is all of the area within Josephine County; recovery rate of 25 percent.

(17) Klamath wasteshed is all of the area within Klamath County; recovery rate of 15 percent.

(18) Lake wasteshed is all of the area within Lake County; recovery rate of 7 percent.

(19) Lane wasteshed is all of the area within Lane County; recovery rate of 30 percent.

(20) Lincoln wasteshed is all of the area within Lincoln County; recovery rate of 15 percent.

(21) Linn wasteshed is all of the area within Linn County, including the Cities of Albany and Mill City, and excluding the area within:

(a) The City of Gates;

(b) The City of Idanha;

(c) Recovery rate of 30 percent.

(22) Malheur wasteshed is all of the area within Malheur County; recovery rate of 15 percent.

(23) Marion wasteshed is all of the area within Marion County and all of the area within the Cities of Gates, Idanha, and the city of Salem excluding the area within West Salem and Mill City; recovery rate of 25 percent until the solid waste disposed of generated from within the wasteshed exceeds 180,000 tons. Any solid waste disposed of by the wasteshed in excess of 180,000 tons shall achieve a recovery rate of 30 percent.

(24) Milton-Freewater wasteshed is all the area within the urban growth boundary of the City of Milton-Freewater; recovery rate of 15 percent.

(25) Morrow wasteshed is all of the area within Morrow County; recovery rate of 7 percent.

(26) Polk wasteshed is all the area within Polk County including the area within West Salem and excluding all the City of Willamina; recovery rate of 30 percent.

(27) Sherman wasteshed is all of the area within Sherman County; recovery rate of 7 percent.

(28) Tillamook wasteshed is all of the area within Tillamook County; recovery rate of 15 percent.

(29) Umatilla wasteshed is all of the area within Umatilla County excluding the area within: the urban growth boundary of the City of Milton-Freewater; recovery rate of 15 percent.

(30) Union wasteshed is all of the area within Union County; recovery rate of 15 percent.

(31) Wallowa wasteshed is all of the area within Wallowa County; recovery rate of 7 percent.

(32) Wasco wasteshed is all of the area in Wasco County; recovery rate of 25 percent.

(33) Wheeler wasteshed is all of the area within Wheeler County; recovery rate of 7 percent.

(34) Yamhill wasteshed is all of the area within Yamhill County and all of the area within the City of Willamina; recovery rate of 30 percent.

(35) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed shall achieve a recovery rate of 45 percent. No more than five percent of the recovery rate may be by the processing of mixed municipal solid waste compost. If the Metropolitan Service District does not develop and operate a mixed solid waste composting process for a minimum of six months during calendar year 1995, the recovery rate for Clackamas, Multnomah and Washington Counties in aggregate shall be 40 percent for calendar year 1995.

## Topic I (con't): Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-3: New "2% Credit" Programs

**Wasteshed Programs for Two Percent Recovery Rate Credit** ***[NEW RULE]***

**340-090-0045** A wasteshed may implement one or more of the three following programs. For each program implemented, the wasteshed shall receive a two percent credit on the wasteshed's recovery rate, pursuant to OAR 340-090-0060(3).

(1) Waste Prevention Program. This program shall include:

(a) A wasteshed-wide program to provide general educational materials to residents about waste prevention and examples of things residents can do to prevent generation of waste; and

(b) Two of the following:

(A) Reduce the wasteshed annual per capita waste generation by two percent each year;

(B) Conduct a waste prevention media promotion campaign targeted at residential generators;

(C) Expand the education program in primary and secondary schools to include waste prevention and reuse;

(D) Household hazardous waste prevention education program;

(E) Local governments will conduct waste prevention assessments of their operations, or provide waste prevention assessments for businesses and institutions and document any waste prevention measures implemented;

(F) Conduct a material-specific waste prevention campaign for businesses throughout the wasteshed; or

(G) Implement a Resource Efficiency Model City program.

(2) Reuse Program. This program shall include:

(a) A promotion and education campaign on the benefits and opportunities for reuse available to the public in the wasteshed; and

(b) Two of the following:

(A) Operate construction and demolition debris salvage programs with depots;

(B) Promote reuse programs offered by local resale businesses, thrift stores and equipment vendors, such as computer and photocopier refurbishers, to the public and businesses;

(C) Identify and promote local businesses that will take back white goods for refurbishing and resale to the public;

(D) Develop and promote use of waste exchange programs for the public and private sectors;

(E) Site accommodation for recovery of reusable material at transfer stations and landfills; or

(F) Sidewalk pickup or community fair program in cities over 4,000 population in the wasteshed.

(3) Residential Composting Program. This program shall include:

(a) Promotion of the residential composting program through public information and demonstration site or sites; and

(b) Two of the following:

(A) A program to encourage leaving grass clippings generated by lawn mowing on-site rather than bagging the clippings for disposal or composting;

(B) A composting program for local schools;

(C) An increase in availability of compost bins for residents; or

(D) Another program increasing a household's ability to manage yard trimmings or food wastes.

**Determination of Recovery Rates**

**340-090-0060** (1) Recovery rates required in OAR 340-090-0050 shall be determined by the Department by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective wasteshed.

(2) Recovery rates shall include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris;

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740;

(c) Notwithstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed of.

(3) Recovery rates may include a credit of two percentage points for each program listed in OAR 340-090-0045 for a year for which a wasteshed certifies to the Department that the program or programs have been implemented. No two percent credit shall be received for a calendar year prior to 1997. In order for the wasteshed to receive a two percent credit:

(a) All required components of a program must be in place and implemented in the geographic area(s) required by OAR 340-090-0045 during the entire calendar year for which the credit is claimed. If the chosen program component is seasonal, the component must be provided during the appropriate season(s) of the subject calendar year.

(b) On behalf of a wasteshed the county shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the county that the chosen program(s) met the requirements in OAR 340-090-0045.

(c) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted to the Department, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the Metropolitan Service District that the chosen program(s) met the requirements in OAR 340-090-0045.

~~(3)~~ (4) Recovery rates may include the composting or burning for energy recovery the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) Mixtures of materials that are composted or burned for energy recovery are not comprised of 50 percent or more by weight of materials that could have been recycled if properly source separated; and

(b) A place does not exist within a wasteshed that will pay for the material or accept it for free or a place does not exist outside of the wasteshed that will pay a price for the material that, at a minimum, covers the cost of transportation of the material to market; and

(c) The appropriate county or ~~m~~Metropolitan ~~s~~Service ~~d~~District in the report required under OAR 340-090-0100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the wasteshed, including markets available within and outside of the

wasteshed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

~~(4)~~ (5) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any preconsumer waste;

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream;

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Discarded vehicle parts that are received at recycling dropoff facilities operated as part of the general solid waste management system are not excluded from the recovery rate calculation;

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs;

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (2)(a) of this rule and OAR 340-090-0050(35);

(f) Mixed solid waste burned for energy recovery.

~~(5)~~(6) For the purposes of calculating the recovery rate the following shall not be included in the total solid waste disposed:

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

(b) Solid waste disposed of at an industrial solid waste disposal site;

(c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin for such materials delivered and reports the weight and appropriate wasteshed in the reports required to be submitted to the Department under OAR 340-090-0100(3);

(d) Solid waste received at an ash monofill from an energy recovery facility; and

(e) Any solid waste not generated within the state of Oregon.

## Topic I (con't): Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-4. Reporting Flexibility

**Reporting Requirements**

**340-090-0100** The information in this rule is reported in order to determine statewide and local wasteshed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon:

(1) General requirements. The information in ~~sections (2),~~ subsection (2)(b) and sections (3), (4), and (5) of this rule shall be reported on a form provided by the Department and shall be reported to the Department no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.

(2) County requirements. On behalf of each wasteshed and the cities within each wasteshed the county shall submit the following information ~~annually~~ to the Department. The information required below that relates to collection programs within each city jurisdiction shall be reported by the city to the county so that the county can provide the required information in a timely manner to the Department~~:~~.

(a) The following information shall be reported periodically as required by the Department. This information constitutes the "opportunity to recycle" report. The Department will notify counties by November 1 of a year if an opportunity to recycle report is required for that year. When required, this report shall be submitted on the schedule specified in section (1) of this rule. In any case examples of all materials listed under paragraph (D) below shall be kept on file by the county for future reports or inspection by the Department:

~~(a)~~(A) The materials which are accepted for recycling at each disposal site in the wasteshed;

~~(b)~~(B) If a recycling depot has been designated in place of a disposal site as a more convenient location for recycling under the opportunity to recycle requirements, the location of that recycling depot and the materials accepted for recycling at that depot;

~~(c)~~(C) Description of all education and promotion activities conducted by or on behalf of each applicable city and the county;

~~(d)~~(D) For each city of 4,000 or more population in the wasteshed and for each city located within a ~~m~~Metropolitan ~~s~~Service ~~d~~District in the wasteshed, the following information:

~~(A)~~(i) A list of materials accepted for recycling in each on-route residential collection program that is offered to all residential collection service customers;

~~(B)~~(ii) A list of materials accepted for recycling in multi-family collection programs;

~~(C)~~(iii) A list of materials accepted for recycling in on-site commercial collection programs;

~~(D)~~(iv) Listing of each program element under OAR 340-090-0040(3) that has been chosen and implemented by each city with 4,000 population or more in the wasteshed, including appropriate documentation of implementation of collection service rates, multi-family collection programs and commercial collection programs if applicable; or, as applicable, a description of the approved alternative method being implemented and the status of implementation.

(E) A summary of activities in an Expanded Education and Promotion Plan, if a city or county has chosen to provide the expanded education and promotion program element through implementation of a Plan pursuant to OAR 340-090-0040(3)(c)(B)(ii). The summary shall include education and promotion activities planned for implementation in the coming two years unless otherwise required by the Department. The summary should also include:

(i) Plan activities actually implemented since the wasteshed last reported to the Department on activities in the Education and Promotion Plan; and

(ii) Any changes in activities implemented from those in the Plan originally submitted to the Department, or from the previous summary submitted to the Department pursuant to paragraph (2)(a)(E) of this rule, with explanations for the changes.

(F) A city or county that has evaluated the effectiveness of one or more program elements is encouraged to include the evaluation(s) in the wasteshed "opportunity to recycle" report.

(b) The following information shall be reported annually, and constitutes the "recovery rate report":

~~(e)~~(A) The type and corresponding weight of each material collected for the purpose of recycling during the previous calendar year for the following sources in the wasteshed:

~~(A)~~(i) On-route residential collection;

~~(B)~~(ii) Multi-family residential collection;

~~(C)~~(iii) On-site commercial collection;

~~(D)~~(iv) Collection at disposal site recycling depots or designated more convenient locations under the opportunity to recycle requirements;

~~(E)~~(v) Collection from alternatively approved methods under OAR 340-090-0080 if applicable.

~~(f)~~(B) The information required in ~~subsection (2)(e)~~paragraph (2)(b)(A) of this rule shall be reported in the following manner:

~~(A)~~(i) The weight of material reported shall exclude recovery of wastes as described in OAR 340-090-0060~~(4)~~(5);

~~(B)~~(ii) The weight of material collected shall be determined either by direct measurement or by determining the weight of material sold or otherwise sent off-site or used on-site for recycling during the calendar year, adjusted by the difference in weight of material held in inventory on the first day and last day of the calendar year;

~~(C)~~(iii) Unless the Department and the county have agreed in writing on an alternative reporting method, the weight of material collected shall be reported separately for each collection service provider or other recycler, on forms provided by the Department;

~~(D)~~(iv) The type and corresponding weight of material reported shall be broken down by each of the following collection sources:

~~(i)~~(I) On-route residential collection;

~~(ii)~~(II) On-site commercial collection;

~~(iii)~~(III) Multi-family residential collection;

~~(iv)~~(IV) Disposal site recycling depots or depots designated as more convenient locations under the opportunity to recycle requirements; and

~~(v)~~(V) Material collected by an alternative method for providing the opportunity to recycle requirements.

~~(F)~~(v) In cases where a collection service provider is unable to provide exact weight information for the categories identified in ~~paragraph (2)(f)(D)~~subparagraph (2)(b)(B)(iv) of this rule, reasonable estimates allocating the weight of material collected by collection source and by wasteshed may be made.

~~(g)~~(C) Information on participation in on-site residential collection programs~~shall be provided by a reasonable estimate where exact participation data is not available;~~ should be provided if available, either by exact participation data or by a reasonable estimate;

~~(h)~~(D) Information on participation in on-site commercial collection programs and multi-family collection programs ~~shall be provided by a reasonable estimate where exact participation data is not available;~~ should be provided if available, either by exact participation data or by a reasonable estimate;

~~(i)~~(E) Total weight of all solid waste generated in the wasteshed disposed of outside of the state of Oregon. The following waste is excluded from this reporting requirement:

~~(A)~~(i) Sewage sludge or septic tank and cesspool pumpings;

~~(B)~~(ii) Industrial solid waste disposed of at an out-of-state industrial solid waste disposal site;

~~(C)~~(iii) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to an out-of-state municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin of such materials delivered;

~~(D)~~(iv) Solid waste received at an out-of-state ash monofill from ~~a resource~~an energy recovery facility.

~~(j)~~(F) A copy of any new city or county collection service franchise, or any amendment to franchise~~,~~, including rates under the franchise~~,~~, which relates to recycling;

~~(k)~~(G) If a county determines that the conditions in OAR 340-090-0060~~(3)~~(4) exist and specific materials or mixtures that are composted or burned for energy recovery may be included in the calculation of the recovery rate for the wasteshed, the county shall report the following information:

~~(A)~~(i) Weight and type of material composted or burned for energy recovery;

~~(B)~~(ii) For mixtures of materials, the percent by weight and description of each type of material composted or burned for energy recovery that, if properly source separated, could have been recycled;

~~(C)~~(iii) Where markets exist for such materials in the wasteshed and outside the wasteshed;

~~(D)~~(iv) Charge or price paid for each material at each location;

~~(E)~~(v) Transportation distances to market at each location and the per-mile transportation cost to market by the most economical means of transportation available.

(3) Solid waste disposal facility requirements. Except as provided in section (4) of this rule, and excluding the material ~~specified in subsection (2)(j) of this rule~~listed in OAR 340-090-0060(5), each solid waste disposal site that receives solid waste for disposal, except transfer stations, shall report to the Department the weight of solid waste disposed of by each wasteshed in ~~the state of~~ Oregon. The disposal site shall report this waste as either "not counting" in determining the recovery rate in OAR 340-090-0050 (wastes specified in OAR 340-090-0060 (5)) or as "counting" towards the rate (all other wastes generated in Oregon). This information shall be reported by the disposal site permittee on forms provided by the Department and shall be a condition of the solid waste permit. If a disposal site is unable to determine the exact weight of waste disposed for each wasteshed in which it was generated, a reasonable estimate allocating the weight of waste to the appropriate wastesheds may be made.

(4) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall report the following information:

(a) Information in subsection (2)(b) of this rule for all counties in aggregate for said district;

(b) Weight of solid waste disposed of through facilities owned or operated by the Metropolitan Service District, or operated under contract to the Metropolitan Service District, excluding the wastes listed in ~~subsection (2)(i) of this rule~~OAR 340-090-0060(5); and

(c) Weight of solid waste sent to out-of-state facilities.

(5) Privately operated recycling and material recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, collection service providers who collect

or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use recycled material in manufacturing, or recycle material that is not included in the reporting requirements of ~~sections (2) and~~subsection (2)(b) and section (6) of this rule. ~~The privately operated recycling and material recovery~~ These facilities shall accurately report to the Department the type and corresponding weight of each category of material recycled, processed, ~~or~~ recovered or used in a new product containing recycled content in a calendar year as follows:

(a) Weight of each material recovered shall be reported, broken down by wasteshed of origin and by source ~~type~~ as provided on the data form supplied by the Department;

(b) Weight of materials reported shall exclude recycling of wastes described in OAR 340-090-0060~~(4)~~(5);

(c) Weight of material collected shall be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year, adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;

(d) To avoid double counting of materials, entities reporting under this section shall identify weight and sources of material they collected from other recyclers, subsequent recyclers and end users that directly receive their material and the weight of material sold or delivered to each directly subsequent recycler or end user. This applies to all materials collected for recycling, including materials delivered to subsequent recyclers or end users~~, including those materials~~ or collected and reported to the county under subsection (2)(b) of this rule;

(e) Private recyclers shall report the final status of each material sold, delivered or utilized. The report shall indicate whether the material was recycled, composted, or burned for energy recovery in order to determine which materials will count toward the recovery rate in OAR 340-090-0050;

(f) Total weight of material recovered by each private recycler shall be reported based on actual measurement. In cases where determining the actual weight of material recovered by wasteshed or by collection source is not possible, reasonable estimates allocating the weight of material collected by wasteshed and collection source may be ~~estimated~~made.

(6) Scrap metal industry requirements. The Department shall survey the scrap metal industry annually. The scrap metal industry may report the following information to the Department on a form provided by the Department in accordance with the requirements of section (1) of this rule:

(a) Weight of post-consumer residential scrap metal, including appliances processed for use in manufacturing new products that do not routinely enter the solid waste stream;

(b) Source or wasteshed where the material was generated.

**Decertification, Recertification, and Variances**

**340-091-0040** (1) Certified persons shall be decertified if the Department finds, through its review of the recycling reports (periodic opportunity to recycle report and annual recovery rate report) submitted under OAR 340-090-0100 or 340-091-0050, or through other information that becomes known to the Department, that the opportunity to recycle is no longer being provided. Certified local governments shall also be decertified if ~~no annual recycling~~ any report required under OAR 340-090-0100 or 340-091-0050 is not submitted. The procedure used for the decertification is as follows:

(a) The Department shall notify the disposal site that receives the waste and the affected persons who participated in preparing the most recent recycling report of the proposed decertification, based on written findings;

(b) An affected person may:

(A) Request a meeting with the Department to review the Department's findings, which meeting may include all or some of the persons who prepared the report; or

(B) Correct the deficiencies that the Department found regarding the opportunity to recycle.

(c) For persons that have previously been certified under OAR 340-091-0030, the Department shall grant a reasonable extension of time of at least 60 days to permit the affected persons to correct any deficiencies in providing the opportunity to recycle. The disposal site permittee may submit, or cause to be submitted, information to the Department during this period to demonstrate that any deficiencies have been

corrected and the opportunity to recycle is being provided;

(d) If the Department finds, after a reasonable extension of time, that the opportunity to recycle is still not implemented by or for the person, the Director of the Department shall notify the Commission, and shall send a notice to the disposal site that receives wastes from the person and to the affected persons who participated in the preparation of the most recent recycling report. This notice shall indicate how comments on the Department's findings can be directed to the Commission;

(e) If requested by the disposal site permittee or by another affected person within 30 days after notification under subsection (d) of this section, the Commission shall hold a public hearing;

(f) If, after review of the public record, and based on the Department's findings on review of the recycling report and other information made known to the Department, the Commission determines that all or part of the opportunity to recycle is not being provided, the Commission shall act to decertify the person and shall set an effective date for the decertification, subject to the requirements and right of appeal set forth in ORS 183.310 to 183.550.

(2) If a person has been decertified under section (1) of this rule, the disposal site permittee may apply to the Department for recertification by supplying, or causing to be supplied, information to demonstrate that all deficiencies have been corrected and that the opportunity to recycle is being provided. If the Department determines that the opportunity to recycle is being provided, the Department shall so certify, and shall provide notice of the certification to the affected disposal site permittee.

(3) Upon written application, the Commission may, to accommodate special conditions grant a variance from specific requirements of rules adopted with regards to providing the opportunity to recycle. The procedure for adopting such a variance and the powers of the Commission shall be as set forth in ORS 459A.055.

**Initial Reports Required for Recycling Certification**

**340-091-0050** (1) The disposal site permittee shall report, on forms provided by the Department, the quantity of material received from each certified person, located outside of the immediate service area of the disposal site.

(2) Initial Local Government Reports: Before a disposal site can accept waste from a local government unit not previously certified under OAR 340-091-0030, an initial recycling report consisting of the following information for the local government unit must be submitted for the Department's approval on forms provided by the Department:

(a) The materials which are recyclable material at each disposal site and within each city of 4,000 or more population or unincorporated urbanized area.

(b) A listing of recycling program elements, as described in OAR 340-090-0040, that demonstrates that the local government unit is providing the opportunity to recycle.

(c) Proposed and approved alternative methods for providing the opportunity to recycle which are to be used within the local government unit.

(d) Proposed or existing methods for providing a recycling public education and promotion program, including copies of materials that are to be or are being used as part of the program.

(e) For disposal sites and for cities of more than 4,000 people and for unincorporated urbanized areas located within the local government unit, copies of any ordinance, franchise, permit, or other document that insures that the opportunity to recycle will be provided, if requested by the Department.

(f) The geographic boundaries of the urbanized area or proposed boundaries of the urbanized area.

(g) Other information or attachments necessary to describe the proposed program for providing the opportunity to recycle.

(3) In order to maintain certification for local government units, ~~an annual recycling~~ a recovery rate report that includes the information required in OAR 340-090-0100(2)(b) must be submitted each year~~.~~, and an opportunity to recycle report required in OAR 340-090-0100(2)(a) must be submitted as required by the Department. The recovery rate~~The recycling~~ report shall be due on February 28th of each year following certification, and the opportunity to recycle report shall be due on February 28th following each year for which an opportunity to recycle report is required. If these ~~recycling~~ reports are not submitted, the local government unit shall be subject to decertification as specified in OAR 340-091-0040.

(4) The disposal site permittee shall be responsible for submitting, or causing to be submitted, all of the information required by sections (2) and (3) of this rule.

(5) Initial Reports for Persons other than Local Government Units. Before a disposal site can accept waste from a person other than a local government unit not previously certified under OAR 340-091-0030, an initial recycling report consisting of the following information must be submitted to the Department on forms provided by the Department:

(a) The type of business and the local government unit(s) with jurisdiction over the location of the business;

(b) A description of the mode of transportation to be used to ship waste to the selected disposal site;

(c) A list of waste being disposed of by waste stream component, the estimated tonnage by waste stream component for current calendar year, preceding calendar year and the projected tonnages for the next calendar year. Indication of any activity or change to the business or waste generation activity which will increase or decrease waste disposal weights;

(d) The generation point of waste being disposed of and indication if multiple facilities are consolidating waste prior to shipment for disposal;

(e) A description of the regional and local programs available which provide the opportunity to recycle;

(f) Any existing or planned program opportunities which reduce, reuse, recycle and/or compost material before disposal. Include types and quantities of material that are or will be diverted from landfilling and what percent of the waste generation that represents.

**Submittals, Approval, and Amendments for Waste Reduction Programs**

**340-091-0080** (1) For persons within the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the person before waste from that person may be accepted by the disposal site.

(2) For persons outside the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the disposal site operator accepting waste from the person. The site operator shall submit this information to the Department no later than two years after the date when waste is first received from the person at the site, pursuant to OAR 340-091-0035(4).

(3) Where the waste proposed to be disposed of comes from more than one jurisdiction, information submitted for approval shall cover all affected jurisdictions.

(4) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-091-0070, are met.

(5) If the Department does not approve the waste reduction program, the Department shall notify the disposal site operator and, for persons within the State of Oregon, the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-091-0040.

(6) In order to demonstrate continued implementation of the waste reduction program, by February 28 of each year, information required in OAR 340-090-0100 and any solid waste management plan specifications as well as information in OAR 340-091-0070(2) must be submitted for the preceding calendar **or fiscal** year as specified by the Department.

(7) If a person amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-091-0070 are met.

## Topic I (con't): Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-6: Rigid Plastic Container Recycling Rate

**Rigid Plastic Containers: Purpose**

**340-090-0310** (1) The following administrative rules, OAR 340-090-0320 through 0430, are intended to establish the minimum requirements for the implementation of the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:

(a) Reduce the amount of rigid plastic containers being disposed of in Oregon;

(b) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;

(c) Increase the use of recycled material in the manufacture of rigid plastic containers.

**Recycling Rate Calculation**

**340-090-0380** (1) The recycling rate for rigid plastic containers shall be calculated as one of the following:

(a) Aggregate or specified resin type recycling rate for compliance purposes;

(b) Calendar year aggregate recycling rate;

(c) Specified-type rate; or

(d) Product-associated rate.

(2) Recycling rate for compliance purposes.

(a) Aggregate recycling rate for compliance purposes.

(A) The Department ~~shall~~ may determine a recycling rate for rigid plastic containers, in the aggregate, for compliance purposes by December 31 of ~~each~~ any year for which the Department deems it necessary to determine such a rate. The aggregate recycling rate for compliance purposes shall apply to the following calendar year and to any subsequent calendar year until the Department again calculates an aggregate rigid plastic container recycling rate for compliance purposes.

(B) The aggregate recycling rate for compliance purposes shall be based in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, the Department will use the best available recycling rate information in lieu of a calendar year recycling rate.

(b) Specified resin type recycling rate for compliance purposes.

(A) If the aggregate recycling rate in paragraph (2)(a)(A) of this rule is determined to be less than 25 percent, the Department shall determine a specified resin type recycling rate for compliance purposes for rigid plastic containers made from each of the plastic resin types identified in ORS 459A.680. The specified resin type recycling rate for compliance purposes shall apply to the calendar year(s) for which the aggregate recycling rate in paragraph (2)(a)(A) of this rule was determined.

(B) The specified resin type recycling rate for compliance purposes shall be based in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, the Department will use the best available recycling rate information in lieu of a calendar year recycling rate.

(3) Calendar year aggregate recycling rate.

(a) The calendar year aggregate recycling rate for rigid plastic containers shall be calculated by the Department and includes all rigid plastic containers including those exempted by OAR 340-090-0340 (2), (4), (5), (6) or (7) from meeting compliance standards.

(b) The calendar year recycling rate for rigid plastic containers in the aggregate shall be determined as a percentage by dividing the aggregate numerator by the aggregate denominator. The numbers in both the numerator and denominator of this calculation shall be collected and/or adjusted to represent the same calendar year.

(4) The disposal site permittee shall be responsible for submitting, or causing to be submitted, all of the information required by sections (2) and (3) of this rule.

(5) Initial Reports for Persons other than Local Government Units. Before a disposal site can accept waste from a person other than a local government unit not previously certified under OAR 340-091-0030, an initial recycling report consisting of the following information must be submitted to the Department on forms provided by the Department:

(a) The type of business and the local government unit(s) with jurisdiction over the location of the business;

(b) A description of the mode of transportation to be used to ship waste to the selected disposal site;

(c) A list of waste being disposed of by waste stream component, the estimated tonnage by waste stream component for current calendar year, preceding calendar year and the projected tonnages for the next calendar year. Indication of any activity or change to the business or waste generation activity which will increase or decrease waste disposal weights;

(d) The generation point of waste being disposed of and indication if multiple facilities are consolidating waste prior to shipment for disposal;

(e) A description of the regional and local programs available which provide the opportunity to recycle;

(f) Any existing or planned program opportunities which reduce, reuse, recycle and/or compost material before disposal. Include types and quantities of material that are or will be diverted from landfilling and what percent of the waste generation that represents.

**Submittals, Approval, and Amendments for Waste Reduction Programs**

**340-091-0080** (1) For persons within the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the person before waste from that person may be accepted by the disposal site.

(2) For persons outside the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the disposal site operator accepting waste from the person. The site operator shall submit this information to the Department no later than two years after the date when waste is first received from the person at the site, pursuant to OAR 340-091-0035(4).

(3) Where the waste proposed to be disposed of comes from more than one jurisdiction, information submitted for approval shall cover all affected jurisdictions.

(4) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-091-0070, are met.

(5) If the Department does not approve the waste reduction program, the Department shall notify the disposal site operator and, for persons within the State of Oregon, the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-091-0040.

(6) In order to demonstrate continued implementation of the waste reduction program, by February 28 of each year, information required in OAR 340-090-0100 and any solid waste management plan specifications as well as information in OAR 340-091-0070(2) must be submitted for the preceding calendar **or fiscal** year as specified by the Department.

(7) If a person amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-091-0070 are met.

## Topic I (con't): Local Government and Other Recycling Programs (HB 3456)

### Subtopic I-6: Rigid Plastic Container Recycling Rate

**Rigid Plastic Containers: Purpose**

**340-090-0310** (1) The following administrative rules, OAR 340-090-0320 through 0430, are intended to establish the minimum requirements for the implementation of the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:

(a) Reduce the amount of rigid plastic containers being disposed of in Oregon;

(b) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;

(c) Increase the use of recycled material in the manufacture of rigid plastic containers.

**Recycling Rate Calculation**

**340-090-0380** (1) The recycling rate for rigid plastic containers shall be calculated as one of the following:

(a) Aggregate or specified resin type recycling rate for compliance purposes;

(b) Calendar year aggregate recycling rate;

(c) Specified-type rate; or

(d) Product-associated rate.

(2) Recycling rate for compliance purposes.

(a) Aggregate recycling rate for compliance purposes.

(A) The Department ~~shall~~ may determine a recycling rate for rigid plastic containers, in the aggregate, for compliance purposes by December 31 of ~~each~~ any year for which the Department deems it necessary to determine such a rate. The aggregate recycling rate for compliance purposes shall apply to the following calendar year and to any subsequent calendar year until the Department again calculates an aggregate rigid plastic container recycling rate for compliance purposes.

(B) The aggregate recycling rate for compliance purposes shall be based in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, the Department will use the best available recycling rate information in lieu of a calendar year recycling rate.

(b) Specified resin type recycling rate for compliance purposes.

(A) If the aggregate recycling rate in paragraph (2)(a)(A) of this rule is determined to be less than 25 percent, the Department shall determine a specified resin type recycling rate for compliance purposes for rigid plastic containers made from each of the plastic resin types identified in ORS 459A.680. The specified resin type recycling rate for compliance purposes shall apply to the calendar year(s) for which the aggregate recycling rate in paragraph (2)(a)(A) of this rule was determined.

(B) The specified resin type recycling rate for compliance purposes shall be based in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, the Department will use the best available recycling rate information in lieu of a calendar year recycling rate.

(3) Calendar year aggregate recycling rate.

(a) The calendar year aggregate recycling rate for rigid plastic containers shall be calculated by the Department and includes all rigid plastic containers including those exempted by OAR 340-090-0340 (2), (4), (5), (6) or (7) from meeting compliance standards.

(b) The calendar year recycling rate for rigid plastic containers in the aggregate shall be determined as a percentage by dividing the aggregate numerator by the aggregate denominator. The numbers in both the numerator and denominator of this calculation shall be collected and/or adjusted to represent the same calendar year.

(c) The elements of the formula to calculate the calendar year aggregate recycling rate for post-consumer rigid plastic containers in Oregon are:

(A) The aggregate numerator, expressed in tons.

(i) The numerator shall be calculated as the total weight of post-consumer rigid plastic containers recycled in Oregon.

(ii) In addition to the Department's census of material recovery rates, the Department may use as the basis for determining the total weight of post-consumer rigid plastic containers recycled in Oregon an annual recycling census of all parties directly involved in brokering, processing, or recycling post-consumer rigid plastic containers from Oregon. Monthly forms may be provided by the Department for record keeping purposes only. Census respondents will be asked to calculate and submit:

(I) The total amount of post-consumer rigid plastic received from Oregon sources which is rigid plastic containers as defined in OAR 340-090-0330;

(II) The percentage of (I) that is lost due to removal of contaminated, non-plastic, and non-recyclable material; and

(III) Any other information the Department may require to accurately determine the recycling tonnages.

(iii) Procedures to conduct the census shall be designed and implemented relating to:

(I) Developing and maintaining a comprehensive list of handlers and reclaimers;

(II) Obtaining data from handlers and reclaimers, including the use of monthly and annual record keeping and reporting forms;

(III) Reconciling variances in reported data;

(IV) Maintaining quality control in data collection and analysis; and

(V) Adjusting data to produce estimates of the amount of plastic from post-consumer rigid plastic containers by controlling for contamination, including moisture, organic matter and other non-plastic materials.

(iv) The Department shall publish a report on the findings of the census, methodologies used and information regarding potential errors.

(B) The aggregate denominator, expressed in tons.

(i) The denominator shall be calculated as the sum of the total weight of post-consumer rigid plastic containers recycled in Oregon (the numerator) plus the total weight of post-consumer rigid plastic containers disposed of in Oregon. The total weight of post-consumer rigid plastic containers disposed of in Oregon shall be calculated by multiplying the estimated percent of municipal solid waste which is post-consumer rigid plastic containers times total tons of municipal solid waste disposed of in Oregon.

(ii) The total tons of municipal solid waste disposed of in Oregon is derived from information collected under the provisions of ORS 459A.010 (4)~~(d)~~ (g) and 459A.050 (3) and (4).

(iii) A composition study of solid waste disposed of in Oregon shall be used as the basis for estimating the percent of disposed solid waste which is post-consumer rigid plastic containers. Adjustments to a previous composition study may be used as a substitute for a new composition study.

**Note**: Stated as a formula, this is:

$$\frac{\text{Aggregate Numerator}}{\text{Aggregate Denominator}} \times 100 = \text{Calendar Year Aggregate Recycling Rate}$$

(d) The calendar year aggregate rigid plastic container recycling rate will be determined by the Department ~~annually~~, when the Department determines it to be necessary, on a calendar year basis. ~~beginning with 1995 and~~ When a calendar year aggregate rate is determined, it will be published in a report which includes a discussion of potential errors associated with calculation of the total tons of municipal solid waste disposed of in Oregon, information on the recycling and disposal data collection and analysis methodologies and margin of error for the percent composition of rigid plastic containers.

(4) Specified-type recycling rate. The recycling rate for a specified type of rigid plastic container as calculated by the Department shall be determined as a percentage by dividing the specified type numerator by the specified type denominator. The numbers in both the numerator and denominator of this calculation shall be collected and/or adjusted to represent the same calendar year.

(a) The elements of the formula to calculate the specified type recycling rate for rigid plastic containers in Oregon are:

(A) The specified type of post-consumer rigid plastic container numerator shall be calculated as the total of the specific type of post-consumer rigid plastic containers recycled in Oregon, expressed in tons.

(B) The specified type of post-consumer rigid plastic container denominator, expressed in tons.

(i) The denominator shall be calculated by one of the following methods:

(I) As the sum of the weight of the specified type of post-consumer rigid plastic containers recycled in Oregon plus the total weight of the specified type of rigid plastic containers disposed of in Oregon; or

(II) The total weight of the specified type of post-consumer rigid plastic containers sold in Oregon.

(ii) If the weight of the specified type of post-consumer rigid plastic containers disposed of is used to calculate the denominator, a composition study of solid waste disposed of in Oregon shall be used as the basis for determining the weight disposed of.

**Note**: Stated as a formula, this is:

$$\frac{\text{Specified Type Numerator}}{\text{Specified Type Denominator}} \times 100 = \text{Specified Type Recycling Rate}$$

(b) Any person calculating the recycling rate of a specified type of post-consumer rigid plastic container may rely upon disposal or recycling data generated by the Department. Persons using other data to calculate a recycling rate must be able to document that such data were generated by a methodology acceptable to the Department and are verifiable.

(c) Adjustment to data collected by the recycling census and composition study identified in paragraphs (3)(c)(A)(ii) and (3)(c)(B)(ii) and (iii) of this rule respectively shall be made only by use of a methodology acceptable to the Department.

(d) Data collected on a national basis may be used to determine the post-consumer rigid plastic container recycling rate in Oregon if it can be shown how these data are either typical of or can be adjusted to accurately represent conditions in Oregon.

(5) Product-associated recycling rate. The recycling rate for a product-associated rigid plastic container as calculated by the Department shall be determined as a percentage by dividing the product-associated numerator by the product-associated denominator. The numbers in both the numerator and denominator of this calculation shall be collected and/or adjusted to represent the same calendar year.

(a) The elements of the formula to calculate the product-associated recycling rate for rigid plastic containers in Oregon are:

(A) The numerator shall be calculated as the total weight of product-associated post-consumer rigid plastic containers recycled in Oregon, expressed in tons.

(B) The product-associated post-consumer rigid plastic container denominator, expressed in tons. The denominator shall be the total weight of the product-associated rigid plastic containers sold in Oregon.

**Note**: Stated as a formula, this is:

$$\frac{\text{Product-associated Numerator}}{\text{Product-associated Denominator}} \times 100 = \text{Product-associated Recycling Rate}$$

(6) A product manufacturer or container manufacturer shall rely on the Department's calculation of the aggregate recycling rate for compliance purposes for post-consumer rigid plastic containers to comply with OAR 340-090-0350(1)(b)(A). In cases where the Department calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer or container manufacturer may rely on the Department's rate calculation when claiming that a container or containers comply with OAR 340-090-0350(1)(b)(B) or (1)(b)(C).

(7) In cases where a manufacturer calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer may rely upon disposal or recycling data generated by the Department, where available. Manufacturers using other data to calculate a recycling rate must be able to document that such data were generated by a methodology acceptable to the Department and are verifiable.

(8) Calculation of a recycling rate shall include only those outputs from processing rigid plastic containers which are recycled into new products. When a processing technology results in a combination of outputs, some of which are recycled into new products and others of which are fuel products, or energy recovery, the recycling rate shall not include any portion of the output which is a fuel product, is used to produce fuel products, or is otherwise used for energy recovery.

## Topic II: Container Glass Minimum Recycled Content Requirements (SB 1044)

**Definitions:** See below p.34, **340-090-0010** (15) "Glass Container Manufacturer"

**Minimum Content Reporting Requirements**

**340-090-0110** The following information shall be reported to the Department by February 28 of each year for the previous calendar year by the applicable person on a form provided by the Department:

(1) Each consumer of newsprint in Oregon shall report the following information:

(a) Amount of newsprint used in a calendar year in short tons or metric tons;

(b) Amount of recycled-content newsprint, comprised of post-consumer waste paper, used in a calendar year in short tons or metric tons;

(c) Aggregate recycled content of the newsprint used in a calendar year expressed as a percent of the total newsprint used in a calendar year in short tons;

(d) For calendar year 1995 and every year thereafter, if a consumer cannot obtain the required amount of recycled content newsprint for the reasons listed in ORS 459A.505, the report shall include an appropriate explanation;

(e) For purposes of this section only "post-consumer waste" means a material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer or manufacturing item.

(2) Beginning on February 28, 1995 for calendar year 1994 and every year thereafter, publishers of directories distributed in Oregon shall provide the following information on a form provided by the Department. For purposes of this rule, directories means telephone directories that weigh one pound or more for a local jurisdiction:

(a) Total weight in tons of directories distributed in Oregon;

(b) Percent by weight of recycled content in the total directories distributed in Oregon;

(c) Percent of total weight that consists of post consumer waste;

(d) If the requirements in ORS 459A.520 cannot be met, an explanation is required;

(e) Description of the locations and cooperative programs implemented with local government for the collection and recycling of old directories when new ones are distributed, including the total weight of old directories collected for recycling in each local government jurisdiction.

(3) Each manufacturer of glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located ~~sold or distributed~~ in Oregon, shall report the following information:

(a) Total tons of new glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located ~~or sold~~ in Oregon, in a calendar year;

(b) The total tons of post-consumer recycled glass used in manufacturing the containers made in Oregon, or made outside Oregon and sold to packagers located ~~or sold~~ in Oregon, in a calendar year.

(c) Beginning with calendar year 2000, post-consumer recycled glass generated in Oregon and used in "secondary end uses" shall be credited towards the 50 percent minimum percentage requirement. As used in this section, "post-consumer recycled glass" does not include window glass and other glass not related to glass container manufacturing. This "credit" shall be determined annually beginning in 2002 as follows:

(A) The Department shall determine the tonnage of post-consumer recycled glass generated in Oregon and used in "secondary end uses" based on reports received pursuant to OAR 340-090-0100.

(B) The Department shall then determine the percentage of post-consumer glass generated in Oregon that was used for secondary end uses that year. A composition study of solid waste disposed of in Oregon shall be used as the basis for estimating the amount of solid waste which is post-consumer recycled glass.

(C) The 50 percent minimum glass recycled content requirement each glass manufacturer must meet shall be reduced by the number of percentage points determined in (3)(c)(B) of this rule for the subject year.

(d) It shall be the responsibility of a glass manufacturer to identify to the Department all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" shall include:

(A) Use on road surfaces as "glasphalt;"

(B) Fiberglass;

(C) Abrasives;

(D) Glass foam;

(E) Glass beads for reflective paint;

(F) Construction uses, meeting engineering specifications;

(G) Road-base aggregate, meeting engineering specifications;

(H) Other uses as approved by the Department.

(e) Upon request from a glass container manufacturer, the Department shall not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if the Department determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet within Oregon wastesheds where container glass is a principal recyclable material, and that meets reasonable specifications established by the manufacturer. However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement shall not exempt a glass container manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a glass container manufacturer shall include sufficient detail for the Department to be able to reasonably make a determination as to the availability of appropriate cullet, and shall:

(A) Be made to the Department in writing by February 28 of a year to apply to use of cullet in the previous calendar year.

(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer shall demonstrate to the Department why such restrictions are necessary.

(C) Include the tonnage of the shortfall of available cullet.

## Topic III: Requirements for Out-of-State Waste Disposed of in Oregon (SB 543)

**Purpose for Waste Reduction Programs and Recycling Certification**

**340-091-0010** (1) The Commission's purpose in adopting rules OAR 340-091-0010 through 340-091-0090 for waste reduction programs pursuant to ORS 459.055 and 468.220 and for certifying that a sufficient opportunity to recycle is provided pursuant to ORS 459.305 is to:

(a) Conserve valuable landfill space by insuring that the persons who generate the garbage going to a disposal site have the opportunity to recycle, and that the amount of recyclable material being disposed of is reduced as much as is practical;

(b) Protect groundwater resources and the environment and preserve public health by reducing the waste going to landfills; and

(c) Conserve energy and natural resources by promoting the reuse and recycling of materials as a preferred alternative to disposal.

(2) The purpose as stated in section (1) of this rule is to apply regardless of the state or jurisdiction

in which the waste was generated.

(3) The Department shall not have enforcement authority regarding the requirements of ORS 459A.005 to 459A.085 and 459.250, or rules adopted under these statutory requirements, for out-of-state persons other than the ability ~~to certify and decertify the persons under OAR 340-091-0040, and the ability~~ to accept or reject waste reduction programs and determine whether or not waste reduction programs are being implemented, thus restricting the disposal of wastes in a landfill when an adequate opportunity to recycle has not been provided to the generators of the wastes, or where an approved waste reduction program is not being implemented in the area where the waste is generated.

(4) It is the intent of the Commission that where a local government requests funding, technical or landfill assistance under ORS 459.047 through 459.057 or 468.220, ~~that~~ the local government shall make a good faith effort toward development, implementation and evaluation of waste reduction programs.

**Applicability for Waste Reduction Programs and Recycling Certification**

**340-091-0020** (1) Waste Reduction Programs: A waste reduction program approved by the Department under OAR 340-091-0080 shall be required before:

(a) Issuance of a disposal site permit under ORS 459.047 through 459.055 and ORS 459.205 through 459.273 for a disposal site expected to accept more than 75,000 tons of waste per year from any person;

(b) Issuance of Pollution Control Bond Fund monies to a local government pursuant to ORS 468.220; or

(c) A disposal site accepts more than 75,000 tons per year of wastes from any person. 75,000 or more tons per year of solid waste originating outside Oregon may be accepted from a single source generator or wasteshed if the disposal site operator provides written notice to the Department before receiving the first shipment of waste pursuant to OAR 340-091-0035, and if, within two years of first receiving the waste, the disposal site operator submits information to the Department making the demonstration required by OAR 340-091-0035(4).

(2) Recycling Certification: ~~For a person not required to implement a waste reduction program under ORS 459.055, or not otherwise exempt under OAR 340-091-0030(6), c~~Certification under OAR ~~340-090-0030~~ 340-091-0030 shall be required before waste from ~~the~~ a person may be accepted for disposal by a disposal site unless the person is exempt under OAR 340-091-0030(6).

(3) Certification of a local government unit constitutes certification for all persons within that local government unit.

(4) For persons other than local governments in a jurisdiction that has not been certified, a recycling certification is required for residential, institutional and commercial waste.

**Standards for Recycling Certification**

**340-091-0030** (1) Opportunity to recycle. For purposes of OAR 340-091-0010 to 0090, the opportunity to recycle means that:

(a) For any person other than a local government unit, the opportunity to recycle is available locally or that the person has a program in place which provides the opportunity to reduce the waste disposed of by the person through waste prevention ~~reduction~~, reuse and recycling.

(b) For local government units, the requirements of OAR 340-090-0020, 0030, 0040 and 0050 have been met, or the disposal site permittee on behalf of the local government unit has requested and received approval for an alternative method under OAR 340-090-0080.

(c) For waste originating outside Oregon, there is a program for recycling in place which either:

(A) Has achieved a recovery rate equivalent to that achieved in a comparable county in Oregon; or

(B) Is equivalent to the opportunity to recycle as required in subsection (1)(a) or (b) of this rule, except that a local government unit shall not be required to meet the recovery rate in OAR 340-090-0050.

(2) Except as otherwise provided in section (6) of this rule, a disposal site may not accept any solid waste ~~generated from persons either within or outside the State of Oregon~~ unless the Department has certified that:

(a) The recycling programs offered to or by the person provide an opportunity to recycle; or

(b) If the person is a local government unit, the recycling program meets the requirements of ORS 459A.005 to 459A.085 and 459.250.

(3) A person shall be considered certified if the person has not been decertified under OAR 340-091-0040 and if:

(a) The permittee of the disposal site has submitted or caused to be submitted an initial recycling report containing the information required in OAR 340-091-0050, and the Department has approved or conditionally approved the report; or

(b) The Department has approved or conditionally approved an initial recycling report submitted under OAR 340-090-0100.

(4) The date of certification shall be considered to be the date that the initial recycling report was first approved, or conditionally approved, by the Department.

(5) For each initial recycling report submitted to fulfill the requirements of section (3) of this rule, the Department shall respond by 60 days after receipt of a completed initial recycling report by either certifying that the opportunity to recycle is provided or by indicating what deficiencies exist in providing the opportunity to recycle. If the Department does not respond within this time limit, the local government unit shall not be considered to be certified under OAR 340-091-0030.

(6) A disposal site may accept wastes for disposal ~~that are generated from a person outside the State of Oregon~~ without certification required under section (2) of this rule, if:

(a) The person is implementing a waste reduction program under ORS 459.055 and OAR 340-091-0070 that is approved by the Department; or

~~(b) For out-of-state waste first received from a solid waste generator after September 9, 1995, the disposal site operator receiving the waste has notified the Department in writing before receiving the first shipment of waste pursuant to OAR 340-091-0035 and, within two years of first receiving the waste, submits information to the Department making the demonstration(s) required by OAR 340-091-0035 (4); or~~

~~(c)~~ (b) The disposal site accepts no more than 1,000 tons per year of wastes generated within any single local government unit. This 1,000 ton per year exemption shall apply separately to each incorporated city or town or similar local government unit, and to the unincorporated area of each county or similar local government unit, but not to other smaller geographic units referred to in section (7) of this rule; or

(c) The wastes are generated from a person outside the State of Oregon.

~~(d) The disposal site accepts a separate industrial waste from a person other than a local government. For purposes of OAR 340 Division 91, petroleum-contaminated soils are considered "industrial waste."~~

(7) For the purposes of OAR 340-091-0100 to 0110, the term "local government unit" shall include smaller geographic units such as individual franchise or contract areas if a disposal site requests that the Department certify the recycling programs in the smaller geographic unit. The Department will certify the recycling programs in the smaller geographic unit if it determines that the opportunity to recycle is provided to all residents and businesses within the unit, as provided in section (1) of this rule, and that the boundaries of the unit were not drawn for the purpose of excluding potential recycling opportunities or otherwise reducing recycling requirements.

**Notification of Intent to Receive Out-of-State Waste and Compliance "Demonstration"**

**340-091-0035** (1) A disposal site operator shall notify the Department before accepting a single shipment or the first of multiple shipments of solid waste from a source outside Oregon anticipated to exceed the following amounts of solid waste:

(a) Solid waste (other than separate industrial waste) generated within any single local government unit if the site operator anticipates receiving more than ~~1,000~~ 10,000 tons per year of such wastes. For purposes of this rule, petroleum-contaminated soils are considered "industrial waste."

(b) Separate industrial waste from a person other than a local government if the site operator anticipates receiving more than 75,000 tons per year of such waste.

(2) For separate industrial waste received from a person other than a local government when a site operator does not originally anticipate receiving more than 75,000 tons in a calendar year:

(a) The site operator shall notify the Department when the landfill has received 60,000 tons of any separate industrial waste in a calendar year. The notification shall be received by the Department within one week of when the cumulative total of that waste for the year reached 60,000 tons.

(b) If a site operator later adjusts the estimated tonnage to be over 75,000 tons for any calendar year, the site operator shall notify the Department as soon as the permittee receives information that that threshold is likely to be exceeded. The site operator shall in any case notify the Department before the cumulative amount of the separate industrial waste received by the site first exceeds 75,000 tons in any calendar year.

(3) The notification required by sections (1) and (2) of this rule shall:

(a) Be in writing. Facsimile transmittal is acceptable if it is addressed to a person designated by the Department.

(b) Be received by the Department before the first shipment of solid waste from that source is received at the disposal site, except as provided in section (2) of this rule. Receipt of the notification by the Department on the day the waste is first received is acceptable.

(c) Contain the following information:

(A) Name and address of the disposal site.

(B) Name and telephone number of the contact person at the disposal site.

(C) Name and address of, or identifying number and city or county and state of origin of, the generator of the solid waste.

(D) If the generator is not a ~~unit of~~ local government unit, the name of the person responsible for solid waste management in the area from which the solid waste originates.

(E) Type and description of waste.

(F) Anticipated annual tonnage to be received of each type of waste.

(G) Expected date on which the first shipment of waste will be received. For waste subject to subsection (2)(a) of this rule, this date need not be provided. For waste subject to subsection (2)(b) of this rule, the date when waste was first received at the site shall be given.

(H) Any other information required by the Department relative to ~~certification of a recycling program or~~ approval of a waste reduction program.

(4) Within two years of the date when waste subject to the notification requirements in subsection (1)(b) or (2)(b) of this rule is first received at a site, the site operator shall submit information to the Department to demonstrate that: a waste reduction program is being implemented pursuant to ORS 459.055(3) and OAR 340-091-0070 for persons from whom more than 75,000 tons of solid waste are anticipated to be received annually.

~~(a) For persons from whom more than 1,000 tons but fewer than 75,000 tons of waste are anticipated to be received annually, the person responsible for solid waste management in the area of origin has implemented a program which provides the opportunity to recycle pursuant to OAR 340-091-0030 (1) and 340-091-0060; or~~

~~(b) For persons from whom more than 75,000 tons of solid waste are anticipated to be received annually, a waste reduction program is being implemented pursuant to ORS 459.055 (3) and OAR 340-091-0070.~~

(5) The site operator shall be responsible for tracking the two-year time period within which information must be submitted to the Department to demonstrate compliance with section (4) of this rule. The "date when waste is first received at the site" shall apply to the first calendar year in which the waste received exceeds ~~the 1,000 ton or~~ the 75,000-ton threshold, and shall be the date in that year when the first shipment of the subject waste is received by the disposal site.

(6) Reporting. A site operator shall report to the Department in the site's quarterly operations report, as follows:

(a) For out-of-state waste received from a person for the first time after September 9, 1995 and subject to the demonstration~~(s)~~ in section (4) of this rule:

(A) The person and/or urbanized area from which the waste originates, and its tonnage for the reporting period. For separate industrial wastes an identification number and state of origin may be used for identification purposes; and

(B) The date when the waste is first received at the site from each affected person. This requirement shall not apply after the Department has approved the ~~applicable recycling or~~ waste reduction program.

(b) If a site receives separate industrial waste or other special waste in amounts which are anticipated to be less that 75,000 tons a year from a person or persons located outside of Oregon: the total tonnage, by state of origin, of such waste received during the reporting period, beginning with the July-September 1996 quarter.

**Standards For Waste Reduction Programs**

**340-091-0070** (1) The information in section (2) of this rule must be submitted before the Department will approve a waste reduction program from any person, whether the waste is generated within or outside Oregon. In addition, the information required by sections (3), (4), (5) or (6), as applicable, must be submitted.

(2) Information required from all persons:

(a) The geographic boundaries of the urbanized area or proposed boundaries of the urbanized areas. For waste originating outside the State of Oregon, the geographic boundaries shall be defined as specified in OAR 340-091-0060 (1)(a);

(b) Information on the volume and composition of waste generated in the area, and the volume and composition of waste proposed to be disposed of at an Oregon disposal site;

(c) A list and description of the programs, techniques, requirements, and activities that comprise the waste reduction program;

(d) A timetable indicating the starting date and duration for each activity or portion of the waste reduction program;

(e) Information that demonstrates the commitment by the person to use techniques such as ~~source reduction~~waste prevention, reuse, recycling and resource recovery to reduce the volume of waste that would otherwise be disposed of in a landfill;

(f) A copy of any contract or agreement to dispose of waste in an Oregon landfill;

~~(f)~~(g) A list and description of information that is sufficient to demonstrate continued implementation of the waste reduction program; and

~~(g)~~(h) Any other documents or information that may be necessary to fully describe the waste reduction program and to demonstrate the legal, technical, and economic feasibility of the program.

(3) Local Government Unit Standards: To be approved by the Department, a waste reduction program for local government units shall also:

(a) Be designed to meet all waste reduction standards and goals adopted by the Commission;

(b) Include an opportunity to recycle that meets or exceeds the requirements of OAR 340-090-0020, 0030, 0040, 0050 and ORS 459.250, as demonstrated by submitting to the Department an initial recycling report containing the information and meeting the criteria set forth in OAR 340-091-0050(1) and (2) for recycling certification;

(c) Address waste reduction for each separate waste stream generated within the local government unit that is to be sent to affected Oregon disposal sites, including but not limited to:

(A) household waste,

(B) commercial waste,

(C) industrial waste,

(D) yard debris,

(E) demolition material, and

(F) hazardous material;

(d) Meet all criteria set forth in ORS 459.055;

(e) Continue for as long as a waste reduction program is required under OAR 340-091-0020; and

(f) Include a copy of each ordinance or similar enforceable legal document that sets forth the elements of the waste reduction program, and that demonstrates the commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as ~~source reduction~~waste prevention, recycling, reuse and resource recovery.

(4) For local government units that ~~produce~~generate less than 75,000 tons of waste per year that are requesting financial assistance for development or planning for solid waste facilities under ORS 468.220, the local government unit shall consider proven methods of waste reduction for inclusion in a waste reduction program. In reviewing the waste reduction program, the Department shall take into account:

(a) The type and volume of wastes produced;

(b) The density and other appropriate characteristics of the population and commercial activity within the local government unit; and

(c) The distance of the local government unit from recycling markets.

(5) Persons other than Local Government Units: To be approved by the Department, a waste reduction program for any person other than a local government unit shall also:

(a) Fulfill the requirements of OAR 340-091-0050(5);

(b) Describe the existing office recycling program; if none exists, describe the proposed program and startup date;

(c) Describe existing industrial process solid waste reduction program; if none exists, describe the proposed program and startup date;

(d) Describe use of post-consumer materials in manufacturing processes including the tons per year of recovered material consumed;

(e) Describe any composting efforts taking place for waste reduction;

(f) Describe procurement policy with regard to the purchase of products made with recycled content; if none exists, describe the proposed program and startup date; and

(g) Describe techniques used to promote waste reduction and recycling to employees; if none exist, describe the proposed program and startup date.

(6) Waste Originating Outside Oregon: To be approved by the Department, a waste reduction program for waste originating outside Oregon shall also provide information which demonstrates either:

(a) A recovery rate for the urbanized area in which the waste originated equivalent to that achieved in a comparable local government unit in Oregon as described in OAR 340-091-0060(1)(d), and justification for the selection by the site operator of the appropriate recovery rate for that jurisdiction. The demonstration shall include at a minimum information on population density, distance to recycling markets for each recyclable material, and other waste composition information and demographic information necessary to justify the selected recovery rate; or

(b) A recycling program equivalent to the opportunity to recycle and its component program elements as required in section (3) or (5) of this rule, as applicable.

## Topic IV: Financial Assurance

### Subtopic IV-1. Landfills: Corporate Financial Test

**Closure and Post-Closure Care: Closure Permits**

**340-094-0100** If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with closure criteria in **40 CFR, §258.60**. All municipal solid waste permittees shall also comply with this rule:

(1) Closure Permit:

(a) At least five years prior to anticipated closure of a municipal solid waste landfill, the person holding the disposal site permit shall apply to renew the permit to cover the period of time remaining for site operations, closure of the site, and all or part of the time that active post-closure site maintenance is required by the Department. This last permit issued before final closure of the landfill is scheduled to occur shall be called a "closure permit";

(b) The person who holds or last held the disposal site permit, or, if that person fails to comply, then the person owning or controlling a municipal solid waste landfill that is closed and no longer receiving solid waste after January 1, 1980, must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site.

(2) Applications for closure permits must include but are not limited to:

(a) A Final Engineered Site Closure Plan prepared in accordance with OAR 340-094-0110. In lieu of requiring the Final Engineering Site Closure Plan as a part of the application for a closure permit, the Department may specify a date in the closure permit for submission of the Final Engineering Site Closure Plan;

(b) A Final Engineered Post-closure Plan prepared in accordance with OAR 340-094-0115. In lieu of requiring the Final Engineered Post-closure Plan as a part of the application for a closure permit, the Department may specify a date in the closure permit for submission of the Final Engineered Post-closure Plan;

(c) If the permittee does not own and control the property, the permittee shall demonstrate to the Department that the permittee has access to the landfill property after closure to monitor and maintain the site and operate any environmental control facilities;

(d) If any person other than the permittee assumes any responsibility for any closure or post-closure activities, that responsibility shall be evidenced by a written contract between the permittee and each person assuming any responsibility.

(3) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but is not limited to:

(a) An evaluation of the approved closure or post-closure plan as applicable discussing current status, unanticipated occurrences, revised closure date projections, necessary changes, etc.;

(b) A copy of the annual update of financial assurance as required by OAR 340-094-0140(6)~~(d)~~(e). If the financial mechanism used is a trust fund, the permittee shall include an evaluation of the financial assurance plan documenting an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any changes in the plan;

(c) Other information requested by the Department to determine compliance with the rules of the Department.

(4) The Department shall terminate closure permits for municipal solid waste landfills not later than 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

(5) Any time after a municipal solid waste landfill is closed, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee. Before the Department grants a termination or release under this section, the permittee must demonstrate and the Department must find that human health and the environment will be protected and there is no longer a need for:

(a) Active supervision of the site;

(b) Maintenance of the site; or

(c) Maintenance or operation of any system or facility on the site.

(6) The closure permit remains in effect and is a binding obligation of the permittee until the Department terminates the permit according to section (4) or (5) of this rule or upon issuance of a new closure permit for the site to another person following receipt of a complete and acceptable application.

**Financial Assurance Criteria**

**340-094-0140** If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in 40 CFR, §258.1, the owner or operator shall comply with financial assurance criteria in 40 CFR, Part 258, Subpart G. All municipal solid waste permittees shall also comply with this rule.

(1) Financial Assurance Required. The owner or operator of a municipal solid waste landfill shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

(a) Closure of the municipal solid waste landfill;

(b) Post-closure maintenance of the municipal solid waste landfill; and

(c) Any corrective action required by the Department to be taken at the municipal solid waste landfill, pursuant to OAR 340-094-0080(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements existing municipal solid waste landfills which stopped receiving waste before October 9, 1993 (or which stopped receiving waste before April 9, 1994, if a "small landfill" meeting criteria in 40 CFR, §258.1(e)(2), and completed installation of final cover by October 9, 1994. The Department may also exempt from the financial assurance requirements an existing "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1), if such a landfill stops receiving waste before October 9, 1997 and completes installation of final cover by October 9, 1998.

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(A) The landfill poses no significant threat of adverse impact on groundwater or surface water;

(B) The landfill poses no significant threat of adverse impact on public health or safety;

(C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(D) The area of the landfill that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance.

(3) Schedule for provision of financial assurance.

(a) For costs associated with the "worst-case" closure plan and the "Subtitle D" post-closure plan prepared pursuant to 40 CFR, Subparts F and G and OAR 340-094-0010(1)(a)(A) and OAR 340-094-0115(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided on the following schedule:

(A) For a new municipal solid waste landfill: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste;

(B) For a regional disposal site operating under a solid waste permit on November 4, 1993: by May 4, 1994;

(C) For other municipal solid waste landfills operating under a solid waste permit on November 4, 1993: by April 9, 1997; or

(D) For a "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1) and operating under a solid waste permit on November 4, 1993: by October 9, 1997.

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-094-0110(1)(a)(B) and OAR 340-094-0115(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided at the same time those two Plans are due to the Department.

(c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action.

(d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

(a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars according to the provisions of 40 CFR, §258.75. A landfill owner or operator meeting the criteria in 40 CFR §258.75 (a) through (c) may estimate the current dollar cost using a discount rate no greater than the Department's current reference rate. The Department shall determine the reference rate annually during the month of June. It shall be in effect for the fiscal year beginning on the first day of July immediately following the determination date and ending on June 30 of the following calendar year. (The reference rate shall be based on the current yield of composite long-term U.S. Treasury Bonds as published in the Federal Reserve's H.15 (519) Selected Interest Rates for the first full week of the month in which the reference rate is determined, less the annualized

Gross Domestic Product implicit price deflator as published in the most recent U.S. Bureau of Economic Analysis *Survey of Current Business*.) The written estimate shall be prepared by a Registered Professional Engineer and shall include costs of:

(A) Closing the municipal solid waste landfill;

(B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the landfill site;

(C) Performing required corrective action activities; and

(D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.

(b) The source of the cost estimates;

(c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;

(d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable.

(A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(i) A reduction of the rates a person within the area served by the municipal solid waste landfill is charged for solid waste collection service as defined by ORS 459.005; or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(B) If the municipal solid waste landfill is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.

(f) Adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule;

(g) The certification required by subsection (6)(c) of this rule; and

(h) The annual updates required by subsection (6)~~(d)~~(e) of this rule.

(5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:

(a) Closure. Detailed cost estimates for closure shall be based on the "worst-case" closure plan or the Final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure Plan shall take into consideration at least the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) The portion of the site property closed before final closure of the entire site; and

(G) Any other conditions imposed on the permit relating to closure of the site.

(b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the "Subtitle D" post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:

(A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and

(B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-094-0080(3) and 40 CFR, §258.73.

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one municipal solid waste landfill, the amount of financial assurance

required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated.

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a "worst-case" closure plan, a Final Engineered Site Closure Plan, a "Subtitle D" post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report.

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operating record on the schedule specified in section (3) of this rule.

(c) The permittee shall certify to the Director at the time a financial assurance mechanism is submitted to the Department and when a financial assurance plan is placed in the facility operating record that the financial assurance mechanism meets all state and federal requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year.

(d) If a permittee uses a discount rate to estimate costs pursuant to subsection (4)(a) of this rule, the permittee shall prospectively for each year the discount rate is used:

(A) Certify to the Director that the landfill closure date is certain and there are no foreseeable factors that will change the estimate of site life; and

(B) Submit a certification to the Director from a Registered Professional Engineer stating the cost estimates are complete and accurate.

~~(d)~~ (e) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable.

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and, if used, in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure care and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review.

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operating record. The certification shall state that the financial assurance plan(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed in the facility operating record. If a discount rate is used to estimate costs, the annual update shall include the certifications in subsection (6)(d) of this rule. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-094-0100(3).

(7) Department Review of Financial Assurance and Third-Party Certification.

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time.

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-094-0145(~~5~~6)(i) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state and federal requirements for financial assurance including criteria in OAR 340-094-0145(~~5~~6)(i), and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department.

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with applicable laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule.

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a municipal solid waste landfill unit is scheduled to occur in the "worst case" closure plan or in the Final Engineered Site Closure Plan.

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to begin for a municipal solid waste landfill unit in the "Subtitle D" post-closure plan or in the Final Engineered Post-closure Plan.

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in 40 CFR, §258.74.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-094-0145;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-094-0145(~~5~~6)(a), (b) or (i), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule.

**Financial Assurance Mechanisms**

**340-094-0145** Form of Financial Assurance.

(1) The financial assurance mechanism shall restrict the use of the financial assurance so that the financial resources may be used only to guarantee that closure, post-closure or corrective action activities will be performed, or that the financial resources can be used only to finance closure, post-closure or corrective action activities.

(2) The financial assurance mechanism shall provide that the Department or a party approved by the Department is the beneficiary of the financial assurance.

(3) A permittee may use one financial assurance mechanism for closure, post-closure and corrective action activities, but the amount of funds assured for each activity must be specified.

(4) A permittee may demonstrate financial assurance for closure, post-closure and corrective action by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

~~(4)~~ (5) The financial assurance mechanism shall be worded as specified by the Department, unless a permittee uses an alternative financial assurance mechanism pursuant to subsection ~~(5)(i)~~(6)(i) of this rule. The Department retains the authority to approve the wording of an alternative financial assurance mechanism.

~~(5)~~ (6) Allowable Financial Assurance Mechanisms. A permittee shall provide only the following forms of financial assurance for closure and post-closure activities:

(a) A trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and meeting criteria in 40 CFR §258.74(a).

The purpose of the trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure, post-closure maintenance or corrective action activities which are authorized by the Department. The permittee shall notify the Department, in writing, before any expenditure of trust fund moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the trustee within 30 days after receiving such notification, the expenditure is deemed authorized and the trustee may make the requested reimbursements;

(b) A surety bond guaranteeing payment into a standby closure or post-closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The standby closure or post-closure trust fund must be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the permittee or surety company. The penal sum of the bond must be in an amount at least equal to the current closure or post-closure care cost estimate, as applicable. The bond must guarantee that the permittee will either fund the standby trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond.. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(c) A surety bond guaranteeing performance of closure, post-closure or corrective action activities issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure, post-closure maintenance or corrective action activities, as applicable, or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond.. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(d) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year and shall be automatically extended for at least one year on each successive expiration date unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or to perform the selected remedy described in the corrective action report, of if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(e) A closure or post-closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures that are in accordance with the closure or post-closure plan or otherwise justified. The permittee shall notify the Department, in writing, before any expenditure of insurance policy moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the insurer within 30 days after receiving such notification, the expenditure is deemed authorized and the insurer may make the requested reimbursements. The policy must provide that the insurance is automatically renewable and that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both

the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department determines that the land disposal site has been abandoned; or the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. code; or the premium due is paid. The permittee is required to maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated;

(f) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that funds are available for closure, post-closure or corrective action activities, and that those activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable. A qualifying private corporation may guarantee its own obligations, the obligations of a corporate parent, sibling or subsidiary, and the obligations of a firm with which it has a substantial business relationship. A corporation guaranteeing the obligations of a firm with which it has a substantial business relationship must certify that it possesses such relationship and that it is issuing the guarantee as an act incident to that relationship, and must specify any compensation received for its issuance of such guarantee. To qualify, a private corporation must meet the criteria of either paragraph (A) or (B) of this subsection:

(A) Financial Test. To pass the financial test, the permittee must have:

(i) Two of the following three ratios: A ratio of total liabilities to tangible net worth less than ~~3.0~~ 1.5; a ratio of the [(sum of net income plus depreciation, depletion, and amortization) minus $10 million] to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(ii) Net working capital equal to at least four times and tangible net worth equal to at least six times the sum of the current cost estimates covered by the test;

(iii)Tangible net worth of at least $10 million exclusive of the costs being guaranteed; and

(iv) Assets in the United States amounting to at least ~~six times~~ the sum of the current closure, post-closure and corrective action cost estimates covered by the test, plus any other environmental obligations guaranteed by permittee.

(B) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(i) Tangible net worth of at least $10 million exclusive of the costs being guaranteed; and

(ii) Two of the following three ratios:

(I) Times Interest Earned ([earnings before interest and taxes] divided by interest) of 2.0 or higher;

(II) Beaver's Ratio of 0.2 or higher ([internally generated cash] divided by [total liabilities]). Internally generated cash is obtained from taxable income before net operating loss, ~~plan~~plus credits for fuel tax and investment in regulated investment companies, plus depreciation plus amortization plus depletion, plus any income on the books not required to be reported for tax purposed if it is likely to be recurring, minus income tax expenses. Total liabilities includes all long- and short-term debt; or

(III) Altman's Z-Score of 2.9 or higher.

(C) The permittee shall demonstrate that ~~is~~it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(i) A letter signed by the permittee's chief financial officer that:

(I) Provides the information necessary to document that the permittee passes the financial test;

(II) Guarantees that the funds are available to finance closure, post-closure or corrective action activities according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable;

(III) Guarantees that the closure, post-closure or corrective action activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable;

(IV) Guarantees that a substitute financial mechanism acceptable to the Department ~~the standby trust fund~~will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure or post-closure plan and permit, or the selected remedy described in the corrective action report, as applicable, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial

test;

(V) Guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor is a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; and

(VI) Acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(ii) A copy of the independent certified public accountant's (CPA) report on examination of the permittee's financial statements for the latest completed fiscal year;

(iii) An agreed-upon procedures letter prepared in accordance with standards established by the American Institute of Certified Public Accountants ~~special report~~from the permittee's independent CPA ~~stating that~~ in which the CPA ~~has compared the data which the letter from the permittee's chief financial officer~~ either specifies that the figures used in determining that the corporation meets the requirements of the corporate financial test are the same as the figures in the corporation's ~~as having been derived from the~~ independently audited year end financial statements for the latest fiscal year or explains any deviation therein to the satisfaction of the Department; ~~with the amounts in such financial statements, and that no matters came to the CPA's attention which caused the CPA to believe that the specified data should be adjusted;~~

(iv) ~~A trust agreement demonstrating that a standby trust fund has been established with an entity which has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and~~

~~(v)~~ A list of any facilities in Oregon or elsewhere for which the permittee is using a similar financial means test to demonstrate financial assurance.

(D) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund a substitute financial assurance mechanism acceptable to the Department ~~the standby trust fund~~ within 30 days after notification by the Department.

(g) Local Government Financial Test. A local government permittee that satisfies the requirements of 40 CFR, §258.74(f)(1) through (3) may demonstrate financial assurance up to the amount specified in 40 CFR, §258.74 (f)(4).

(A) The provisions of 40 CFR, §258.74 (f)(1)(i) and 40 CFR, §258.74 (f)(1)(i)(A) are deleted.

(h) Local Government Guarantee. A permittee that satisfies the requirements of 40 CFR, §258.74(h)(1) and (2) may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government.

(A) The local government guarantee mechanism is allowed only to the extent permitted by the Oregon Constitution.

(i) Alternative Financial Assurance. Alternative forms of financial assurance, such as state-approved trust fund or a pledge of revenue, may be proposed by the permittee, subject to the review and approval of the Director. The applicant must be able to prove to the satisfaction of the Department that the level of security is equivalent to subsections (a) through (h) of this section, that the criteria of OAR 340-094-0140(4)(e) and sections (1) through ~~(3)~~(4) of this rule and the performance standards in 40 CFR, §258.74(1) are met, except that the pay-in period of a state-approved trust fund for closure or post-closure care may be over the remaining life of the municipal solid waste landfill unit. Submittal of an alternative financial assurance mechanism to the Department for review and approval shall include third-party certification as specified in OAR 340-094-0140(7).

(~~6~~7) Allowable Financial Assurance Mechanism for Corrective Action. A permittee shall provide one of the following forms of financial assurance for corrective action: a trust fund, a surety bond guaranteeing performance of corrective action, an irrevocable letter of credit, a corporate guarantee, local government financial test, local government guarantee, or alternative forms of financial assurance, pursuant to subsections ~~(5)~~(6)(a), (c), (d), (f), (g), (h), or (i) of this rule, respectively. Unless specifically required by a mutual agreement and order pursuant to ORS 465.325, the surcharge provisions of ORS 459.311 shall not be used to meet the financial assurance requirements of this rule for financial assurance for corrective action.

**Note**: Formats containing the standard wording for financial assurance mechanisms as required by OAR 340-094-0145~~(4)~~(5) may be obtained from the Department.)

**Financial Assurance Criteria**

**340-095-0090** (1) Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

(a) Closure of the non-municipal land disposal site;

(b) Post-closure maintenance of the non-municipal land disposal site; and

(c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-095-0040(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements any non-municipal land disposal site including but not limited to construction and demolition waste sites, composting facilities and industrial waste sites.

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(A) The non-municipal land disposal site poses no significant threat of adverse impact on groundwater or surface water;

(B) The non-municipal land disposal site poses no significant threat of adverse impact on public health or safety;

(C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(D) The area of the non-municipal land disposal site that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a non-municipal land disposal site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the non-municipal land disposal site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance.

(3) Schedule for provision of financial assurance.

(a) For costs associated with the conceptual "worst-case" closure plan and the conceptual post-closure plan prepared pursuant to OAR 340-095-0060(1)(a)(A) and OAR 340-095-0065(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the non-municipal land disposal site shall be provided on the following schedule:

(A) For a new non-municipal land disposal site: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste; or

(B) For a non-municipal land disposal site operating under a solid waste permit on November 4, 1993: by April 9, 1997.

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-095-0060(1)(a)(B) and OAR 340-095-0065(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the land disposal site shall be provided at the same time those two Plans are due to the Department.

(c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action.

(d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

(a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars (as calculated using a discount rate equal to the current yield of a 5-year U.S. Treasury Note as published in the Federal Reserve's *H.15 (519) Selected Interest Rates* for the week in which the calculation is done), prepared by a Registered Professional Engineer, of:

(A) Closing the non-municipal land disposal site;

(B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the non-municipal land disposal site;

(C) Performing required corrective action activities; and

(D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.

(b) The source of the cost estimates;

(c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;

(d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable.

(A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(i) A reduction of the rates a person within the area served by the non-municipal land disposal site is charged for solid waste collection service as defined by ORS 459.005; or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(B) If the non-municipal land disposal site is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.

(f) The financial assurance plan shall contain adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule;

(g) The certification required by subsection (6)(c) of this rule; and

(h) The annual updates required by subsection (6)(d) of this rule.

(5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:

(a) Closure. Detailed cost estimates for closure shall be based on the conceptual "worst-case" closure plan or the final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure plan shall take into consideration at least the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) The portion of the site property closed before final closure of the entire site; and

(G) Any other conditions imposed on the permit relating to closure of the site.

(b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the conceptual post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:

(A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and

(B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-095-0040(3).

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one non-municipal land disposal site, the amount of financial assurance required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated.

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a conceptual "worst-case" closure plan, a Final Engineered Site Closure Plan, a conceptual post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report.

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operations office or another location approved by the Department on the schedule specified in Section (3) of this rule.

(c) The permittee shall certify to the Director at the time a financial assurance plan is placed in the facility operations office or other approved location that the financial assurance mechanism meets all state requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year.

(d) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable.

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review.

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operations office or other approved location. The certification shall state that the financial assurance plans(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed at the facility operations office or other approved location. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-095-0050(3).

(7) Department Review of Financial Assurance and Third-Party Certification.

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time.

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-095-0095~~(5)~~(6)(g) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state requirements for financial assurance, and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department.

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with state laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule.

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a non-municipal land disposal site unit is scheduled to occur in the conceptual "worst case" closure plan or in the Final Engineered Site Closure Plan.

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to begin for a non-municipal land disposal site unit in the conceptual post-closure plan or in the Final Engineered Post-closure Plan.

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in the corrective action selected pursuant to OAR 340 Division 40.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-095-0095;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-095-0095~~(5)~~(6)(a), (b) or (g), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule.

**Financial Assurance Mechanisms**

**340-095-0095** Form of Financial Assurance.

(1) The financial assurance mechanism shall restrict the use of the financial assurance so that the financial resources may be used only to guarantee that closure, post-closure or corrective action activities will be performed, or that the financial resources can be used only to finance closure, post-closure or corrective action activities.

(2) The financial assurance mechanism shall provide that the Department or a party approved by the Department is the beneficiary of the financial assurance.

(3) A permittee may use one financial assurance mechanism for closure, post-closure and corrective action activities, but the amount of funds assured for each activity must be specified.

(4) A permittee may demonstrate financial assurance for closure, post-closure and corrective action by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

~~(4)~~(5) The financial assurance mechanism shall be worded as specified by the Department, unless a permittee uses an alternative financial assurance mechanism pursuant to subsection ~~(5)(g)~~ (6)(g) of this rule. The Department retains the authority to approve the wording of an alternative financial assurance mechanism.

~~(5)~~(6) Allowable Financial Assurance Mechanisms. A permittee shall provide only the following forms of financial assurance for closure and post-closure activities:

(a) A trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The purpose of the trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure, post-closure maintenance or corrective action activities which are authorized by the Department. The permittee shall notify the Department, in writing, before any expenditure of trust fund moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the trustee within 30 days after receiving such notification, the expenditure is deemed authorized and the trustee may make the requested reimbursements;

(b) A surety bond guaranteeing payment into a standby closure or post-closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The standby closure or post-closure trust fund must be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the permittee or surety company. The penal sum of the bond must be in an amount at least equal to the current closure or post-closure care cost estimate, as applicable. The bond must guarantee that the permittee will either fund the standby trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(c) A surety bond guaranteeing performance of closure, post-closure or corrective action activities issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure, post-closure maintenance or corrective action activities, as applicable, or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(d) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year and shall be automatically extended for at least one year on each successive expiration date unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or to perform the selected remedy described in the corrective action report, or if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(e) A closure or post-closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures that are in accordance with the closure or post-closure plan or otherwise justified. The permittee shall notify the Department, in writing, before any expenditure of insurance policy moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the insurer within 30 days after receiving such notification, the expenditure is deemed authorized and the insurer may make the requested reimbursements. The policy must provide that the insurance is automatically renewable and that the insurer

may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department determines that the land disposal site has been abandoned; or the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under **Title 11 (Bankruptcy), U.S. Code**; or the premium due is paid. The permittee is required to maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated;

(f) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that funds are available for closure, post-closure or corrective action activities, and that those activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable. A qualifying private corporation may guarantee its own obligations, the obligations of a corporate parent, sibling or subsidiary, and the obligations of a firm with which it has a substantial business relationship. A corporation guaranteeing the obligations of a firm with which it has a substantial business relationship must certify that it possesses such relationship and that it is issuing the guarantee as an act incident to that relationship, and must specify any compensation received for its issuance of such guarantee. To qualify, a private corporation must meet the criteria of either paragraph (A) or (B) of this subsection:

(A) Financial Test. To pass the financial test, the permittee must have:

(i) Two of the following three ratios: A ratio of total liabilities to tangible net worth less than ~~3.0~~ 1.5; a ratio of the [(sum of net income plus depreciation, depletion, and amortization) minus $10 million] to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(ii) Net working capital equal to at least four times and tangible net worth equal to at least six times the sum of the current cost estimates covered by the test;

(iii) Tangible net worth of at least $10 million exclusive of the costs being guaranteed; and

(iv) Assets in the United States amounting to at least ~~six times~~ the sum of the current closure, post-closure and corrective action cost estimates covered by the test, plus any other environmental obligations guaranteed by permittee.

(B) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(i) Tangible net worth of at least $10 million exclusive of the costs being guaranteed; and

(ii) Two of the following three ratios:

(I) Times Interest Earned ([earnings before interest and taxes] divided by interest) of 2.0 or higher;

(II) Beaver's Ratio of 0.2 or higher ([internally generated cash] divided by [total liabilities]). Internally generated cash is obtained from taxable income before net operating loss, ~~plan~~ plus credits for fuel tax and investment in regulated investment companies, plus depreciation plus amortization plus depletion, plus any income on the books not required to be reported for tax purposed if it is likely to be recurring, minus income tax expenses. Total liabilities includes all long- and short-term debt; or

(III) Altman's Z-Score of 2.9 or higher.

(C) The permittee shall demonstrate that it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(i) A letter signed by the permittee's chief financial officer that provides the information necessary to document that the permittee passes the financial test; that guarantees that the funds are available to finance closure, post-closure or corrective action activities according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable; that guarantees that the closure, post-closure or corrective action activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable; that guarantees that a substitute financial mechanism acceptable to the Department ~~the standby trust fund~~ will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure or post-closure plan and permit, or the selected remedy described in the corrective action report, as applicable, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial

test; that guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor is a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; and that acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(ii) A copy of the independent certified public accountant's (CPA) report on examination of the permittee's financial statements for the latest completed fiscal year;

(iii) An agreed-upon procedures letter prepared in accordance with standards established by the American Institute of Certified Public Accountants ~~special report~~ from the permittee's independent CPA ~~stating that~~ in which the CPA ~~has compared the data which the letter from the permittee's chief financial officer~~ either specifies that the figures used in determining that the corporation meets the requirements of the corporate financial test are the same as the figures in the corporation's ~~as having been derived from the~~ independently audited year end financial statements for the latest fiscal year or explains any deviation therein to the satisfaction of the Department; ~~with the amounts in such financial statements, and that no matters came to the CPA's attention which caused the CPA to believe that the specified data should be adjusted;~~

(iv) ~~A trust agreement demonstrating that a standby trust fund has been established with an entity which has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and~~

~~(v)~~ A list of any facilities in Oregon or elsewhere for which the permittee is using a similar financial means test to demonstrate financial assurance.

(D) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund a substitute financial assurance mechanism acceptable to the Department ~~the standby trust fund~~ within 30 days after notification by the Department.

(g) Alternative Financial Assurance. Alternative forms of financial assurance may be proposed by the permittee, subject to the review and approval of the Director. The applicant must be able to prove to the satisfaction of the Department that the level of security is equivalent to subsections (a) through (f) of this section and that the criteria of OAR 340-095-0090(4)(e) and sections (1) through ~~(3)~~(4) of this rule are met. Submittal of an alternative financial assurance mechanism to the Department for review and approval shall include third-party certification as specified in OAR 340-095-0090(7).

(6) Allowable Financial Assurance Mechanisms for Corrective Action. A permittee shall provide one of the following forms of financial assurance for corrective action: a trust fund, a surety bond guaranteeing performance of corrective action, an irrevocable letter of credit, a corporate guarantee, or alternative forms of financial assurance, pursuant to subsections ~~(5)~~(6)(a), (c), (d), (f) or (g) of this rule, respectively. Unless specifically required by a mutual agreement and order pursuant to ORS 465.325, the surcharge provisions of ORS 459.311 shall not be used to meet the financial assurance requirements of this rule for financial assurance for corrective action.

**NOTE**: Formats containing the standard wording for financial assurance mechanisms as required by OAR 340-095-0095~~(4)~~(5) may be obtained from the Department.

## Topic IV: Financial Assurance

### Subtopic IV-2. Financial Assurance, "General Permit" Composting Facilities

**Special Rules Pertaining to Composting: Conditions**

**340-096-0028** (1) Feasibility Study Report shall include but not be limited to:

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

Department of Agriculture;

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

(c) A proposed facility closure plan of a conceptual "worst case" scenario ~~(including evidence of financial assurance, pursuant to OAR 340-095-0090(1))~~ to dispose of unused feedstocks, partially processed residues and finished compost, unless exempted from this requirement by the Department pursuant to OAR 340-095-0090 (2). The plan will include a method for disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes~~;~~. The facility closure plan shall also include evidence of financial assurance, pursuant to OAR 340-095-0090(1), for all composting facility full permits;

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

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

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

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

(c) Water Quality: Composting facilities shall have no discharge of leachate, wastewater, or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with permit(s) from the Water Quality Program of the Department issued under ORS 468B.050. Agricultural composters must meet water quality requirements pursuant to ORS 468B.050 (1)(b), administered by the Oregon Department of Agriculture;

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

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

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

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

(3) Composting Facility Operations Plan shall include:

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

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

(A) A management plan for malodorous loads;

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

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

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

(ii) Use of mixing for favorable composting conditions;

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

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

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

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

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

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential; and

(v) Degree of maturity.

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

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

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

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

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

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

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

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

(h) Storage:

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

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

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

(i) Salvage:

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

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

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

(4) Records: Annual reporting of the weight of feedstocks utilized for composting is required on a form provided by the Department. The Department may also require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a registration or permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years.

## Topic V: Other Changes Identified by the Department

### Subtopic V-1. Recordkeeping Changes Stemming from DEQ Fee Audit

**Operating Criteria**

**340-094-0040** (1) If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with landfill operating criteria in **40 CFR, Part 258, Subpart C**. Except as otherwise provided in OAR Chapter 340, Division 94, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the operating requirements of this rule.

(2) Open Burning. No person shall conduct the open burning of solid waste at a landfill. The Department may authorize the infrequent burning of land-clearing debris such as tree stumps and limbs, brush and other wood waste, except that open burning of industrial wood waste is prohibited.

(3) Surface Water:

(a) No person shall cause a discharge of pollutants from a landfill into public waters including wetlands, in violation of any applicable state or federal water quality rules or regulations;

(b) Each landfill permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(4) Surface Drainage Control. Each permittee shall ensure that:

(a) The landfill is maintained so that drainage will be diverted around or away from active and completed operational areas;

(b) The surface contours of the landfill are maintained such that ponding of surface water is minimized.

(5) Gas Control:

(a) No person shall operate or maintain a landfill except in conformance with the provisions for gas control in OAR 340-094-0060(4);

(b) Monitoring:

(A) Where the Department finds that a landfill's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the landfill on the concentration of methane gas in the soil;

(B) In addition to the requirements of **40 CFR, §258.23**, if the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(C) In addition to the requirements of **40 CFR, §258.23**, where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of gas, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(D) In addition to the requirements of **40 CFR, §258.23**, the Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(6) Floodplains. No permittee of a landfill located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(7) Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a landfill in accordance with the approved operations plan, and permit conditions and OAR Chapter 340, Divisions 93 and 94.

(8) Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a landfill at intervals specified in the permit. An applicant may propose and the Department may approve alternative cover designs or procedures which are equally protective. In evaluating such a proposal for alternative cover design or procedures, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of equipment and cover

material, any past operational problems and any other relevant factor.

(9) Access Control. Each permittee shall insure that the landfill has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(10) Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the landfill to control or prevent the propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction;

(b) No permittee of a landfill disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(11) In addition to the requirements of **40 CFR, Part 258, Subpart C**, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the following:

(a) Permitted Wastes. Only the waste types listed in the solid waste permit or the approved operations plan, or wastes previously approved by the Department in writing, may be accepted for disposal. In certain cases the Department may also require approval of the source(s) of the waste. Written requests for authorization to accept additional waste types shall be submitted to and approved by the Department prior to disposal of such waste. Requests for authorization to accept additional waste types shall include the following information:

(A) Waste characterization with detailed physical and chemical characteristics of the waste type such as percent solids, results of the paint filter test, Toxicity Characteristic Leaching Procedure ("TCLP") results, polychlorinated biphenyl content, and test results for ignitability, reactivity, corrosivity, etc., as appropriate;

(B) The approximate volume of waste to be disposed of on a daily and yearly basis;

(C) The source of the wastes and a description of the processes which generated the waste;

(D) Special handling and disposal procedures, to be incorporated into the Special Waste Management Plan pursuant to paragraph (11)(b)(J) of this rule.

(b) Operations Plan. Each permittee shall maintain a detailed operations plan which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells. Said plan shall include at least the following:

(A) A description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities);

(B) A program for detecting and preventing the disposal at the facility of regulated hazardous wastes and polychlorinated biphenyl wastes and any other unacceptable wastes as determined by the Department;

(C) Methods of waste unloading, placement, compaction and covering;

(D) Areas and/or procedures to be used for disposal of waste materials during inclement weather;

(E) Types and weights of equipment to be used for site operation;

(F) Detailed description of any salvaging or resource recovery operations to take place at the facility;

(G) Such measures for the collection, containment, treatment or disposal of leachate as may be required;

(H) Provisions for managing surface drainage;

(I) Measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent; and

(J) A Special Waste Management Plan if certain wastes are received, which due to their unique characteristics, require special handling. Such wastes may present personnel safety hazards, create odor and vector problems, generate excessive leachate, lead to excessive settlement, puncture or tear the landfill liner, pose a fire hazard, or increase the toxicity of landfill leachate. The Special Waste Management Plan shall describe special acceptance, waste characterization, handling, storage, recordkeeping and disposal procedures for those materials. Wastes to be included in a Special Waste Management Plan include:

(i) Cleanup materials contaminated with hazardous substances pursuant to OAR 340-093-0170;

(ii) Wastes requiring special management pursuant to OAR 340-093-0190(1);

(iii) Additional wastes authorized for disposal by the Department pursuant to subsection (11)(a)of this rule; and

(iv) Large dead animals, sewage sludges and grit, septage, industrial solid wastes and other materials which may be hazardous or difficult to manage by virtue of their character or large volume, unless special

provisions for such disposal are otherwise approved by the Department.

(c) Leachate. Any person constructing, operating or maintaining a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department;

(d) Endangered Species. No person shall operate a landfill in a manner that will affect endangered species in any of the ways specified in OAR 340-094-0030(3);

(e) Access Roads. Each permittee shall ensure that roads from the landfill property line to the active operational area and roads within the operational area are constructed and maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site;

(f) Site Screening. To the extent practicable, each permittee shall screen the active landfill area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means;

(g) Fire Protection:

(A) Each landfill permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency;

(B) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire-fighting methods until all smoldering, smoking and burning ceases;

(C) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a landfill, or allow dumping activities to interfere with fire-fighting efforts.

(h) Signs. Each permittee of a landfill open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted;

(i) Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a landfill are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department;

(j) Sewage Disposal. Each landfill permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department;

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

(l) Litter:

(A) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the landfill;

(B) Each landfill operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(12) Weighing. The Department may require that landfill permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making and accurate reporting.

(13) Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit, OAR Chapter 340, Divisions 93 through 97 or provisions of OAR Chapter 340, Divisions 90 and 91. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years. At a minimum, the following records are required:

(A) Daily listing by load of the volume or weight of solid waste received; and

(B) Monthly and quarterly accumulations of amounts of daily waste received.

(14) Modifications in Name or Address. The permittee shall notify the Department of any name or address change of the owner or operator of the facility within ten days of the change.

**Operating Criteria**

**340-095-0020** (1) Except as otherwise provided in OAR Chapter 340 Division 95, any person who maintains or operates any non-municipal land disposal site must do so in conformance with the operating requirements of this rule.

(2) Permitted Wastes. Only the waste types listed in the solid waste permit or the operations plan, or wastes previously approved by the Department in writing, may be accepted for disposal. In certain cases the Department may also require approval of the source(s) of the waste. Written requests for authorization to accept additional waste types shall be submitted to and approved by the Department prior to disposal of such waste. Approval of requests for authorization for one-time disposal may be granted by the Department in writing. Requests for authorization for more than one-time disposal shall require a permit modification by the Department. Requests for authorization to accept additional waste types shall include the following information:

(a) Waste characterization with detailed physical and chemical characteristics of the waste type such as percent solids, results of the paint filter test, Toxicity Characteristic Leaching Procedure ("TCLP") results, polychlorinated biphenyl content, and test results for ignitability, reactivity, corrosivity, etc., as appropriate;

(b) The approximate volume of waste to be disposed of on a daily and yearly basis;

(c) The source of the wastes and a description of the processes which generated the waste;

(d) Special handling and disposal procedures, to be incorporated into the Special Waste Management Plan pursuant to subsection (3)(j) of this rule.

(3) Operations Plan. Each permittee shall maintain a detailed operations plan which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells. Said plan shall include at least the following:

(a) A description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities);

(b) A program for detecting and preventing the disposal at the facility of regulated hazardous wastes and polychlorinated biphenyl wastes and any other unacceptable wastes as determined by the Department;

(c) Methods of waste unloading, placement, compaction and covering;

(d) Areas and/or procedures to be used for disposal of waste materials during inclement weather;

(e) Types and weights of equipment to be used for site operation;

(f) Detailed description of any salvaging or resource recovery operations to take place at the facility;

(g) Such measures for the collection, containment, treatment or disposal of leachate as may be required;

(h) Provisions for managing surface drainage;

(i) Measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent; and

(j) A Special Waste Management Plan if certain wastes are received, which due to their unique characteristics, require special handling. Such wastes may present personnel safety hazards, create odor and vector problems, generate excessive leachate, lead to excessive settlement, puncture or tear the landfill liner, pose a fire hazard, or increase the toxicity of landfill leachate. The Special Waste Management Plan shall describe special acceptance, waste characterization, handling, storage, recordkeeping and disposal procedures for those materials. Wastes to be included in a special Waste Management Plan include:

(A) Cleanup materials contaminated with hazardous substances pursuant to OAR 340-093-0170;

(B) Wastes requiring special management pursuant to OAR 340-093-0190(1);

(C) Additional wastes authorized for disposal by the Department pursuant to section (2) of this rule; and

(D) Large dead animals, sewage sludges and grit, septage, industrial solid wastes and other materials which may be hazardous or difficult to manage by virtue of their character or large volume, unless special provisions for such disposal are otherwise approved by the Department.

(4) Open Burning. No person shall conduct the open burning of solid waste at a non-municipal land disposal site. The Department may authorize the infrequent burning of land-clearing debris such as

tree stumps and limbs, brush and other wood waste, except that open burning of industrial wood waste is prohibited.

(5) Leachate. Any person constructing, operating or maintaining a non-municipal land disposal site shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department.

(6) Surface Water:

(a) No person shall cause a discharge of pollutants from a non-municipal land disposal site into public waters including wetlands, in violation of any applicable state or federal water quality rules or regulations;

(b) Each non-municipal land disposal site permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(7) Surface Drainage Control. Each permittee shall ensure that:

(a) The non-municipal land disposal site is maintained so that drainage will be diverted around or away from active and completed operational areas;

(b) The surface contours of the non-municipal land disposal site are maintained such that ponding of surface water is minimized.

(8) Endangered Species. No person shall operate a non-municipal land disposal site in a manner that will affect endangered species in any of the ways specified in OAR 340-095-0010(2).

(9) Gas Control.

(a) No person shall operate or maintain a non-municipal land disposal site except in conformance with the provisions for gas control in OAR 340-095-0030(4).

(b) Monitoring:

(A) Where the Department finds that a non-municipal land disposal site's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the site on the concentration of methane gas in the soil;

(B) If the Department determines that monitoring wells are required at a non-municipal land disposal site, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(C) Where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of gas, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(D) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(10) Floodplains. No permittee of a non-municipal land disposal site located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(11) Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a non-municipal land disposal site in accordance with the approved operations plan, and permit conditions and OAR Chapter 340 Divisions 93 and 95.

(12) Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a non-municipal land disposal site at intervals specified in the permit. An applicant may propose and the Department may approve alternative cover designs or procedures which are equally protective. In evaluating such a proposal for alternative cover design, procedures or frequency, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of equipment and cover material, any past operational problems and any other relevant factor.

(13) Access Roads. Each permittee shall ensure that roads from the non-municipal land disposal site property line to the active operational area and roads within the operational area are constructed and

maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site.

(14) Access Control. Each permittee shall insure that the non-municipal land disposal site has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(15) Site Screening. To the extent practicable, each permittee shall screen the active non-municipal land disposal site area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means.

(16) Fire Protection:

(a) Each non-municipal land disposal site permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency;

(b) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire-fighting methods until all smoldering, smoking and burning ceases;

(c) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a non-municipal land disposal site, or allow dumping activities to interfere with fire-fighting efforts.

(17) Signs. Each permittee of a non-municipal land disposal site open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted.

(18) Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a non-municipal land disposal site are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department.

(19) Sewage Disposal. Each non-municipal land disposal site permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department.

(20) Salvage: A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the non-municipal land disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan.

(21) Litter:

(a) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the non-municipal land disposal site;

(b) Each non-municipal land disposal site operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(22) Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the non-municipal land disposal site to control or prevent the propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction;

(b) No permittee of a non-municipal land disposal site disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(23) Weighing. The Department may require that non-municipal land disposal site permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making and accurate reporting.

(24) Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit, OAR Chapter 340 Divisions 93 through 97 or provisions of OAR Chapter 340, Divisions 90 and 91. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years. At a minimum, the following records are required:

(A) Daily listing by load of the volume or weight of solid waste received; and

(B) Monthly and quarterly accumulations of amounts of daily waste received.

(25) Modifications in Name or Address. The permittee or registrant shall notify the Department of any name or address change of the owner or operator of the facility within ten days of the change.

**Special Rules Pertaining to Incineration**

**340-096-0010** (1) Applicability. This rule applies to all energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Division 93 and applicable provisions in OAR Chapter 340, Divisions 95 and 97.

(2) Detailed Plans and Specifications:

(a) All incineration equipment and air pollution control appurtenances thereto shall comply with air pollution control rules and regulations and emission standards of this Department or the regional air pollution control authority having jurisdiction;

(b) Detailed plans and specifications for incinerator disposal sites shall include, but not be limited to, the location and physical features of the site, such as contours, drainage control, land-scaping, fencing, access and on-site roads, solid waste handling facilities, truck washing facilities, ash and residue disposal and design and performance specifications of incineration equipment and provisions for testing emissions therefrom.

(3) Incinerator Design and Construction:

(a) Ash and Residue Disposal. Incinerator ash and residues shall be disposed in an approved landfill unless handled otherwise in accordance with a plan approved in writing by the Department;

(b) Waste Water Discharges. There shall be no discharge of waste water to public waters except in accordance with a permit from the Department, issued under ORS 468B.050;

(c) Access Roads. All weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(d) Drainage. An incinerator site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(e) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(f) Fences. Access to the incinerator site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(g) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(h) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Incinerator Operations:

(a) Storage:

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

(B) Accumulation of solid wastes and undisposed ash residues shall be kept to minimum practical quantities.

(b) Salvage:

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

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

(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as

defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Air Quality. The incinerator shall be operated in compliance with applicable air quality rules (OAR 340-25-850 through 340-25-905);

(f) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous owner and maintained for the required five years.

**Special Rules Pertaining to Sludge and Land Application Disposal Sites**

**340-096-0030** (1) Applicability:

(a) This rule applies to all land used for the spreading, deposit, lagooning or disposal of sewage sludge, septage and other sludges. Such land and facilities are defined as disposal sites by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable, including the requirements for obtaining a permit from the Department in accordance with OAR 340-093-0050 and 340-093-0070;

(b) Disposal of sewage sludges resulting from a sewage treatment facility that is operating under a current and valid Waste Discharge Permit, issued under ORS 468B.050, is exempted from obtaining a solid waste disposal permit, provided that said sewage sludge disposal is adequately covered by specific conditions of the Waste Discharge Permit. Such sewage sludge disposal operations and sites shall comply with all other provisions of OAR Chapter 340, Divisions 93 through 97 and other laws, rules and regulations pertaining to solid waste disposal.

(2) Plans and Specifications for Sludge Disposal Sites:

(a) Detailed plans and specifications for sludge disposal lagoons shall include, but not be limited to, location and design of the physical features of the site, such as berms, dikes, surface drainage control, access and on-site roads, waste water facilities, inlet and emergency overflow structures, fences, utilities and truck washing facilities, topography with contours not to exceed five foot contour intervals, elevations, legal boundaries and property lines, and land use;

(b) Plans and specifications for land application units shall include, but not be limited to, physical features of the site, such as, surface drainage, access and on-site roads, fences, truck washing facilities, topography with contours not to exceed five foot contour intervals, rates and frequency of sludge application, legal boundaries and property lines and land use.

(3) Prohibited Methods of Sludge Disposal:

(a) Septage and raw sewage sludge shall not be permitted to be disposed of by land spreading, unless it is specifically determined and approved in writing by the Department or state or local health agency having jurisdiction, that such disposal can be conducted with assured, adequate protection of public health and safety and the environment;

(b) Except for "heat-treated" sewage sludges, sewage sludges including septage, raw, non-digested and digested sewage sludges, shall not be:

(A) Used as fertilizer on root crops, vegetables, low growing berries or fruits that may be eaten raw;

(B) Applied to land later than one year prior to planting where vegetables are to be grown;

(C) Used on grass in public parks or other areas at a time or in such a way that persons could unknowingly come in contact with it;

(D) Given or sold to the public without their knowledge as to its origin.

(c) Sludges shall not be deposited in landfills except in accordance with operations plans that have been submitted to and approved by the Department in accordance with OAR 340-094-0060(2)(d) or 340-95-030(2)(d).

(4) Sludge Lagoon and Land Application Unit Design, Construction and Operation:

(a) Location:

(A) Sludge lagoons shall be located a minimum of 1/4 mile from the nearest residence other than that of the lagoon operator or attendant;

(B) Sludge shall not be spread on land where natural run-off could carry a residue into public waters;

(C) If non-digested sludge is spread on land within 1/4 mile of a residence, community or public use area, it shall be plowed under the ground, buried or otherwise incorporated into the soil within five days after application.

(b) Fences:

(A) Public access to a lagoon site shall be controlled by man-proof fencing and gates which shall be locked at all times that an attendant is not on duty;

(B) Public access to land application units shall be controlled by complete perimeter fencing and gates capable of being locked as necessary.

(c) Signs. Signs shall be posted at land application units as required. Signs which are clearly legible and visible shall be posted on all sides of a sludge lagoon, stating the contents of the lagoon and warning of potential hazard to health;

(d) Drainage. A sludge disposal site shall be so located, sloped or protected such that surface drainage will be diverted around or away from the operational area of the site;

(e) Type of Sludge Lagoon. Lagoons shall be designed and constructed to be nonoverflow and watertight;

(f) Lagoon Freeboard. A minimum of 3.0 feet of dike freeboard shall be maintained above the maximum water level within a sludge lagoon unless some other minimum freeboard is specifically approved by the Department;

(g) Lagoon Emergency Spillway. A sludge lagoon shall be provided with an emergency spillway adequate to prevent cutting-out of the dike, should the water elevation overtop the dike for any reason;

(h) Sludge Removal from Lagoon. Water or sludge shall not be pumped or otherwise removed from a lagoon, except in accordance with a plan approved in writing by the Department;

(i) Monitoring Wells. Lagoon sites located in areas having high groundwater tables or potential for contaminating usable groundwater resources may be required to provide groundwater monitoring wells in accordance with plans approved in writing by the Department. Said monitoring wells shall be sufficient to detect the movement of groundwater and easily capable of being pumped to obtain water samples;

(j) Truck Washing. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction;

(k) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years.

**Transfer Stations and Material Recovery Facilities**

**340-096-0040** (1) Applicability. This rule applies to all transfer stations and material recovery facilities (except composting facilities). Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a fixed or permanent transfer station or material recovery facility shall include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Design and Construction:

(a) Waste Water Discharges. There shall be no discharge of waste water to public waters except in accordance with a permit from the Department, issued under ORS 468B.050;

(b) Access Roads. All weather roads shall be provided from the public highways or roads, to and

within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(c) Drainage. The site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(d) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(e) Fences. Access to the site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(f) ~~Solid Waste~~ Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(g) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Operations:

(a) Storage:

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

(B) Accumulation of solid wastes shall be kept to minimum practical quantities.

(b) Salvage:

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

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

(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the number of years required by the Department.

**Solid Waste Treatment Facilities**

**340-096-0050** (1) Applicability. This rule applies to all solid waste treatment facilities. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a solid waste treatment facility shall include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Air Quality. A permittee shall ensure that all solid waste treatment facilities comply with air pollution control rules and regulations and emission standards of this Department or the regional air pollution control authority having jurisdiction.

(4) Bioremediation Facilities. Facilities that propose to biologically treat petroleum contaminated soil must design the operation to prevent contamination of the area and minimize the possibility of contaminants leaching to groundwater. Such facilities shall in general comply with regulations in OAR

Chapter 340, Division 95, "Land Disposal Sites Other Than Municipal Solid Waste Landfills," for location restrictions, operating criteria and design criteria. The following requirements also apply:

(a) To prevent leaching, design criteria must include either:

(A) A landfill-type liner with a leachate removal system. A concrete slab is not considered a liner. An applicant must demonstrate that the proposed liner is compatible with the waste; or

(B) A vadose zone monitoring system, pursuant to **40 CFR 264, Subpart M.**

(b) Groundwater. The Department may require groundwater monitoring depending on the facility's cover, run-on controls and irrigation;

(c) Operating criteria:

(A) Each permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters;

(B) The permittee must ensure that the facility is operated in a manner such that the liner is not damaged;

(C) The permittee must provide a monitoring plan to demonstrate completion of the biodegradation process.

(d) Financial assurance. An application for a bioremediation solid waste treatment facility shall include a financial assurance plan sufficient to cover costs for a third party to remove the waste to a thermal desorption facility if it is deemed necessary by the Department.

(5) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97. All records must be kept for a minimum of five years. In the case of a change in ownership of the permitted facility, the new permittee is responsible for ensuring that the records are transferred from the previous permittee and maintained for the required five years.

**Permittee Obligations**

**340-064-0025**

(1) Each person who is required by ORS 459.715 and 459.725, and OAR 340-64-015 and 340-64-055, to obtain a permit shall:

(a) Comply with the provisions of ORS459.705 to 459.790, these rules and any other pertinent Department requirements;

(b) Inform the Department in writing within 30 days of company changes that affect the permit, such as business name change, address change of the permittee, change from individual to partnership and change in ownership;

(c) Allow to the Department, after reasonable notice, necessary access to the site and to its records, including those required by other public agencies, in order for the monitoring, inspection and surveillance program developed by the Department to operate.

(2) Each person who is required by ORS 459.715 and OAR 340-064-0015 to obtain a permit shall submit to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the amount of $250, except that the holder of a waste tire storage permit allowing operation of the site as a beneficial use, shall submit an annual compliance fee in the amount of $50, effective February 1, 1989. The permittee shall submit evidence of required financial assurance when the annual compliance fee is submitted. For the first year's operation, the full annual compliance fee shall apply if the waste tire storage site permit is issued on or before October 1. Any new waste tire storage site issued a permit after October 1 shall not owe an annual compliance fee until February 1 of the following year.

(3) Each waste tire storage site permittee whose site accepts waste tires after the effective date of these rules shall also do the following as a condition to holding the permit:

(a) Maintain records on approximate numbers of waste tires received and shipped, and tire carriers transporting the tires so as to be able to fulfill the reporting requirements in subsection (3)(c) of this rule. The permittee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the permittee documents the approximate number of tires included in each. These records shall be maintained for a ~~period of three~~ minimum of five years, and shall be available for inspection by the Department after reasonable notice;

(b) Maintain a record of the name (and the carrier permit number, if applicable) of the tire carriers not

exempted by OAR 340-064-0055(3) who deliver waste tires to the site and ship waste tires from the site, together with the quantity of waste tires shipped with those carriers;

(c) Submit a report containing the following information annually by February 1 of 1990 and each year thereafter:

(A) Number of waste tires received at the site during the year covered by the report;

(B) Number of waste tires shipped from the site during the year covered by the report;

(C) A list (and tire carrier permit number, if applicable) of the tire carriers not exempted by OAR 340-064-0055(3) delivering waste tires to the site and shipping waste tires from the site;

(D) The number of waste tires and amount of tire-derived products located at the site at the time of the report.

(d) Notify the Department within one month of the vehicle license plate number and name, if possible, of any unpermitted tire carrier (who is not exempt under OAR 340-064-0055(3)) who delivers waste tires to the site after January 1, 1989;

(e) If required by the Department, prepare for approval by the Department and then implement:

(A) A plan to remove some or all of the waste tires or tire-derived products stored at the site. The plan shall follow standards for site closure pursuant to OAR 340-064-0045. The plan may be phased in, with Department approval;

(B) A plan to process some or all of the waste tires stored at the site. The plan shall comply with ORS 459.705 through 459.790 and OAR 340-064-0035.

(f) Maintain the financial assurance required under OAR 340-064-0020(1)(b) and 340-064-0022;

(g) Maintain any other plans and exhibits pertaining to the site and its operation as determined by the Department to be reasonably necessary to protect the public health, welfare or safety or the environment.

**Waste Tire Carrier Permittee Obligations**

**340-064-0063** (1) Each person required to obtain a waste tire carrier permit shall:

(a) Comply with OAR 340-064-0025(1);

(b) Display current decals with his or her waste tire carrier identification number issued by the Department when transporting waste tires. The decals shall be displayed on the sides of the front doors of each truck used to transport tires;

(c) Maintain the financial assurance required under ORS 459.730(2)(d).

(2) When a waste tire carrier permit expires or is revoked or suspended, the former permittee shall immediately remove all waste tire permit decals from its vehicles and remove the permit from display. The permittee shall surrender a revoked or suspended permit, and certify in writing to the Department within fourteen days of revocation or suspension that all Department decals have been removed from all vehicles.

(3) Leasing, loaning or renting of permits or decals is prohibited. No permit holder shall engage in any conduct which falsely tends to create the appearance that services are being furnished by the holder when in fact they are not.

(4) A waste tire carrier shall leave waste tires for storage or disposal only in a permitted waste tire storage site, at a land disposal site permitted by the Department to store waste tires or with an operating plan allowing the storage of waste tires, or at another site approved by the Department, such as a site authorized to accept waste tires under the laws or regulations of another state.

(5) The Department may allow a permittee to use up to two covered containers to collect waste tires. Amaximum of 2,000 tires may be so collected at any one time, and for no longer than 90 days in each container, beginning with the date when a waste tire is first placed in a container. The containers must be located at the permittee's main place of business.

(6) A waste tire carrier permittee shall inform the Department within two weeks of any change in license plate number or ownership (sale)of any vehicle under his or her waste tire carrier permit.

(7) Waste tire carrier permittees shall record and maintain for a minimum of three years, except as otherwise specified in this section, the following information regarding their activities for each month of operation:

(a) The approximate quantity of waste tires collected. Quantities may be measured by aggregate

loads or cubic yards, if the carrier documents the approximate number included in each load;

(b) Where or from whom the waste tires were collected, and whether the waste tires are from the cleanup of a waste tire pile;

(c) Where the waste tires were deposited. The waste tire carrier shall keep receipts or other written materials documenting where all tires were stored or disposed of. This information shall be maintained for five years.

(8) Waste tire carrier permittees shall submit to the Department an annual report that summarizes the information collected under section (7) of this rule. The information shall be broken down by quarters. This report shall be submitted to the Department annually as a condition of holding a permit together with the annual compliance fee or permit renewal application.

(9) A holder of a waste tire carrier permit shall pay to the Department a nonrefundable annual fee in the following amount:

(a) Annual compliance fee (per company or corporation) $175;

(b) Plus annual fee per vehicle used for hauling waste tires $ 25.

(10) A holder of a combined tire carrier/storage permit shall pay to the Department by February 1 of each year a nonrefundable annual compliance fee for the coming calendar year in the following amount:

(a) Annual compliance fee (per company or corporation) $250;

(b) Plus annual fee per vehicle used for hauling waste tires $ 25.

(11) A holder of a waste tire carrier permit shall pay to the Department by February 15 of each year an annual compliance fee for the coming year (March 1 through February 28) as required by sections (9) through (10) of this rule. The permittee shall provide evidence of required financial assurance when the annual compliance fee is submitted. For the first year's operation, the full fee(s)shall apply if the carrier permit is issued on or before December 1. Any new waste tire carrier permit issued after December 1 shall not owe an annual compliance fee(s)until March 1.

(12) The fee is $10 for a decal to replace one that was lost or destroyed.

(13) The fee for a waste tire carrier permit renewal is $25.

(14) The fee for a permit modification of an unexpired waste tire carrier permit, initiated by the permittee, is $15. Adding a vehicle to the permittee's fleet pursuant to OAR 340-064-0055(16), dropping a vehicle from the permitted fleet, or updating a changed license plate number of a vehicle in the permitted fleet does not constitute a permit modification. However, adding a vehicle is subject to a separate fee pursuant to OAR 340-064-0055(16).

(15) The fee to reinstate a waste tire carrier permit which has been revoked by the Department is $100. No fee is required to reinstate a waste tire carrier permit which has been suspended by the Department.

(16) A waste tire carrier permittee should check with the PUC and DMV to ensure that he or she complies with all PUC and DMVregulations.

**Solid Waste Permit and Disposal Fees**

**340-097-0110** (1) Each person required to have a Solid Waste Disposal Permit shall be subject to the following fees:

(a) An application processing fee for new facilities which shall be submitted with the application for a new permit or registration as specified in OAR 340-097-0120(2);

(b) A solid waste permit or registration compliance fee as listed in OAR 340-097-0120(3); and

(c) The 1991 Recycling Act permit fee as listed in OAR 340-097-0120(4).

(2) Each disposal site receiving domestic solid waste shall be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-097-0120(5).

(3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a per-ton solid waste disposal fee as specified in OAR 340-097-0120(5).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-097-0120(5):

(a) For purposes of this rule and OAR 340-097-0120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

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

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

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

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

(E) A person who transports infectious waste.

(b) Notification requirement:

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

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

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

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

(a) New sites:

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

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

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) For a new transfer station, material recovery facility or composting facility. For the first fiscal year's operation, the ~~full~~ entire permit compliance fee shall apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 shall not owe a permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station, material recovery facility or composting facility shall include the applicable permit or registration compliance fee for the first year of operation.

(b) Existing permitted sites. Any existing disposal site that is in operation, is permitted to receive or receives solid waste in a calendar year must pay the solid waste permit or registration compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-097-0120(3)(a), (b), (c) and (4). A facility shall be deemed to be an "existing permitted site" from the time of permit issuance;

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee shall pay the solid waste permit or registration compliance fee for the "year of closure" as specified in OAR 340-097-0120(3)(d)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee shall pay the solid waste permit compliance fee for closed sites as specified in OAR 340-097-0120(3)(d);

(d) The Director may alter the due date for the solid waste permit or registration compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. ~~Beginning on July 31, 1994, the~~ The permit or registration compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, shall be submitted together with a form approved by the Department. Information reported shall include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnage. Permittees and registrants are responsible for accurate calculation of solid waste tonnage. For purposes of determining appropriate fees under OAR 340-097-0120(3) through (5), annual tonnage of solid waste received shall be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including construction and demolition sites and municipal solid waste composting facilities, receiving 50,000 or more tons annually shall be based on weight from certified scales ~~after January 1, 1994~~. When certified scales are required, all solid waste received at the facility for disposal shall be weighed at the facility's scales, except as otherwise approved by the Department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility shall either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required ~~or not available~~, estimated annual tonnage for municipal solid waste, including that at municipal solid waste composting facilities will be based upon 300 pounds per cubic yard of uncompacted waste received, and 700 pounds per cubic yard of compacted waste received. If yardage is not known, the solid waste facility may use one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall be used;

(b) Industrial facilities. Annual tonnage of solid waste received at ~~off-site~~ industrial facilities receiving 50,000 or more tons annually shall be based on weight from certified scales ~~after January 1, 1994~~. When certified scales are required, all solid waste received at the facility shall be weighed at the facility's scales, except as otherwise approved by the Department in writing. If certified scales are required but are temporarily not functioning, all solid waste received at the facility shall either use other certified scales in the area or estimate tonnage as specified in this section. If certified scales are not required ~~, or at those sites receiving less than 50,000 tons a year if scales are not available~~, industrial sites shall use the following conversion factors to determine tonnage of solid waste disposed. Composting facilities shall use the following conversion factors for those materials appropriate for composting:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste:

(i) Wood waste, mixed (as defined in OAR 340-093-0030(~~9~~5~~9~~4)): 1,200 pounds per cubic yard;

(ii) Wood chips, green: 473 pounds per cubic yard;

(iii) Wood chips, dry: 243 pounds per cubic yard;

(iv) Sawdust, wet: 530 pounds per cubic yard;

(v) Sawdust, bone dry: 275 pounds per cubic yard;

(E) Yard debris:

(i) Grass clippings: 950 pounds per cubic yard;

(ii) Leaves: 375 pounds per cubic yard;

(iii) Compacted yard debris: 640 pounds per cubic yard; and

(iv) Uncompacted yard debris: 250 pounds per cubic yard;

(F) Food waste, manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

(G) Ash and slag: 2,000 pounds per cubic yard;

(H) Contaminated soils: 2,400 pounds per cubic yard;

(I) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

(J) For wastes other than the above, the permittee or registrant shall determine the density of the wastes subject to approval by the Department in writing;

(K) As an alternative to the above conversion factors, the permittee or registrant may determine the density of their own waste, subject to approval by the Department in writing.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the Department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The Department determines that no permit or registration will be required;

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils shall be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466; and

(B) The Department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the Department for oversight of the cleanup and for processing of the Letter ~~of~~ Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

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

(11) Submittal schedule.

(a) The solid waste permit or registration compliance fee shall be billed by the Department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period shall be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee shall be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (9)(a) of this rule, ~~beginning on July 1, 1994~~ the solid waste permit or registration compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the Department. These fees shall be self-reported by the permittee to the Department, pursuant to sections (5) and (6) of this rule. The fee period shall be either the calendar quarter or the calendar year, and the fees are due to the Department as follows:

(A) For municipal solid waste disposal sites (including incinerators~~,~~ and energy recovery facilities)~~,~~ and construction and demolition landfills: on the same schedule as specified in subsection (11)(c) of this rule~~. The July 31, 1994 submittal for solid waste disposal sites receiving less than 1,000 tons of solid waste a year shall be for the half year fee period of July 31, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-097-0120(3)(a)(A)~~;

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: annually, on the 31st day of January beginning on January 31, 1995~~. A July 31, 1994 submittal shall be paid for the half year fee period of July 1, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-097-0120(3)(a)(A) or based on the tonnage received from January 1 through June 30, 1994, whichever is more~~;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnage and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year~~. The January 1995 submittal for the per-~~

~~ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.~~

(d) The fees on Oregon solid waste disposed of out of state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-097-0120(5)(e)(C). The fees shall be submitted together with a form approved by the Department, which shall include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

## Topic V (con't): Other Changes Identified by the Department

### Subtopic V-2. Other Minor and Housekeeping Changes

**Definitions**

**340-090-0010** The definitions in this rule apply to OAR Chapter 340, Divisions 90 and 91. As used in these Divisions 90 and 91 unless otherwise specified:

(1) "Affected Person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and ~~m~~Metropolitan ~~s~~Service ~~d~~District. For the purposes of these rules "affected person" also means a person involved in operation of a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(2) "Collection Service" means a service that provides for collection of solid waste or recyclable material or both, but does not include that part of a business operated under a certificate issued under ORS 822.110. "Collection service" of recyclable materials does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(3) "Collector" means the person who provides collection service.

(4) "Commercial" means stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include manufacturing activities. Business, manufacturing or processing activities in residential dwellings are also not included.

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

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

(7) "Consumer of Newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.

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

(9) "Depot" means a place for receiving source separated recyclable material.

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

(11`) "Disposal Site" means land and facilities used for the disposal, handling or transfer of or energy recovery, material recovery, and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composing plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS466.005 to 466.385 to store, treat or dispose of both a hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

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

(13) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

(14) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

(15) "Glass Container Manufacturer" means a person that manufactures ~~commercial~~ new glass containers ~~whose principal component part consists of virgin glass, recycled glass or post consumer glass, or any combination thereof, for sale in Oregon, or if manufactured in Oregon for export to other states or countries, including but not limited to all commercial manufacturing operations that produce beverage containers, food or drink packaging material made primarily of glass, or any combination of both of these items.~~ in Oregon or that manufactures new glass containers outside Oregon sold by the manufacturer to packagers located in Oregon.

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

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

(18) "Local Government Unit" means the territory of a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, Indian reservations, and ~~m~~Metropolitan ~~s~~Service ~~d~~Districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste. If a county regulates solid waste collection within unincorporated areas of the county but not within one or more incorporated cities or municipalities, then the county local government unit shall be considered as only those areas where the county directly regulates solid waste collection.

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

(20) "Metropolitan Service District" means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS Chapters 268, 459, and 459A.

(21) "Multi-Family" means dwellings of five or more units.

(22) "Newsprint" means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the current edition of the *Harmonized Tariff Schedule of the United States* for such products.

(23) "On-Route Collection" means pick up of source separated recyclable material from the generator at the place of generation.

(24) "On-Site Collection" has the same meaning as on-route collection.

(25) "Opportunity to Recycle" means those activities described in OAR 340-090-0020, 340-090-0030, 340-090-0040, and 340-090-0050.

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

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

(28) "Post-Consumer Waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.

(29) "Principal Recyclable Material" means material which is a recyclable material at some place where the opportunity to recycle is required in a wasteshed and is identified by the Commission in OAR 340-090-0070.

(30) "Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(31) "Recycled-Content Newsprint" means newsprint that includes post-consumer waste paper.

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

(33) "Recycling Setout" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

(34) "Residential" means single family dwellings and multi-family dwellings having four or less units.

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

(36) "Solid Waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

(a) Hazardous wastes as defined in ORS 466.005;

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

(37) "Solid Waste Management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste, and facilities necessary or convenient to such activities.

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

(39) "Urbanized Area" means, for jurisdictions within the State of Oregon, the territory within the urban growth boundary of each city of 4,000 or more population, or within the urban growth boundary established by a ~~m~~Metropolitan ~~s~~Service ~~d~~District. For jurisdictions outside the State of Oregon, "urbanized area" means a geographic area with substantially the same character, with respect to minimum population density and commercial and industrial density, as urbanized areas within the State of Oregon.

(40) "Waste Prevention" means to reduce the amount of solid waste generated or resources used, without increasing toxicity, in the design, manufacture, purchase or use of products or packaging. "Waste Prevention" does not include reuse, recycling or composting.

~~(40)~~ (41) "Wasteshed" means the areas of the state of Oregon as defined in ORS 459A.010 and OAR 340-090-0050.

~~(41)~~ (42) "Yard Debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. Includes grass clippings, leaves, hedge trimmings and similar vegetative waste, but does not include stumps or similar bulky wood materials.

**Definitions**

**340-093-0030** As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

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

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

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

(4) "Agronomic Application Rate" means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case shall such application adversely impact the waters of the state. Such application shall be designed to:

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

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

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

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

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

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

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

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

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

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

(12) "Biosolids" means solids derived from primary, secondary or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors.

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

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

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

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

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

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

(19) "Composting Facility" means a site or facility which utilizes organic solid waste or mixed solid waste to produce a useful product through a managed process of controlled biological decomposition.

Composting may include amendments beneficial to the composting process. Vermiculture, vermicomposting and agricultural composting operations are considered composting facilities.

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

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

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

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

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

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

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

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

~~(28) "Designated Well Head Protection Area" means the surface and subsurface area surrounding a public water supply well or wellfield, through which contaminants are likely to move toward and reach the well(s), and within which waste management and disposal, and other activities, are regulated to protect the quality of the water produced by the well(s). A public water supply well is any well serving 14 or more people for at least six months each year.~~

~~(29)~~(28) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

~~(30)~~ (29) "Director" means the Director of the Department of Environmental Quality.

~~(31)~~ (30) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (~~83~~81)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

~~(32)~~ (31) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

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

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

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

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

~~(33)~~ (32) "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

~~(34)~~ (33) "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

~~(35)~~ (34) "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

~~(36)~~ (35) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

~~(37)~~ (36) "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

~~(38)~~ (37) "Green Feedstocks" are materials used to produce a compost. Green feedstocks are low in a) substances that pose a present or future hazard to human health or the environment and b) low in and unlikely to support human pathogens. Green feedstocks include but are not limited to: yard debris, animal manures, wood waste (as defined in OAR 340-093-0030(~~95~~94)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products and crop residue. Green feedstocks may also include other materials that can be shown to DEQ by the composter to be low in substances that pose a present or future hazard to human health or the environment and low in and unlikely to support human pathogens. This term is not intended to include materials fed to animals and not used for composting.

~~(39)~~ (38) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

~~(40)~~ (39) "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

~~(41)~~ (40) "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

~~(42)~~ (41) "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

~~(43)~~ (42) "Home composting" means composting operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of food waste and yard debris.

~~(44)~~ (43) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

~~(45)~~ (44) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

~~(46)~~ (45) "Industrial Waste Landfill" means a landfill which receives only a specific type or combination of industrial waste.

~~(47)~~ (46) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

~~(48)~~ (47) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

~~(49)~~ (48) "Institutional Composting" means the composting of green feedstocks generated from the facility's own activities. It may also include supplemental feedstocks. Feedstocks must be composted on-site,

the compost produced must be utilized within the contiguous boundaries of the institution and not offered for sale or use off-site. Institutional composting includes but is not limited to: parks, apartments, universities, schools, hospitals, golf courses and industrial parks.

~~(50)~~ (49) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

~~(51)~~ (50) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

~~(52)~~ (51) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

~~(53)~~ (52) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

~~(54)~~ (53) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

~~(55)~~ (54) "Local Government Unit" means a city, county, ~~m~~Metropolitan ~~s~~Service ~~d~~District formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

~~(56)~~ (55) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.

~~(57)~~ (56) "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

~~(58)~~ (57) "Material Recovery Facility" means a solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected.

~~(59)~~ (58) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

~~(60)~~ (59) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

~~(61)~~ (60) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small ~~quantify~~ quantity generators, construction and demolition waste and industrial solid waste.

~~(62)~~ (61) "Net Working Capital" means current assets minus current liabilities.

~~(63)~~ (62) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

~~(64)~~ (63) "Non-green Feedstocks" are materials used to produce a compost. Non-green feedstocks are high in a) substances that pose a present or future hazard to human health or the environment and b) high in and likely to support human pathogens. Non-green feedstocks include but are not limited to: animal parts and by-products, mixed materials containing animal parts or by-products, dead animals and municipal solid waste. This term is not intended to include materials fed to animals and not used for composting.

~~(65)~~ (64) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

~~(66)~~ (65) "Permit" means a document issued by the Department, bearing the signature of the Director or ~~his~~ the Director's authorized representative which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

~~(67)~~ (66) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

~~(68)~~ (67) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

~~(69)~~ (68) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

~~(70)~~ (69) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

~~(71)~~ (70) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

~~(72)~~ (71) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the ~~m~~Metropolitan ~~s~~Service ~~d~~District. For a county within the ~~m~~Metropolitan ~~s~~Service ~~d~~District, "immediate service area" means that ~~m~~Metropolitan ~~s~~Service ~~d~~District boundary.

~~(73)~~ (72) "Release" has the meaning given in ORS 465.200(14).

~~(74) "Reload facility" means a facility or site that accepts and reloads only yard debris and wood waste (as defined in OAR 340-093-0030(95)) for transport to another location.~~

~~(75)~~ (73) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

~~(76)~~ (74) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

~~(77)~~ (75) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

~~(78)~~ (76) "Sensitive Aquifer" means any unconfined or semiconfined aquifer which is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

~~(79)~~ (77) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

~~(80)~~ (78) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

~~(81)~~ (79) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

~~(82)~~ (80) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

~~(83)~~ (81) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

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

~~(84)~~ (82) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

~~(85)~~ (83) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

~~(85)~~ (84) "Supplemental Feedstocks" are green feedstocks from off-farm or off-site used to produce a compost at an agricultural or institutional operation, are the minimum amount necessary to allow composting of on-farm and on-site feedstocks, and can be shown by the composter to DEQ to be necessary to maintain porosity, moisture level or carbon to nitrogen ratio in the farm or institution's composting operation. The goal of these feedstocks is to supplement those feedstocks generated on the farm or at the institution so that composting may occur.

~~(87)~~ (85) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

~~(88)~~ (86) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

~~(89)~~ (87) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

~~(90)~~ (88) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (18) of this rule, "material recovery" as defined in section (~~57~~56) of this rule, nor does it apply to a "material recovery facility" as defined in section (~~58~~57) of this rule.

~~(91)~~ (89) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

~~(92)~~ (90) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

~~(93)~~ (91) "Vegetative" means feedstocks used for composting which are derived from plants including but not limited to: fruit and vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease or dairy products such as milk, mayonnaise or ice cream.

~~(94)~~ (92) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

(93) "Wellhead protection area" means the surface and subsurface area surrounding a water well, spring or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield. A public water system is a system supplying water for human consumption that has four or more service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day.

~~(95)~~ (94) "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, stumps, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing or treated with chemical additives, glue resin or chemical preservatives.

~~(96)~~ (95) "Wood waste Landfill" means a landfill which receives primarily wood waste.

~~(97)~~ (96) "Zone of Saturation" means a three dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

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

**Waste Tire Storage Permit Required**

**340-064-0015** (1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or expand a waste tire storage site until the person owning or controlling the waste tire storage

site obtains a permit or permit modification/addendum therefor from the Department. ~~A person who stores more than 100 waste tires or over 200 cubic yards of tire-derived products in this state is required to have a waste tire storage permit from the Department. The following are exempt from the permit requirement:~~

(2) Persons owning or controlling the following are exempted from the above requirement to obtain a waste tire storage permit, but shall comply with all other regulations regarding waste tire management and solid waste disposal:

(a) A person who stores fewer than 100 waste tires;

(b) A person who stores fewer than 200 cubic yards of tire-derived products;

~~(a)~~ (c) A tire retailer who stores not more than 1,500 waste tires for each retail business location;

~~(b)~~ (d) A tire retreader who stores not more than 3,000 waste tires for each individual retread operation so long as the waste tires are of the type the retreader is actively retreading;

~~(c)~~ (e) A wrecking business who stores not more than 1,500 waste tires for each retail business location;

~~(d)~~ (f) Storage of tire-derived products packaged in closed plastic bags.

~~(2)~~ (3) The exception allowed to a tire retailer under section ~~(1)~~ (2)(c) of this rule shall not apply unless the tire retailer submits the return required under ORS 459.519 and the return indicates the sale of new tires during the reporting period, so long as such returns are required to be submitted.

~~(3)~~ (4) Piles of tire-derived products are not subject to regulation as a waste tire storage site if the site actively consumes the following minimum tons of tire-derived products annually:

(a) For cement kilns: 1,500 tons;

(b) For pulp and paper mills: 1,500 tons.

~~(4)~~ (5) Manufacturers must obtain a waste tire storage permit if they are storing the following levels of tire-derived products:

(a) For manufacturers actively consuming crumb rubber:400 tons, or over 50 percent of the manufacturer's annual use of such materials;

(b) For manufacturers actively consuming other waste tire shreds or pieces: 100 tons or over 50 percent of the manufacturer's annual use of such materials.

~~(5)~~ (6) The Department may exempt a site owned by a federal, state or local government unit from the requirement to obtain a waste tire storage permit for tire-derived products if the following conditions are met:

(a) The government unit wants to store tire-derived products for use in fulfilling an existing contract, and requests an exemption from the Department for the waste tire storage permit requirement;

(b) The quantity of tire-derived products to be stored does not exceed the estimated quantity specified in the contract plus ten percent to allow for changes or discrepancies;

(c) The length of time the tire-derived products are to be stored does not exceed six months; and

(d) The Department determines that such storage will not create an environmental risk.

~~(6) After July 1, 1988, a~~ (7) A permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

~~(7)~~ (8) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

~~(8)~~ (9) ~~Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the Department by June 1, 1988 for a "first-stage" permit to store waste tires.~~ A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

~~(9)~~ (10) A person who is using or wants to use over 100 waste tires for a beneficial use must request the Department to determine whether that use constitutes "storage" pursuant to OAR 340-064-0010(25), and is thus subject to the waste tire storage site permit requirement. The Department may recommend remedial actions which, if implemented, will eliminate any environmental risk which would otherwise be caused by a beneficial use of waste tires.

~~(10)~~ (11) Use of waste tires which is regulated under ORS468.750 or 541.605 through 541.695 and for which a permit has been acquired is not subject to additional regulation under OAR Chapter 340,-

Division 64.

~~(11)~~ (12) Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

~~(12) After July 1, 1988 no~~ (13) No person shall advertise or represent himself/herself as being in the business of accepting waste tires for storage without first obtaining a waste tire storage permit from the Department.

~~(13)~~ (14) Failure to apply for or to obtain a waste tire storage permit, or failure to meet the conditions of such permit constitutes a nuisance.

**Collection of Recyclable Materials**

**340-090-0090** (1) No city, county or ~~m~~Metropolitan ~~s~~Service ~~d~~District, or agent thereof, shall be required to collect or receive source separated recyclable material which has not been correctly prepared to reasonable specifications which relate to marketing, transportation, storage, or regulatory agency requirements. The specifications for material preparation shall have been publicized by the appropriate city, county or ~~m~~Metropolitan ~~s~~Service ~~d~~District as part of the education and promotion program requirements in OAR 340-090-0020, 340-090-0030, and 340-090-0040.

(2) In addition to the provisions set forth in ORS 459A.080~~459A.075~~, no person shall dispose of source separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling except for used oil and wood waste which may be collected and burned for energy recovery.

(3) Commercial and residential recyclable materials which are source separated for collection on-route or on-site but are not correctly prepared according to reasonable specifications as set forth by the city, county or ~~m~~Metropolitan ~~s~~Service ~~d~~District in accordance with section (1)of this rule shall not be required to be collected and may be left with the generator of the source separated material or may be collected and prepared for recycling by the collector, but shall not be disposed by the collector. The generator of the material shall be provided with written information that explains correct material preparation for the purposes of educating the generator.

(4) Unauthorized materials that are deposited by the generator at a recycling depot are exempt from the prohibition in sections (1), (2), and (3) of this rule and shall be managed in the appropriate manner otherwise required by law.

(5) Collected recyclable material later found to be contaminated with hazardous substances are exempt from the prohibition in sections (1), (2), and (3) of this rule and shall be managed in an appropriate manner otherwise required by law.

**Fair Market Value Exemption**

**340-090-0130** (1) To qualify for exemption under ORS 459A.075 a source separated recyclable material must be:

(a) Source separated by the generator; and

(b) Purchased from or exchanged by the generator for fair market value for recycling or reuse.

(2) If, as part of the opportunity to recycle, a city or county requires by franchise that residential collection service of recyclable material be provided and identifies a group of two or more materials as the recyclable material for which the residential collection service must be provided, then:

(a) "Fair market value" of any material within the identified group shall include the provisions of collection service for all material in the identified group; and

(b) "Recyclable material" means the group identified by the city or county.

(3) Local government may designate classes of residential dwellings to which specific types or levels of collection service are to be provided.

**Recyclable Material**

**340-090-0140** The purpose of this rule is to describe the factors that shall be considered in determining if a material meets the definition of recyclable material. In determining what materials are recyclable materials:

(1) The cost of collection and sale of a recyclable material shall be calculated by considering the collector's costs from the time the material is source separated and leaves the use of the generator until it is first sold or transferred to the person who recycles it. All costs and savings associated with collection of a recyclable material shall be considered in the calculation.

(2) Any measurable savings to the collector resulting from making a material available for recycling as opposed to disposal shall be considered the same as income from sale.

(3) The cost of collection and disposal of material as solid waste shall be calculated by using the total costs of collection and disposal. Costs shall include fees charged, taxes levies or subsidy to collect and to dispose of solid waste. Costs shall also include but are not limited to the costs to comply with applicable statutes, rules permit conditions and insurance requirements.

(4) The amount and value of any source separated material that is collected or received as part of a recycling requirement of a permit or a city or county franchise may be used in determining whether remaining material meets the definition ~~of~~ of recyclable material.

**~~New~~ Yard Debris Recycling Charges ~~Rule~~**

**340-090-0190** (1) The Commission's purpose in adopting this rule governing when a fee may be charged for yard debris recycling services is to:

(a) Ensure that a financial disincentive for recycling is not created for any waste generator;

(b) Increase recovery of yard debris and stimulate participation in yard debris recycling programs;

(c) Acknowledge the rate considerations due to the extreme variability of volumes generated;

(d) Ensure that service provided to multi-family generators residing in dwellings of four or less units is equivalent to service provided single family residences.

(2) The purpose as stated in section (1) of this rule is to apply to those recycling programs required under ORS 459A.005, 459A.010 and 459.250.

(3) As used in this rule, "residential generator" means any generator of recyclable material located in single or multi-family dwellings up to and including four units.

(4) As used in this rule, a "unit of yard debris" is the equivalent of a 32-gallon can, a similar sized bag, or the standard unit of yard debris service provided, whichever is greater.

(5) Residential generators of yard debris participating in a regularly scheduled yard debris collection service where yard debris is a principal recyclable material, may be charged a fee for yard debris recycling service. The cost of collection of at least the equivalent of one unit of yard debris per month must be incorporated into the base fee charged for solid waste and recycling collection and disposal. An additional fee may be charged for yard debris service which exceeds the equivalent of collection of one unit of yard debris per month. Where multi-family complexes are treated as a single customer, the local government providing the yard debris service shall assure that yard debris service is provided at a level equivalent to service provided single family dwellings. Local governments shall make this determination and any related adjustment in service, no later than their next rate review process. In addition to the base fee charged for solid waste and recycling collection and disposal, which must include the first unit of yard debris, local governments may charge a fee for:

(a) Collection of any volumes of yard debris over and above the first unit which is included in the base fee, where the generator is a solid waste customer;

(b) Collection of any volumes of yard debris where the generator is not a solid waste customer;

(c) Yard debris collected through a depot program or other alternative method including on-call service.

(6) The total additional yard debris recycling fee charged to any generator of yard debris for collection of yard debris shall be less than the fee that would have been charged for collection of that same volume of yard debris as mixed solid waste.

(7) Yard debris recycling fees in addition to the base fee charged for solid waste collection and disposal may be charged for the collection of yard debris on-route or at a depot, where yard debris is not a principal recyclable material.

**Permit Required**

**340-093-0050** (1) Except as provided by section (3) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

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

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

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

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

(d) Composting facilities except as excluded in OAR 340-093-0050 (3)(d) shall abide by OAR 340-096-0020, 340-096-0024 and 340-096-0028 "Special Rules Pertaining to Composting;"

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges shall abide by OAR 340-096-0030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites;"

(f) Transfer stations and Material Recovery Facilities shall abide by OAR 340-096-0040 "Transfer Stations and Material Recovery Facilities;"

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities shall abide by OAR 340-096-0050 "Solid Waste Treatment Facilities."

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

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

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

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

**NOTE**: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the Department with such information as the Department may require to evaluate the request for exemption, pursuant to OAR 340-093-0080.

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

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

(B) Agricultural composting operations that are:

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

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

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

(ii) Composting non-green feedstocks:

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

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

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

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

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

(F) ~~Reload facilities,~~ A site or facility that accepts and reloads only yard debris and wood waste (as defined in OAR 340-093-0030(95)) or transports those materials to another location, providing no composting occurs at the site.

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

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

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

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

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

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

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

(5) If it is determined by the Department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the Department may waive any or all requirements of OAR 340-0930-070, 340-093-0130, 340-093-0140, 340-093-0150, 340-094-0060(2) and 340-095-0030(2) and issue a letter authorization in accordance with OAR 340-093-0060.

(6) Each person who is required by sections (1) and (5) of this rule to obtain a permit shall:

(a) Make prompt application to the Department therefor;

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

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

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

(e) Allow the Department or an authorized governmental agency to enter the property under permit at reasonable times to inspect and monitor the site and records as authorized by ORS 459.385 and 459.272.

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

**Denial of Permits**

**340-093-0110** Upon receipt of a completed application, the Department shall deny the permit if:

(1) The application contains false information.

(2) The application was wrongfully accepted by the Department.

(3) The proposed disposal site would not comply with OAR Chapter 340, Divisions 93 through 97 or other applicable rules of the Department.

(4) The proposal is not part of or not compatible with the adopted local solid waste management plan ~~approved by the Department~~.

(5) There is no clearly demonstrated need for the proposed new, modified or expanded disposal site or for the proposed change in the method or type of disposal.

**Construction Certification**

**340-093-0150** Except as provided in OAR 340-093-0070(5):

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

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

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

**Wastes Requiring Special Management**

**340-093-0190** (1) The following wastes require special handling or management practices, and shall not be deposited at a solid waste disposal site unless special provisions for such disposal are included in a Special Waste Management Plan pursuant to OAR 340-094-0040(11)(b)(J) or 340-095-0020(3)(j), or their disposal is otherwise approved by the Department:

(a) Agricultural Wastes. Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions;

(b) Construction and Demolition Materials. Due to the unusually combustible nature of construction and demolition materials, construction and demolition landfills or landfills incorporating large quantities of combustible materials shall be designed and operated to prevent fires and the spread of fires, in accordance with engineering or operations plans required by OAR Chapter 340, Divisions 93 through 96. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill;

(c) Oil Wastes. More than 25 gallons of petroleum-bearing wastes such as used oil filters, oil-absorbent materials, suspended solids that have settled to the bottom of the tank (tank bottoms) or oil sludges shall not be placed in any disposal site unless all recoverable liquid oils are removed and special provisions for handling and other special precautions are included in the facility's approved plans and specifications and operations plan to prevent fires and pollution of surface or groundwaters. See also OAR 340-093-0040(3)(a), Prohibited Disposal;

(d) Infectious Wastes. All infectious wastes must be managed in accordance with ORS 459.386 to

459.405:

(A) Pathological wastes shall be treated by incineration in an incinerator which complies with the requirements of OAR 340-25-850 to 340-25-905 unless the Department determines:

(i) The disposal cost for incineration of pathological wastes generated within the individual wasteshed exceeds the average cost by 25 percent for all incinerators within the State of Oregon which comply with the requirements of OAR 340-25-850 to 340-25-905; or the generator is unable to contract with any incinerator facility within the State of Oregon due to lack of incinerator processing capacity; and

(ii) The State Health Division of the Oregon Department of Human Resources has prescribed by rule requirements for sterilizing "cultures and stocks," and this alternative means of treatment of the pathological waste is available.

(B) Sharps. Sharps may be treated by placing them in a leak-proof, rigid, puncture-resistant, red container that is taped closed or tightly lidded to prevent loss of the contents. Sharps contained within containers which meet these specifications may be disposed of in a permitted municipal solid waste landfill without further treatment if they are placed in a segregated area of the landfill;

(C) Medical Waste. Medical waste other than infectious waste as defined by ORS 459.386 or hazardous wastes as defined by ORS 466.055 may be disposed of without special treatment in municipal solid waste landfills permitted by the Department if such disposal is not prohibited in the permit.

(e) Asbestos. Wastes containing asbestos shall be disposed of pursuant to OAR 340-032-0100 through 340-032-0120 and 340-032-5590 through 340-032-5650.

(f) Abrasive Blast Media Containing Pesticides. Waste described in OAR ~~340-101-0034(1)~~ 340-101-0040(1) may be disposed of at a solid waste landfill if the site meets the design criteria of **40 CFR 258.40** for new municipal solid wastes landfill units;

(g) Pesticide Treated Wood. Waste described in OAR ~~340-101-0034(2)~~ 340-101-0040(2) may be disposed of at a solid waste landfill if the site meets the design criteria of **40 CFR 258.40** for new municipal solid waste landfill units.

(2) Incinerator ash. Ash from domestic energy recovery facilities and from domestic solid waste incinerator disposal sites shall be disposed of at an ash monofill permitted by the Department. Such a monofill must meet standards in **40 CFR 258** and OAR Chapter 340, Division 94.

(3) Polychlorinated Biphenyls (PCBs). Wastes containing polychlorinated biphenyls shall be disposed of pursuant to OAR Chapter 340, Division 110.

**Location Restrictions**

**340-094-0030** (1) If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with landfill location restrictions in **40 CFR, Part 258, Subpart B**. Except as otherwise provided in OAR Chapter 340, Division 94, any person who designs, constructs, maintains, or operates any municipal solid waste landfill must do so in conformance with the location requirements of this rule.

(2) Floodplains. No person shall establish, expand or modify a landfill in a floodplain in a manner that will allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(3) Endangered Species. In addition to the requirements of **40 CFR, Part 258, Subpart B**, no person shall establish, expand or modify a landfill in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife;

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of ~~threatened or~~ endangered or threatened species using that habitat.

(4) Sensitive Hydrogeological Environments. In addition to the requirements of **40 CFR, Part 258, Subpart B**, no person shall establish or expand a landfill in a gravel pit excavated into or above a water table aquifer or other sensitive or sole source aquifer, or in a ~~designated~~ wellhead protection area, where the Department has determined that:

(a) Groundwater must be protected from pollution because it has existing or potential beneficial uses (OAR 340-40-020); and

(b) Existing natural protection is insufficient or inadequate to minimize the risk of polluting groundwater.

**Closure and Post-Closure Care: Closure Plans**

**340-094-0110** If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with closure and post-closure care requirements in **40 CFR, Part 258, Subpart F**. All municipal solid waste permittees shall also comply with this rule:

(1) Two types of written closure plans shall be prepared.

(a) The two types of closure plan are:

(A) A Subtitle D or "worst-case" closure plan, as required by **40 CFR §258.60**(c); and subsequently

(B) A Final Engineered Site Closure Plan, as required by OAR 340-094-0100(2)(a), which shall include all the elements of and replace the "worst-case" closure plan.

(b) Schedule for preparation of closure plans.

(A) The "worst-case" closure plan shall be prepared and placed in the facility operating record and the Director shall be notified of that action no later than the effective dates specified in OAR 340-094-0001(2) or by the initial receipt of waste, whichever is later;

(B) The Final Engineered Site Closure Plan shall be prepared and submitted to the Department five years before the anticipated final closure date, or at a date specified in the permittee's closure permit pursuant to OAR 340-094-0100(2)(a).

~~(2) Approval of Closure Plan. After approval by the Department, the permittee shall implement the closure plan within the approved time schedule.~~

(~~3~~2) Requirements for closure plans. A closure plan shall specify the procedures necessary to completely close the municipal solid waste landfill at the end of its intended operating life.

(a) Requirements for the "worst-case" closure plan shall include all elements specified in **40 CFR §258.60**, and consist of at least the following:

(A) A description of the steps necessary to close al municipal solid waste landfill units at any point during their active life;

(B) A description of the final cover system that is designed to minimize infiltration and erosion;

(C) An estimate of the largest area of the municipal solid waste landfill unit ever requiring a final cover;

(D) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(E) A schedule for completing all activities necessary to satisfy the closure criteria in **40 CFR §258.60**.

(b) Requirements for the Final Engineered Site Closure Plan. In addition to the requirements for the "worst-case" closure plan, the Final Engineered Site Closure Plan shall consist of at least the following elements:

(A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-093-0140 and 340-094-0060(2), unless an exemption is granted as provided in OAR 340-093-0070(5) ~~340-093-0070(4)~~;

**NOTE**: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure activities.

(B) A description of how and when the facility will be closed. The description shall, to the extent practicable, show how the disposal site will be closed as filling progresses to minimize the area remaining to be closed at the time that the site stops receiving waste. A time schedule for completion of closure shall be included;

(C) Details of final cover including soil texture, depth and slope;

(D) Details of surface water drainage diversion; and

(E) Other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department.

(43) Department approval. The Final Engineered Site Closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Site Closure Plan within the approved time schedule.

(~~5~~4) Amendment of Plan. The approved Final Engineered Site Closure Plan may be amended at any item as follows:

(a) The permittee must amend the plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, or events which occur during the active life of the landfill significantly affect the plan. The permittee must also amend the plan whenever there is a change in the expected year of closure. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(b) The permittee may request to amend the plan to alter the closure requirements based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(A) The nature of the landfill makes the closure requirements unnecessary; or

(B) The requested alteration of closure requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(c) The Department may amend a permit to require the permittee to modify the plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may alter the closure requirements based on cause.

**Closure and Post-Closure Care: Post-Closure Plans**

**340-094-0115** If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with post-closure care requirements in **40 CFR, §258.61**. All municipal solid waste permittees shall also comply with this rule.

(1) Two types of written post-closure plans shall be prepared:

(a) A "Subtitle D" post-closure plan as required by **40 CFR §258.61**(c); and subsequently

(b) A Final Engineered Post-closure Plan as required by OAR 340-094-0100(2)(b). When prepared, this shall include all requirements of and replace the "Subtitle D" post-closure plan.

(2) Schedule for preparation of post-closure plans.

(a) The "Subtitle D" post-closure plan shall be placed in the facility operating record and the Director shall be notified of that action no later than the effective dates specified in OAR 340-094-0001(2) or by the initial receipt of waste, whichever is later;

(b) The Final Engineered Post-closure Plan shall be prepared in conjunction with and submitted to the Department together with the Final Engineered Site Closure Plan required by OAR 340-094-0100(2)(a).

(3) Requirements for post-closure plans. Post-closure plans shall identify the post-closure activities which will be carried on to property monitor and maintain the closed municipal solid waste landfill site.

(a) Requirements for the "Subtitle D" post-closure plan shall include all elements specified in **40 CFR §258.61**, and consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover;

(B) Maintaining and operating the leachate collection system;

(C) Monitoring the groundwater;

(D) Maintaining and operating the gas monitoring system;

(E) Monitoring and providing security for the landfill site; and

(F) Description of the planned uses of the property during the post-closure care period.

(b) Requirements for the Final Engineered Post-closure Plan. In addition to the requirements for the "Subtitle D" post-closure plan, the Final Engineered Post-closure Plan shall consist of at least the following elements:

(A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-093-0140 and 340-094-0060(2), unless an exemption is granted as provided in OAR ~~340-093-0070(4)~~ 340-093-0070(5);

**NOTE**: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure or post-closure activities.

(B) Details of how leachate discharges will be minimized and controlled and treated if necessary;

(C) Details of any landfill gas control facilities, their operation and frequency of monitoring;

(D) A schedule of monitoring the site after closure;

(E) A projected frequency of anticipated inspection and maintenance activities at the site after closure, including but not limited to repairing, recovering and regrading settlement areas, cleaning out surface water diversion ditches, and re-establishing vegetation; and

(F) Any other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department/

(c) Department approval. The Final Engineered Post-closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Post-closure Plan within the approved time schedule.

(d) Amendment. The approved Final Engineered Post-closure Plan may be amended at any time as follows:

(A) The permittee must amend the Plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Division 93 through 97, or events which occur during the active life of the landfill or during the post-closure care period, significantly affect the Plan. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(B) The permittee may request to amend the Plan to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(i) The nature of the landfill makes the post-closure care requirements unnecessary; or

(ii) The nature of the landfill supports reduction of the post-closure care period; or

(iii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(C) The Department may amend a permit to require the permittee to modify the Plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may extend or reduce the post-closure care period or alter the post-closure care requirements based on cause.

**Location Restrictions**

**340-095-0010** (1) Except as otherwise provided in OAR Chapter 340 Division 95, any person who designs, constructs, maintains, or operates any non-municipal land disposal site must do so in conformance with the location requirements of this rule.

(2) Endangered Species. No person shall establish, expand or modify a non-municipal land disposal site in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife;

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(3) Floodplains. No person shall establish, expand or modify a non-municipal land disposal site in a floodplain in a manner that will allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(4) Sensitive Hydrogeological Environments. No person shall establish or expand a non-municipal land disposal site in a gravel pit excavated into or above a water table aquifer or other sole source aquifer, or in a ~~designated~~ wellhead protection area, where the Department has determined that:

(a) Groundwater must be protected from pollution because it has existing or potential beneficial uses (OAR 340-040-0020); and

(b) Existing natural protection is insufficient or inadequate to minimize the risk of polluting groundwater.

**Groundwater Monitoring and Corrective Action**

**340-095-0040** (1) Groundwater:

(a) Each non-municipal land disposal site permittee shall ensure that:

(A) The introduction of any substance from the land disposal site into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid waste boundary of the land disposal site or an alternative boundary specified by the Department;

(B) The introduction of any substance from the land disposal site into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the land disposal site or an alternative boundary specified by the Department, consistent with OAR Chapter 340, Division 40 and any applicable federal or state rules or regulations.

(b) Where monitoring is required, monitoring wells shall be placed at Department-approved locations between the solid waste boundary and the property line if adequate room exists;

(c) The Department may specify an alternative boundary based on a consideration of all of the following factors:

(A) The hydrogeological characteristics of the facility and surrounding land;

(B) The volume and physical and chemical characteristics of the leachate;

(C) The quantity and directions of flow of groundwater;

(D) The proximity and withdrawal rates of groundwater users;

(E) The availability of alternative drinking water supplies;

(F) The existing quality of the groundwater including other sources of contamination and their cumulative impacts on the groundwater; and

(G) Public health, safety, and welfare effects.

(2) Monitoring:

(a) Where the Department finds that a non-municipal land disposal site's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells at Department-approved locations and depths to determine the effects of the non-municipal land disposal site on groundwater;

(b) If the Department determines that monitoring wells are required at a non-municipal land disposal site, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(c) Where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of surface water and/or groundwater, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(d) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(3) Corrective action. Notwithstanding OAR ~~340-093-0030(19)~~ 340-093-0030(22), the Department may require action to remediate releases of constituents above the levels specified in OAR Chapter 340 Division 40. This authority is in addition to any other authority granted by law.

**Closure and Post-Closure Care: Closure Plans**

**340-095-0060** To comply with the financial assurance requirements of OAR 340-095-0090(1)(a):

(1) Two types of written closure plans shall be prepared.

(a) The two types of closure plan are:

(A) A conceptual "worst-case" closure plan, for closing the site at its maximum capacity. The plan shall contain sufficient detail to allow a reasonable estimate of the cost of closing the non-municipal land disposal site as required by OAR 340-095-0090(1)(a); and subsequently

(B) A Final Engineered Site Closure Plan, as required by OAR 340-095-0050(2)(a), which shall replace the conceptual "worst-case" closure plan.

(b) Schedule for preparation of closure plans.

(A) The conceptual "worst-case" closure plan shall be prepared and placed in the facility operations office or other location approved by the Department, and the Director shall be notified of that action no later than April 9, 1995 or by the initial receipt of waste, whichever is later;

(B) The Final Engineered Site Closure Plan shall be prepared and submitted to the Department five years before the anticipated final closure date, or at a date specified in the permittee's closure permit pursuant to OAR 340-095-0050(2)(a).

(2) Requirements for closure plans. A closure plan shall specify the procedures necessary to completely close the non-municipal land disposal site at the end of its intended operating life.

(a) Requirements for the conceptual "worst-case" closure plan shall consist of at least the following:

(A) A description of the steps necessary to close all non-municipal land disposal units at any point during their active life;

(B) A description of the final cover system that is designed to minimize infiltration and erosion;

(C) An estimate of the largest area of the non-municipal land disposal unit ever requiring a final cover; and

(D) An estimate of the maximum inventory of wastes ever on-site over the active life of the facility.

(b) Requirements for the Final Engineered Site Closure Plan. In addition to the requirements for the conceptual "worst-case" closure plan, the Final Engineered Site Closure Plan shall consist of at least the following elements:

(A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-093-0140 and 340-095-0030(2), unless an exemption is granted as provided in OAR 340-093-0070~~(4)~~(5);

**NOTE**: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure activities.

(B) A description of how and when the non-municipal land disposal site will be closed. If a landfill, the description shall, to the extent practicable, show how the landfill will be closed as filling progresses to minimize the area remaining to be closed at the time that the site stops receiving waste. A time schedule for completion of closure shall be included;

(C) Details of final closure. If a landfill, details of final cover including soil texture, depth and slope;

(D) Details of surface water drainage diversion; and

(E) Other information requested by the Department necessary to determine whether the non-municipal land disposal site will comply with all applicable rules of the Department.

(3) Department approval. The Final Engineered Site Closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Site Closure Plan within the approved time schedule.

(4) Amendment of Plan. The approved Final Engineered Site Closure Plan may be amended at any time as follows:

(a) The permittee must amend the plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, or events which occur during the active life of the landfill significantly affect the plan. The permittee must also amend the plan whenever there is a change in the expected year of closure. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(b) The permittee may request to amend the plan to alter the closure requirements based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(A) The nature of the non-municipal land disposal site makes the closure requirements unnecessary; or

(B) The requested alteration of closure requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(c) The Department may amend a permit to require the permittee to modify the plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may alter the closure requirements based on cause.

**Closure and Post-Closure Care: Post-Closure Plans**

**340-095-0065** To comply with the financial assurance requirements of OAR 340-095-0090(1)(b):

(1) Two types of written post-closure plans shall be prepared:

(a) A "conceptual" post-closure plan; and subsequently

(b) A Final Engineered Post-closure Plan as required by OAR 340-095-0050(2)(b). When prepared, this shall include all requirements of and replace the "conceptual" post-closure plan.

(2) Schedule for preparation of post-closure plans.

(a) The "conceptual" post-closure plan shall be placed in the facility operations office or other location approved by the Department and the Director shall be notified of that action no later than April 9, 1995 or by the initial receipt of waste, whichever is later;

(b) The Final Engineered Post-closure Plan shall be prepared in conjunction with and submitted to the Department together with the Final Engineered Site Closure Plan required by OAR 340-095-0050(2)(b).

(3) Requirements for post-closure plans. Post-closure plans shall identify the post-closure activities which will be carried on to properly monitor and maintain the closed non-municipal land disposal site.

(a) Requirements for the "conceptual" post-closure plan shall consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover;

(B) Maintaining and operating the leachate collection system, if required pursuant to OAR 340-095-0020(5);

(C) Monitoring the groundwater, if required pursuant to OAR 340-095-0040;

(D) Maintaining and operating the gas monitoring system if required pursuant to OAR 340-095-0020(9);

(E) Monitoring and providing security for the landfill site; and

(F) Description of the planned uses of the property during the post-closure care period.

(b) Requirements for the Final Engineered Post-closure Plan. In addition to the requirements for the "conceptual" post-closure plan, the Final Engineered Post-closure Plan shall consist of at least the following elements:

(A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-093-0140 and 340-095-0030(2), unless an exemption is granted as provided in OAR 340-093-0070~~(4)~~(5);

**NOTE**: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure or post-closure activities.

(B) Details of how leachate discharges will be minimized and controlled and treated if necessary;

(C) Details of any landfill gas control facilities, their operation and frequency of monitoring;

(D) A schedule of monitoring the site after closure;

(E) A projected frequency of anticipated inspection and maintenance activities at the site after closure, including but not limited to repairing, recovering and regrading settlement areas, cleaning out surface water diversion ditches, and re-establishing vegetation; and

(F) Any other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department.

(c) Department approval. The Final Engineered Post-closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Post-closure Plan within the approved time schedule.

(d) Amendment. The approved Final Engineered Post-closure Plan may be amended at any time as follows:

(A) The permittee must amend the Plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, or events which occur during the active life of the landfill or during the post-closure care period, significantly affect the Plan. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(B) The permittee may request to amend the Plan to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(i) The nature of the landfill makes the post-closure care requirements unnecessary; or

(ii) The nature of the landfill supports reduction of the post-closure care period; or

(iii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(C) The Department may amend a permit to require the permittee to modify the Plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may extend or reduce the post-closure care period or alter the post-closure care requirements based on cause.

**Special Rules Pertaining to Composting ~~Facilities~~: Applicability**

**340-096-0020** Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-093-0050(3) (d) and (e). Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable. Composting facilities commencing operation prior to January 31, 1999 shall submit an application to the Department for a composting facility registration or permit within 18 months of the effective date of these rules. Following that date, composting facilities must apply for and receive a permit or registration prior to commencement of operation.

**Special Rules Pertaining to Composting: Types of Composting Facilities**

**340-096-0024** Composting facilities are categorized by the following criteria and shall meet the portions of this rule as listed in (1)(c), (2)(c) or (3) below:

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

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

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

(c) Composting facilities receiving a registration shall comply with only the following items of OAR 340-096-0028: (1)(d), (2)(c), (3)(a), (3)(b), (3)(c) and (4) and are not subject to the remaining requirements of OAR 340-096-0028;

(d) Persons applying for a composting facility registration shall submit to DEQ items listed in OAR 340-093-0070 (4) (a), (b), (c) and (d) prior to receiving their registration. These facilities are subject to the procedures and requirements of OAR 340-093-0070 (1), (6) and (7), (application processing, public hearings, registration renewal), but are exempted from the remaining requirements of OAR 340-093-0070;

(e) A composting facility registration will be treated as a permit only for purposes of OAR 340-018-0030 and not for other purposes;

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

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

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

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

(c) Persons receiving a composting facility general permit shall comply with all items of OAR 340-096-0028 except (2)(b), (3)(g) and (3)(i). In order to meet these requirements, composters shall have procedures in place and written documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met.

(d) Persons applying for a composting facility general permit shall comply with the requirements of "General Permit," pursuant to OAR 340-093-0070 (3);

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

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

Persons applying for a composting facility full permit shall comply with all items of OAR 340-096-0028. In order to meet these requirements, these persons must submit written documents to the Department for review and approval prior to receiving their permit, as described in OAR 340-093-0050 and OAR 340-093-0070.

(4) Composting facilities exempted from requirements to obtain a permit are listed in OAR 340-093-0050 (3)(d).

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

**Permit/Registration Categories and Fee Schedule**

**340-097-0120** (1) For purposes of OAR Chapter 340, Division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial facility~~disposal site~~";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-093-0090. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: $10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: $5,000;

(b) A new captive industrial facility (other than a transfer station or material recovery facility): $1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: $500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: $200;

(C) Receiving less than 10,000 tons of solid waste per year: $100;

(d) Letter Authorization (pursuant to OAR 340-093-0060):

(A) New site: $500;

(B) Renewal: $500;

(e) A new composting facility (pursuant to OAR 340-096-0024):

(A) Composting facility registration: $100;

(B) Composting facility general permit: $500;

(C) Composting facility full permit. For facilities utilizing feedstocks for composting:

(i) Over 20 tons and less than or equal to 7,500 tons per year: $1,000;

(ii) More than 7,500 tons per year: $5,000;

(f) Permit Exemption Determination (pursuant to OAR 340-093-0080(2)): $500.

(3) Solid Waste Permit and Registration Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the Department may use the base per-ton rates, or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the

base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) All facilities accepting or permitted to accept solid waste except transfer stations, material recovery facilities and composting facilities:

(A) $200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, construction and demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: $.21 per ton;

(ii) Captive industrial facilities: $.21 per ton;

(iii) Energy recovery facilities. $.13 per ton.

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: $1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: $500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: $50;

(c) Composting facilities:

(A) Facilities with a registration: $100;

(B) Facilities with a general permit:

(i) Utilizing over 50,000 tons of feedstocks for composting per year: $5,000;

(ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: $1,000;

(iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: $500;

(C) Facilities with a full permit:

(i) Utilizing over 50,000 tons of feedstocks for composting per year: $5,000;

(ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: $1,500;

(iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: $500;

(d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department shall determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection;

(B) Each land disposal site which closes after July 1, 1984: $150; or the average tonnage of solid waste received in the three most active years of site operation multiplied by $.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed $2,500.

(4) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee shall be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit fee as $.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The $.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(5) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-097-0110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

(a) A per-ton fee of 50 cents;

(b) An additional per-ton fee of 31 cents;

(c) Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account.

(d) Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually ~~on July 31, beginning in 1994, and~~ on January 31~~, beginning in 1995. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.~~ If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fees shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) As used in this rule and in OAR 340-097-0110, the term "domestic solid waste" does not include source separated recyclable material, or material recovered at the disposal site.

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil shall not be subject to the per-ton solid waste fees in this section, provided that:

(A) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;

(B) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final approval from the Department for use as daily cover; and

(C) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

(g) For solid waste delivered to disposal facilities owned or operated by a ~~m~~Metropolitan ~~s~~Service ~~d~~District, the fees established in this section shall be levied on the district, not on the disposal site.

**Attachment B-1**

Secretary of State

# NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

| | |
|---|---|
| DEQ - Waste Management and Cleanup Division<br>Agency and Division | Chapter 340<br>Administrative Rules Chapter Number |
| Susan M. Greco<br>Rules Coordinator | (503) 229-5213<br>Telephone |
| 811 S.W. 6th Avenue, Portland, OR 97213<br>Address | |

| *Hearing Date* | *Time* | *Location* | *Hearings Officer* |
|---|---|---|---|
| August 24, 1998 | 7:20 pm | Meeting Room B<br>Portland Building<br>1120 SW 5th Ave.<br>Portland, Ore. | to be determined |
| August 25, 1998 | 7:20 pm | Jackson County Courthouse Auditorium<br>10 S. Oakdale<br>Medford, Ore. | Zack Loboy |
| August 26, 1998 | 7:20 | Bend Community College<br>Boil Education Center, #154<br>2600 NW College Way<br>Bend, Oregon | Steve Kirk |

Are auxiliary aids for persons with disabilities available upon advance request?
X Yes ☐ No

## RULEMAKING ACTION

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 340-090-0045

**AMEND:**

OAR 340-064-0015; 340-064-0025; 340-064-0063; 340-090-0010; 340-093-0030; 340-090-0040; 340-090-0050; 340-090-0060; 340-090-0090; 340-090-0100; 340-090-0110; 340-090-0130; 340-090-0140; 340-090-0190; 340-090-0310; 340-090-0380; 340-091-0010; 340-091-0020; 340-091-0030; 340-091-0035; 340-091-0040; 340-091-0050; 340-091-0070; 340-093-0050; 340-093-0110; 340-093-0150; 340-093-0190; 340-094-0030; 340-094-0040; 340-094-0100; 340-094-0110; 340-094-0115; 340-094-0140; 340-094-0145; 340-095-0010; 340-095-

0020; 340-095-0040; 340-095-0060; 340-095-0065; 340-095-0090; 340-095-0095; 340-096-0010; 340-096-0020; 340-096-0024; 340-096-0028; 340-096-0030; 340-096-0040; 340-096-0050; 340-097-0110; 340-097-0120

**REPEAL:**

**RENUMBER:**
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:**
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Stat. Auth.: ORS 459.045, 459.995, 459A.025, 468.020
Stats. Implemented: ORS 459 and 459A

**RULE SUMMARY**

The proposed rules incorporate changes in legislation passed by the 1997 Oregon Legislature, as well as others made necessary by changes in Federal regulations. They would also make some changes identified as necessary by the Department for effective administration of solid waste programs, and technical corrections to clarify program implementation. Major topic areas are: amending requirements for local government recycling programs; adding a new "program element" option for local government recycling programs; adding three new optional programs which local governments may implement concerning waste prevention, reuse, and home composting; changes in the container glass minimum recycled content requirements; changes in recycling program requirements for out-of-state jurisdictions that export solid waste to Oregon for disposal; changes in the existing corporate financial test for financial assurance for landfill closure, post-closure care and, if needed, corrective action; changes in financial assurance for "general permit" composting facility operators; and changes in recordkeeping requirements for solid waste disposal site operators.

August 28, 1998
Last Day for Public Comment

Authorized Signer and Date

Sec of St Notice.doc

ATTACHMENT B-2
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste "Catchall" Rulemaking

# Fiscal and Economic Impact Statement

## Introduction

This rulemaking implements requirements of several bills passed by the 1997 Oregon legislature, new federal regulations, and several changes identified by the Department as necessary for effective administration of solid waste programs. These rule amendments deal with several diverse subject areas. They are discussed under five major Topic groupings in the Rulemaking Proposal and Rulemaking Statements cover memo. Those same Topic groupings are used in this Statement under class of affected person.

Impacts associated with **I. Local Government and Other Recycling Programs** (except for I-6, Rigid Plastic Container Recycling Rate) are discussed in this Introduction section, as they are similar whether the implementer is a small business, large business or local government.

**I-1. Changes to existing "recycling program elements."**

- *Expanded Education and Promotion Program Element.* Affects local governments implementing this program element. Adds some more specific requirements for targeting materials to commercial generators; and gives flexibility in program implementation. Could entail developing new brochures, writing newsletters or newspaper articles, producing public service announcements, etc. Cost of various promotional activities could vary from as little as 4 hours of staff time (staff interview on radio, for newspaper) to up to and even exceeding 100 staff hours in larger jurisdictions with ambitious programs. New implementation flexibilities (timing, type of media used) may offset some of the additional costs.

A local government may now choose to develop and implement an Education and Promotion Program Plan instead of simply following actions prescribed by statute. Staff time to develop a Plan: 60 to 120 hours (or more), depending on extent of public involvement (@ $40/hour = $2,400 - $4,800). Implementation costs: will vary greatly, but assumed to be similar to existing costs of this program element. Using the Plan option could have some beneficial impact – local government could more carefully target their recycling education and promotion funds. Initial report to DEQ and periodic follow-up reports: 8 to 16 hours of staff time per report = $320 -

$640.

- *Changes to Commercial Recycling Program Element.* New requirement for educational and promotional activities for jurisdictions selecting this program element (currently about 44 cities). Some new written materials may be required to reach this audience. Possibilities include mailings, PSAs, newspaper ads, newsletters. Could be provided directly by local government or by garbage hauler. Costs will depend on size of audience and methods chosen. Range of costs for developing a new brochure could be from $285 to $2,420 (or greater, depending on production factors). As an example of costs of promotion, writing a short news article or public service announcement could range from $80 to $160.

**I-2. New "recycling program element:" Commercial and Institutional Composting.**

This new program element is not a requirement but an option. If a local government chooses to implement this program (either directly or through a contractor or franchisee such as a garbage collector), it would require staff time to develop and implement. Could range from about 2 weeks to 6 months of staff time to develop, plus on-going program operation to promote the program, collect materials to be composted, and manage the actual composting operation; plus education, evaluation, etc. Cost of operation would depend on the scale of the program, the type of feedstock accepted and the requirement for protections for human health and the environment. Some capital costs would be required. As an example, Metro let a $30,500 contract to construct and operate a commercial food waste composting pilot project of one year's duration, not including collection of the materials to be composted. Metro has another contract to operate a somewhat different commercial composting pilot project at an existing landfill for $53,000 for one year. Most such operations are outdoors in windrows, but can also be inside buildings and/or in vessels. Special containers (from $6 on up) usually need to be provided, generally by the hauler. Jurisdictions may experience cost savings from avoided disposal costs of the materials composted. Selling the end product (compost) will generate revenue. Additional costs may include a DEQ composting facility registration or permit, or Metro composting license. (Estimated range of one-time permit application costs: $100 to $500 [high end assumes a DEQ "Class 2" facility]; estimated range of annual permitting costs: $100 to $5,000, depending on size of facility).

Beneficial impact: implementing one or more 2% Credit Programs may help a wasteshed maintain its 1995 target recovery rate, and thus preclude a city's having to implement two additional recycling program elements and their associated costs.

**I-3. New "2% Credit Programs"**

None of these is required. Some communities are already implementing some of the activities which can be chosen for the new programs. Each Program requires some promotional and educational activities (see I-1. above for some typical costs); and a choice among several other types of activities. Some of these latter also require providing information; others require investment and on-going operation and maintenance, such as providing a drop-off site. Costs would vary greatly between small and large communities, and the individual Program activities chosen. Staff resources would be needed for program development (as in I-2., new commercial composting program), and most activities would require on-going program implementation

costs. A modest program in a small community might be developed using mostly volunteers for a few hundred dollars (or even less) a year. More ambitious programs could cost tens of thousands of dollars a year.
Annual reporting to DEQ on Program implementation would be required to "claim" the 2% credit.
Since a standard format will be provided by the Department for this, reporting costs should be minimal (assume 2 hours of staff time @ $40/hour = $80/year).

**I-4. Reporting flexibility**
Wasteshed "opportunity to recycle" reports may be submitted on an "as needed" basis to DEQ rather than annually. For every report not submitted, an estimated 8 to 16 hours of staff time (usually local government employee) would be saved (@ $40/hour = $320 to $640), plus savings of Department time in reviewing the reports (1 to 2 hours = $80 - $160). Assume 30 (out of 35 wastesheds) report only every other year. Saves a total of 240 to 480 reporter hours, and 30 to 60 Department staff hours.

**I-5. Maintaining 1995 statutory (target) recovery rate**
Affects a wasteshed which does not maintain its 1995 rate: cities over 4,000 population in the wasteshed and the county responsible for solid waste implementation between the city limits and urban growth boundary must implement two additional recycling program elements. Costs of establishing new program elements are discussed in general in I-2 and I-3 above in the Introduction section.

## General Public

**I. Local Government and Other Recycling Programs**

Most of the costs of additional recycling program activities or of implementing new programs would be funded through collection rates for services provided or through the local government's tax base, and thus impact the local resident or business receiving the service. See Introduction for range of program costs. Likewise, any cost savings should also be passed on to the general public. Local residents should also receive the benefits of reduced solid waste disposal costs due to more materials being recycled, reused, or composted and less materials being disposed of. These impacts will vary greatly in each jurisdiction depending on local programs.

6. Rigid plastic container recycling rate **(no direct impact)**

**II. Container Glass Minimum Recycled Content Requirements**

No direct impact on general public

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon**

No direct impact on general public

**IV. Changes in Financial Assurance Requirements**

1. Municipal and non-municipal *solid waste landfills*. No direct impact on general public.
2. *Composting facilities* "general permit" facilities. Could have indirect impact of lower costs

to public taking materials for composting or buying finished compost product if facility is exempted from providing financial assurance.

**V. Other Changes Identified by the Department**

No direct impact on general public.

**Small Business**

**I. Local Government and Other Recycling Programs**

1.-5. See general analysis in Introduction section.

6. Rigid plastic container (RPC) recycling rate. Only direct impact would be for recyclers and processors of rigid plastic containers. The Department would survey them for specific information concerning *rigid plastic containers* when collecting information to determine a RPC recycling rate. In years when no RPC rate is developed, the Department would not request that information. Could save some staff time (1-3 @ $40/hour = $40 to $120) each year.

**II. Container Glass Minimum Recycled Content Requirements**

No direct impact on small business. (Assume all container glass manufacturers are large businesses.)

There could be an indirect impact on small businesses that collect glass for recycling. The Department assumes that the provision allowing "secondary uses of glass" to count towards the Oregon glass recycled content requirements would not result in any appreciably less amount of glass being recovered in Oregon. However, some glass that might otherwise have been recycled into glass containers could go into "secondary uses" (which are generally of lower value) such as road-base aggregate. This could result in a decrease in revenue for the collector. On the other hand, it could result in a decrease in costs of finding an outlet for collected glass if there is a "secondary use" market in areas of the state located far from a glass container manufacturer.

This provision could also affect small businesses providing curbside and other on-site glass recycling collection programs. Instead of keeping glass containers separated by color (necessary for recycling into container glass), colors could be mixed together in the collection process. This could save labor and possibly equipment costs. The magnitude of these cost savings may be in the range of $.20 to $.50 per month per residential customer, depending on pickup details, cost of disposal and various other factors.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon**

This would affect a small business operating a landfill which receives less than 75,000 tons of waste generated outside of Oregon. The Department estimates that four or five landfills may be affected, although this number could change in the future depending on comparative tipping fees. The owner of the landfill would no longer have to "demonstrate" to the Department that the person generating this waste had a recycling program equivalent to Oregon's opportunity to recycle requirements. This would save staff time in research and putting together an initial report for Department certification, and in annual reports thereafter. Range of savings: initial

report - 8 to 16 staff hours (@ $40/hour = $320 to $640); annual reporting: 2 to 3 hours (@ $40/hour = $80 to $120).

**IV. Financial Assurance Requirements**

1. Affects small businesses which are also corporations operating municipal and non-municipal *solid waste landfills.* Have to have tangible net worth of $10 million (plus the costs to be assured) to be eligible to use the corporate guarantee financial assurance option. For those who are eligible and choose to use this mechanism to provide financial assurance for closure, etc., the requirements are changed slightly from existing rule, in the main to conform to the new federal regulation. Overall the changes balance out so the economic impact is neutral.
2. Affects small businesses which are *composting facilities* required to obtain a "general permit" from the Department. It should be noted that this proposed rule does not *establish* the requirement for financial assurance for general permit composting facilities; that requirement is in existing DEQ rule. This rule would establish *exemptions* to the financial assurance requirement for these facilities. Two exemption options are given in the draft rule. Option A would require financial assurance ***unless*** exempted by the Department. Option B would exempt "general permit" compost facilities from having to provide financial assurance (although the Department might impose a requirement for financial assurance as part of a negotiated settlement in the case of a troublesome facility, or through requiring such a facility to obtain a "full permit"). In Option A, the burden of proof would be on the permittee to demonstrate to the Department that financial assurance should not be required. The business would have to request the exemption, provide information showing that the exemption was warranted, etc. This process could take 4 to 6 hours (@$40/hour) = $160 to $240. The Department estimates there are 22 facilities subject to the composting general permit now, and that the number will increase to about 32 facilities by the year 2001. Most of these facilities are small businesses. Some number of these facilities (estimated to be fewer than 20 percent) would end up providing financial assurance as a result of a Department decision requiring Option A's pro-active exemption process.

   The cost of providing financial assurance depends on several factors. The amount of financial assurance required is based on the estimated cost of closing the facility, cleaning up and or removing whatever uncomposted waste may remain on site, and cost of remediation of any environmental problems (such as groundwater contamination) caused by facility operation. The cost of the financial assurance mechanism depends on which mechanism is chosen. A trust fund requires annual payments so that the fund contains sufficient funds for closure and other costs when needed. The costs of providing a corporate guarantee for closure would be simply the costs of assembling the required financial information and certification by an independent CPA. EPA has estimated in the prologue to its Subtitle D regulations for *municipal solid waste landfills* that the annual cost of various other financial assurance mechanisms is 1 to 2 percent of the full amount required. That is, for closure costs of $100,000 the annual cost for financial assurance would be $1,000 to $2,000. This rule would create a positive financial impact for any facility exempted from this requirement.

   The Department estimates that closure costs for *municipal solid waste landfills* have a range of $90,000 to $190,000 an acre. Composting facilities are much different from landfills and should have considerably lower closure costs. Estimating closure costs for composting

facilities is a relatively new area. The Department is establishing a work group to develop guidelines on the amount of financial assurance which should reasonably be required for composting facilities. The work group will begin meeting this summer and will include interested persons from within and outside the Agency.

**V. Other Changes Identified by the Department:**

1. Recordkeeping. This would affect small businesses operating land disposal sites. More detailed recordkeeping is required of waste received, including daily listing by load of the volume or weight of solid waste received; and monthly and quarterly accumulations of amounts of daily waste received. For facilities not now keeping records in this manner, it will require staff time to set up the system. A range of 10 to 16 hours of staff time (bookkeeper or accountant) might be necessary to set this up (@ $50/hour = $500 to $800). Additional staff time may be required to use and maintain the system (perhaps 4 hours a month at the beginning @ $40/hour = $160), although this should diminish over time to approach staff time requirements for existing recordkeeping.
2. Other minor changes. Affects small businesses operating solid waste disposal sites or providing recycling programs for local governments. Little or no fiscal impact.

## Large Business

**I. Local Government and Other Recycling Programs**

See general analysis in Introduction section.

6. Same impact as for small businesses.

**II. Container Glass Minimum Recycled Content Requirements**

This will impact glass container manufacturers located in Oregon and outside of Oregon if they sell new glass containers to packagers located in Oregon. There are provisions allowing exemptions to the existing requirement for minimum post-consumer glass content in glass containers. One exemption allows secondary uses of glass to count towards the 50% minimum content requirement after the year 2000. Another exemption allows a manufacturer to request that DEQ not enforce the minimum content requirement if there is a lack of available cullet meeting the manufacturer's specifications. To the best of the Department's knowledge, the price paid by glass container manufacturers for cullet is approximately equal to their cost of raw materials used for making an equal amount of glass. This may or may not include the economic value of energy savings gained by using cullet, which requires less process energy than use of virgin materials. The exemptions may provide a positive economic impact to manufacturers who would otherwise have to alter handling and storage procedures to be able to use sufficient cullet to meet the recycled content requirements. These savings could amount to several thousands or even hundreds of thousands of dollars (storage space, conveyor belts, sorting areas, etc). On the other hand, a manufacturer requesting the "lack of available cullet" exemption would have to prepare and submit an annual application to the Department demonstrating the reason for that lack. Such a report could require 8 to 16 hours of staff time (@ $50/hr) = $400 to $800.

See **Small Business** section for collection impacts.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon**

Same impact as for small businesses.

**IV. Changes in Financial Assurance Requirements**

1. Municipal and non-municipal *solid waste landfills*. Same impact as for small businesses, except that large businesses are more likely to use a corporate financial test than are small businesses. Currently about four or five corporate landfill owners use the corporate financial test. The state requirement for establishment of a stand-by trust fund, to be filled if the company can no longer meet the criteria of the corporate test, is proposed to be dropped. In its place is a requirement to provide an alternative mechanism within 30 days if the criteria of the corporate test are no longer met. For a permittee now using the corporate financial test, dropping the standby trust fund requirement will provide an estimated $200 annual savings, the approximate cost of establishing and maintaining a standby trust fund with a commercial trustee. Actual amount will vary according to individual trustee fees, legal costs, etc.
2. *Composting facilities* "general permit" facilities. Same impact as for small businesses.

**V. Other Changes Identified by the Department**

1. Recordkeeping. Same impact as for small businesses.
2. Other minor changes. Same as for small businesses.

## Local Governments

**I. Local Government and Other Recycling Programs**

See general analysis in Introduction section.

**II. Container Glass Minimum Recycled Content Requirements**

No impact.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon**

Impacts local governments operating a landfill: same impact as for businesses.

**IV. Changes in Financial Assurance Requirements**

1. Municipal and non-municipal *solid waste landfills*: no impact.
2. *Composting facilities* "general permit" facilities: affects a local government operating such a compost facility, same impact as for businesses except that a local government may use a local government financial test to provide financial assurance. This is a demonstration that the local government is capable of meeting its financial obligations through "self-insurance" at no additional cost to itself.

**V. Other Changes Identified by the Department**

1. Recordkeeping. Affects a local government which is a permittee of a land disposal site. Same impact as for businesses.
2. Other minor changes. Affects local governments operating solid waste disposal sites or

providing recycling programs. Little or no fiscal impact.

## State Agencies

Impact to DEQ is principally in providing technical assistance to local governments concerning new requirements, and to help them implement new programs. Other impacts include: additional time to work with the composting facility financial assurance exemption; some additional training by DEQ for solid waste disposal site operators on new recordkeeping requirements; additional time to review requests for non-enforcement ("lack of available cullet") from glass manufacturers; beginning in 2002, determination of tonnage of secondary end uses of glass in Oregon. Will be provided through existing Solid Waste staff.

Decreased reporting requirements (see Introduction section) and less frequent determination of the rigid plastic container recycling rate will save 2-3 weeks of staff time for every year this is not done, and $105,000 in contract funds (per biennium) . These impacts are created by statutory change.

- FTE's (no additional)
- Revenues - none
- Expenses - none beyond regular operations (mailings, fact sheets)

## Assumptions

1. Cost of developing and distributing one new recycling brochure (low-cost, 300 copies): staff time: 8 hrs @ $30/hr = $240; printing $.10 ea = $30; distribution: $.05 staff time ea = $15. Total: **$285**
   - Cost of developing and distributing one new recycling brochure, two-color (1,000 copies): staff time – 25 hours @ $30/hr = $750; graphic artist -- $800; 1,000 brochures @ $.50 each = $500; distribution of brochures $.32 each + $.05 staff time = $370. Total: **$2,420**
2. Cost of writing one short news article, one radio public service announcement or doing one media interview: 2-4 hours of staff time @ $40 = $80 - $160
3. Of the thirty-seven active municipal solid waste landfills operating in Oregon as of July 1, 1998, over 80 percent are owned or operated by local governments. Six of these receive more than 100 tons of waste a day, and are considered large. The remaining 31 are small. In addition, there are six construction and demolition landfills (three of them "large"), about 50 industrial landfills and solid waste treatment facilities; and about 4 sludge land application sites and septage lagoons.

## Housing Cost Impact Statement

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

ATTACHMENT B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste "Catchall" Rulemaking

# Land Use Evaluation Statement

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

The proposed rules would incorporate changes in legislation passed by the 1997 Oregon Legislature, as well as others made necessary by changes in Federal regulations. In addition it would make some changes identified as necessary by the Department for effective administration of solid waste programs, and technical corrections to clarify program implementation. Major topic areas are: amending requirements for local government recycling programs; adding a new "program element" option for local government recycling programs; adding three new optional programs which local governments may implement concerning waste prevention, reuse, and home composting; changes in the container glass minimum recycled content requirements; changes in recycling program requirements for out-of-state jurisdictions that export solid waste to Oregon for disposal (out-of-state "persons" exporting less than 75,000 tons of solid waste a year are exempt from recycling program requirements); changes in the existing corporate financial test for financial assurance for landfill closure, post-closure care and, if needed, corrective action; changes in financial assurance for "general permit" composting facility operators; and changes in recordkeeping requirements for solid waste disposal site operators.

**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:**

Issuance of solid waste permits.

**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 land use policy requires that local government approve a Land Use Compatibility Statement before issuing a solid waste permit. This policy adequately covers the proposed rules.

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on
   a. resources, objectives or areas identified in the statewide planning goals, or
   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

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

Division | Intergovernmental Coordinator | 7/9/98 Date

Land use st.doc

## 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?**

There are Federal requirements related to two items: Topic IV 1., "corporate financial test" for financial assurance for corporate owners and operators of municipal solid waste landfill facilities; and Topic V 2., practices now in Department guidance to conform to EPA requirements.

Topic IV 1: On April 10, 1998, the Environmental Protection Agency (EPA) adopted a new mechanism under Subtitle D (40 CFR Part 258) that corporate operators of municipal solid waste landfills may use to provide financial assurance. This mechanism differs from a similar one in existing DEQ rule.

Topic V 2: Two parts.
- Need to implement a requirement from a previous EPA rule adoption. Concerns requirement for "determinations" by State Director of two conditions if a landfill owner or operator wants to use a discount rate in calculating facility closure, post-closure and/or corrective action costs. DEQ proposes to implement these "determinations" through self-certification. One of the determinations required by EPA includes submittal of a cost certification by a Registered Professional Engineer. (Note: use of the discount rate is optional, not required.)
- Incorporate EPA guidance concerning use of a Registered Professional Engineer for required written cost estimates for closure, post-closure care, etc. This is current Department practice, and comports with EPA written guidance.

***The remainder of this document applies only to Topic IV 1, corporate financial test.***

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

Corporate financial test. Establishes financial criteria to be used by a corporation to demonstrate sufficient financial strength to cover costs of landfill closure, post-closure care and/or corrective action.

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

Not entirely. The Department identified the following areas of the EPA regulation which do not provide sufficient assurance to allow use of a corporate financial test.

- EPA regulations allow an "investment grade" bond rating to serve as one of the measures of financial strength for determining whether a corporate guarantee will qualify as a financial assurance mechanism. Current DEQ regulations do not allow this. EPA identified several companies with rated senior debt (bonds); three of these companies had "investment grade" bonds (including Waste Management Inc.). The others issued "junk bonds." There has been considerable consolidation in the waste industry nationwide since EPA's rule was drafted. DEQ believes that fiscal prudence should dictate that our rule continue to ignore bond ratings in assessing a corporate financial test.
- EPA allows 120 days for a permittee to provide an alternative financial assurance mechanism if the corporation no longer meets the corporate guarantee. The Department, by inference, requires an alternative mechanism within 30 days. The Department believes that 120 days is too long a period to

allow a permittee to remain without financial assurance, especially for a corporation whose financial strength may have declined.

- EPA has no specific requirement to notify the state regulatory agency when a corporation no longer meets corporate guarantee criteria. The Department has required notification within 15 days. The Department believes that it is in the public interest to receive this notice as within that timeframe so alternatives may be sought.

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

The Department's proposal is similar to current DEQ requirements for the corporate guarantee. Rather than adopting the federal rule by reference (as the Department has done with other parts of Subtitle D), the proposal amends existing DEQ rule to bring in into conformance with several EPA provisions, but retains state requirements where financial prudence so indicates.

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

No. Federal rule is now in effect, as is state rule. They need to be brought into conformance.

**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. The requirements of this financial assurance mechanism apply equally to any corporate owner or operator of a municipal solid waste landfill wanting to use a corporate guarantee.

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

If a financial assurance mechanism is not sufficient to cover costs of landfill closure, post-closure care (and/or remedial action when necessary), the public ends up footing the bill which can amount to thousands or even millions of dollars. State law requires a permittee to be responsible for adequate financial assurance. The Department believes the proposed requirements are in the interests of the public and the environment.

**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?**

Procedural requirements (notification, earlier provision of "replacement" financial assurance) are noted above under 3, together with a discussion of the rationale.

**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?**

See discussion under 8. above.

**Attachment B-5**

## State of Oregon
## Department of Environmental Quality — Memorandum

**Date:** July 14, 1998

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal and Rulemaking Statements - Solid Waste "Catchall" Rulemaking

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt a new rule and rule amendments regarding solid waste management and recycling. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would incorporate changes required by legislation passed by the 1997 Oregon Legislature, as well as modifications made necessary by changes in Federal regulations. In addition it would make some changes identified as necessary by the Department for effective administration of solid waste programs, and technical corrections necessary to clarify program implementation. Major topic areas are:

**I. Changes in Local Government and Other Recycling Programs (HB 3456):**

1. Amends two (of several) existing "recycling program elements" among which local governments choose in order to provide the opportunity to recycle: the Expanded Education and Promotion Program Element, and the Commercial Recycling Program Element.
2. Creates one new "recycling program element:" the Commercial and Institutional Composting Program Element.
3. Creates three new "Programs" which a wasteshed (usually a county) may choose to implement. For each Program implemented, the wasteshed receives a two percent "credit" on its recovery rate. The Programs are: Waste Prevention; Reuse; and Residential Composting.
4. Adds flexibility to local government recycling program reporting requirements to DEQ.
5. Requires wastesheds to at least **maintain** their 1995 statutory (target) recovery rate; otherwise, cities over 4,000 population in the wasteshed must implement two additional recycling program elements.
6. Concerning DEQ's determination of a recycling rate for **rigid plastic containers**: gives DEQ flexibility to calculate the rate on an as-needed basis rather than annually.

**II. Changes in Container Glass Minimum Recycled Content Requirements (SB 1044):**

- Restricts the minimum recycled content requirements to **new** glass containers made in Oregon, or made outside of Oregon **and sold by the manufacturer to packagers in Oregon.**
- Exempts a glass container manufacturer from enforcement of minimum content requirements if the manufacturer can demonstrate a lack of available glass cullet meeting the manufacturer's specifications.

- Modifies compliance determination with the 50% recycled glass content requirement in glass containers (effective in 2000). Requires the Department to credit toward that requirement the combined amount of recycled glass generated in Oregon for "secondary end uses" (uses other than in manufacturing new glass containers).

**III. Changes in Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):**

- Exempts landfill owners from the requirement to demonstrate that out-of-state local jurisdictions exporting solid waste to Oregon have programs meeting the "opportunity to recycle" requirement, **unless** they export **over 75,000 tons annually** for disposal in Oregon.

**IV. Changes in Financial Assurance Requirements**

1. Concerning municipal and non-municipal *solid waste landfills*: Proposes changes in existing DEQ rule for "corporate financial test" for landfill owners and operators, a mechanism to provide financial assurance for closure, post-closure care and, if needed, corrective action. Changes are needed to comport with recently passed Federal rules under Subtitle D (40 CFR Part 258).
2. Concerning *composting facilities* required to obtain a permit: Proposes changing existing DEQ regulation which requires all "general permit" composting facilities to obtain financial assurance for closure, etc. The change would allow exemptions to that requirement for general permit facilities.

**V. Other Changes Identified by the Department:**

1. Requires more detailed recordkeeping by solid waste facilities as a result of a Department audit of reporting and fee payment procedures at a sampling of permitted solid waste facilities.
2. Other minor and housekeeping changes.

The Department has the statutory authority to address this issue under ORS 459.045, 459.995, 459A.025 and 468.020. These rules implement ORS 459 and 459A.

**What's in this Package?**

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

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

| | |
|---|---|
| | amendments. |
| Attachment E | Solid Waste Advisory Group Membership. |
| Attachment F | Corporate Financial Test Comparison. |
| Attachment G | Revised standard format for Corporate Guarantee for Financial Assurance |

**Hearing Process Details**

The Department is conducting three public hearings at which comments will be accepted either orally or in writing. The hearings will be held as follows:

**Date:** August 24, 1998
**Time:** 7 p.m. - 7:20 informational presentation, questions and answers
7:20 p.m. public hearing
**Place:** Meeting Room B (second floor)
The Portland Building
1120 SW 5th Avenue
Portland, Oregon

**Date:** August 25, 1998
**Time:** 7 p.m. - 7:20 informational presentation, questions and answers
7:20 p.m. public hearing
**Place:** Jackson County Courthouse Auditorium
10 S. Oakdale
Medford, Oregon

**Date:** August 26, 1998
**Time:** 7 p.m. - 7:20 informational presentation, questions and answers
7:20 p.m. public hearing
**Place:** Bend Community College
Boil Education Center, #154
2600 NW College Way
Bend, Oregon

**Deadline for submittal of Written Comments:** 5 p.m., August 28, 1998

Presiding Officers will be Zach Loboy at the Medford hearing, Steve Kirk in Bend, with the Presiding Officer in Portland to be determined.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Deanna Mueller-Crispin, 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 want 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 be 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, each 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 Officers' reports. The public hearings will be tape recorded, but the tapes 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 October 30, 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 1997 Oregon Legislature passed several bills making a number of changes in recycling program and solid waste laws. The rule amendments are needed to bring the Department's regulations into conformance with the laws.

On April 10, 1998, the Environmental Protection Agency (EPA) adopted a new mechanism, a corporate financial test, under Subtitle D (40 CFR Part 258) that corporate operators of municipal solid waste landfills may use to provide financial assurance. This mechanism differs from a similar one in existing DEQ rule. The differences between the new EPA requirements and DEQ's rule need to be addressed.

In addition, the Department has identified several issues that need to be addressed as a result of the fee audit mentioned in V.1. above and during program operations.

**How was the rule developed?**

The Department established a Solid Waste Advisory Group (SWAG) to help with this rulemaking (see Attachment E for SWAG membership). The SWAG met twice (April 9 and June 11, 1998) to discuss all Topics addressed in this rule adoption other than some minor housekeeping changes, and reviewed draft rules for the same. They are scheduled to meet once more in September after the August public hearings to discuss any issues arising from public comment before the proposed final rule is sent to the EQC. In addition, a "Glass Sub-Group" of SWAG members met once on May 14, 1998 to discuss issues raised by SB 1044, the Container Glass Minimum Recycled Content bill, dealing with changes in recycled content legislation for glass containers (Topic II of this rulemaking). The recommendations of this Sub-Group were then forwarded to the SWAG for consideration at their June 11 meeting.

The SWAG reached consensus on draft rule language for all Topics they discussed, except for Topic II, Glass Minimum Content.

*Lack of available cullet exemption.* Both the Glass Sub-Group and the SWAG discussed how DEQ would determine, upon a glass manufacturer's request, whether there was lack of sufficient "available" cullet meeting the manufacturer's specifications. Both groups felt DEQ rule should address how economic considerations influence "availability" of appropriate cullet. Some SWAG members wanted to include in the concept of availability a "good faith" effort by the manufacturer, including the offer of a reasonable price. The SWAG agreed with the language in the Department's draft rule, but with the understanding that dissenting members would work on drafting language that would address the concerns of those members. This language would also be put forward as an option in the rule for public comment. The Department would like to receive public comment on two options for determining "availability" of glass cullet. See below page 8 for further discussion, and Attachment D, page 7, for the text of the two Options.

*Secondary end uses of glass.* SWAG members desired changes from the Glass Sub-Group's proposed language in two areas concerning the list of "secondary end uses of glass." The SWAG reached consensus on one of these changes, but not on the other. The Department would like to receive public comment on three options for the listing of "secondary uses of glass," the two options discussed by the SWAG (Options A and B), and the Glass Sub-Group's proposal (Option C) as no members of the Glass Sub-Group were present at the June 11 full SWAG meeting. See below page 9 for further discussion, and Attachment D, page 6, for the text of the three Options. It should be kept in mind that the definition of "secondary uses of glass" in this rule pertains **only** to those uses of glass **as they "count" towards the required 50% glass minimum content requirement for glass container manufacturers.** This definition has no bearing on secondary or any other uses to which recovered glass may be put in the state.

*Composting facilities.* DEQ rules for composting facilities were adopted in July 1997, including a requirement for financial assurance for closure, post-closure care, etc., for two of the three types of composting permittees: "general permits" and full permits. Comments at recent public hearings on the compost "general permit" format made the case that composting facility "general permit" sites are generally low risk operations. Commenters argued that it is therefore appropriate to require financial

assurance for a general permit facility **only if** the Department determines that the site appears to hold potential to create environmental problems. This would require case-by-case analysis. Department Solid Waste managers agreed with public comment, and proposed that rule change on financial assurance to the SWAG. The SWAG did not agree with the change. They commented that there were good reasons for the financial assurance requirement. The SWAG instead reached consensus that financial assurance should be required **unless** the Department determines it is not necessary. (Option A)

As the Department staff had further in-house and legal discussions of these options, the Department concluded that neither of the preceding options should be preferred for dealing with this issue. "General permit" composting facilities have been determined by the Department to be low-risk by their nature. Requiring financial assurance to be assessed on a case-by-case basis is unworkable for two reasons. The The Department has a Memorandum of Understanding (MOU) with the Metropolitan Service District to administer the composting facility "general permit" in areas within Metro's jurisdiction. A review for financial assurance would not be workable under the MOU. In addition, the concept of a "general permit" is that the same permit provisions apply to *all* facilities, with no room for individual adjustments. The Department has other options for dealing with a "general permit" composting facility that becomes troublesome: 1.) Financial assurance could be required as part of a negotiated settlement in an enforcement action, among other required actions; and 2.) The existing composting facility rules contain a provision allowing the Department to require a "general permit" facility to apply for and comply with the provisions of a composting facility "full permit," including financial assurance (OAR 340-096-0024(2)(e)). The Department proposes to remove the financial assurance requirement for "general permit" composting facilities (Option B) with the understanding that the above two provisions would be pursued for problematic facilities.

The Department would like to receive public comment on two options for modifying the financial assurance requirement for "general permit" composting facilities. See additional discussion on page 11; more complete rule text is given in Attachment D, page 10.

Copies of the following documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Kelly Scharbrough at 503-229-6299, or toll-free at 1-800-452-4011 for times when the documents are available for review:

1997 House Bill 3456
1997 Senate Bill 543
1997 Senate Bill 1044
Federal Register Vol. 63, No. 69, pp. 17706 to 17731
Meeting notes and agenda packets, Solid Waste Advisory Group and Glass Sub-Group

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

**I. Local Government and Other Recycling Programs (HB 3456)**

1. Changes to existing "recycling program elements" will affect those local governments (cities over 4,000 population or in the Metropolitan Service District and counties responsible for the area between city limits and the urban growth boundary) which choose to implement either of those Program Elements. The general public is affected in those areas choosing to implement these.
   - **Expanded Education and Promotion Program Element**: major change is that a local government may now choose to either follow actions prescribed in statute to implement the Program Element (existing statute, with minor changes), **or** may instead develop an education and promotion **Plan**. This affords additional flexibility to the local government to craft an education and promotion program suited to its local needs. Some additional staff work would be required to develop a local plan, but once developed, the plan might be more cost-effective to implement than the actions prescribed in statute. The local government must periodically report to DEQ on implementation of a plan. The general public should benefit by receiving better-targeted information on recycling options available to them.
   - **Commercial Recycling Program Element:** a local government selecting this Program Element would now have to provide an education and promotion program tailored to its commercial solid waste generators. This includes specific materials designed to meet the needs of the commercial sector. Additional actions such as waste assessments and recycling recognition programs are encouraged but not required. The changes should enhance the effectiveness of a commercial recycling program, providing local businesses additional encouragement to recycle and reduce the waste they must dispose of.
2. New **Commercial and Institutional Composting Program Element.** A local government may choose to add this new program element or to substitute it for a program element they are currently implementing. The local government would have to establish or facilitate the establishment of a "system" to collect and compost food waste and other compostable materials from commercial businesses (such as restaurants and produce stores) and institutional generators (such as schools, hospitals and other institutions with food service). Such a program would create a useful product (compost) and provide an option other than landfilling for food waste and other compostibles. It may save money on disposal costs for participating businesses.
3. New **"2% Credit Programs."** A wasteshed may choose to implement all, any or none of these new programs. For each program chosen for implementation, there is a required education and promotion component. Two other components must be implemented out of a choice of several in statute. In general, cities with 4,000 population or more and/or counties would implement the program components. The general public within an implementing wasteshed would benefit from having additional information and opportunities to prevent waste, reuse products and materials and participate in home composting. Businesses involved in reuse of products (repair shops, resale shops) may benefit from programs

creating public awareness about the advantages and availability of such services. The 2% credit received for implementing any of these new Programs (maximum: 6% if all three are implemented) may help a wasteshed maintain its 1995 target recovery rate, and thus preclude a city's having to implement two additional recycling program elements (see 5. below).

4. **Reporting Flexibility.** Some wasteshed recycling program reports to the Department are no longer required on an annual basis. This will ease the administrative burden on local government staff in report preparation and on DEQ staff for report review.
5. **Maintain 1995 Statutory Recovery Rate.** If a wasteshed does not maintain its 1995 recovery rate, cities over 4,000 population in the wasteshed and the county responsible for solid waste implementation between the city limits and urban growth boundary must implement two additional recycling program elements until the wasteshed again achieves the 1995 rate. Implementing two additional programs could require considerable staff time and other local government resources. Once a city has adopted two additional measures, no more must be adopted in the future.
6. **Rigid Plastic Container Recycling Rate**: DEQ will determine the recycling rate for compliance purposes on an as-needed basis rather than annually. This will save contractor costs and staff time for the Department. In turn, recyclers and processors of rigid plastic containers will not be asked for detailed recycling information by the Department in years when the rate is not calculated. The most recent recycling rate determined by DEQ will be used to determine whether product or container manufacturers using rigid plastic containers comply with the law.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044)**

Glass container manufacturers outside Oregon whose containers are filled **before** shipment to Oregon to be sold are no longer subject to Oregon's minimum recycled content requirements. Glass container manufacturers in Oregon or who ship empty glass containers to packagers in Oregon continue to be subject to the requirements.

Glass container manufacturers are given flexibility in meeting Oregon's recycled content requirements through a provision for enforcement exemption for lack of available cullet, and the provision for secondary uses of glass in Oregon to "count" towards the 50% glass recycled content requirement.

*Lack of available cullet exemption.* The Department is requesting public input on two Options for the lack of available cullet exemption. In order to receive the "lack of available cullet" enforcement exemption, a glass manufacturer must provide sufficient information for the Department to determine that appropriate cullet was not available. The statute does not define "available." The draft rule as agreed to by the SWAG required a number of things from the manufacturer, including the manufacturer's specifications, and an explanation of how the manufacturer determined that sufficient cullet was not available. The draft rule considered by the SWAG established a 300-mile radius for this consideration. This text follows as Option A, Cullet Availability Exemption.

**OPTION A, Cullet Availability Exemption:**

(e) Upon request from a Glass Container Manufacturer, the Department shall not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if the Department determines that a Glass Container Manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet within 300 miles (or another reasonable market distance as established by the Department) that meets reasonable specifications established by the manufacturer. However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement shall not exempt a Glass Container Manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a Glass Container Manufacturer shall include sufficient detail for the Department to be able to reasonably make a determination as to the availability of appropriate cullet, and shall:

(A) Be made to the Department in writing by February 28 of a year to apply to use of cullet in the previous calendar year.

(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer shall demonstrate to the Department why such restrictions are necessary.

(C) Include the tonnage of the shortfall of available cullet.

A further refinement of the concept of "availability" attempting to address concerns of some SWAG members ("economic aspect") follows as Option B, Cullet Availability Exemption. Option B puts more emphasis on "producer responsibility."

**OPTION B, Cullet Availability Exemption:**

(Note: changes from Option A are shown in ***bold italics***)

(e) Upon request from a Glass Container Manufacturer, the Department shall not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if the Department determines that a Glass Container Manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet ~~*within 300 miles (or another reasonable market distance as established by the Department)*~~ that meets reasonable specifications established by the manufacturer. However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement shall not exempt a Glass Container Manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a Glass Container Manufacturer shall include sufficient detail for the Department to be able to reasonably make a determination as to the availability of appropriate cullet, and shall:

(A) Be made to the Department in writing by February 28 of a year to apply to use of cullet in the previous calendar year.

(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer shall demonstrate to the Department why such restrictions are necessary.

***(C) Demonstrate a reasonable effort to obtain glass cullet at a price which encourages collection and delivery of post-consumer glass to the manufacturing facility from within 300 miles of the facility, or another reasonable market distance as determined by the Department.***

(D) Include the tonnage of the shortfall of available cullet.

*Secondary end uses of glass.* The Department is requesting public input on three Options (A, B and C, Secondary End Uses) detailing what "secondary end uses of glass" would count toward the 50% requirement. Each Option would require that glass container manufacturers inform the Department of secondary end uses of Oregon glass *of which they are aware*. Manufacturers would not be required to provide information about how much glass was used in these secondary uses; the Department would gather that information as part of its annual determination of the state recovery rate. Each Option would have different effects for glass manufacturers wanting a particular secondary end use of glass to qualify as counting toward the 50% requirement.

"Secondary end uses" shall include:

1. Use on road surfaces as "glasphalt;"
2. Fiberglass;
3. Abrasives;
4. Glass foam;
5. Glass beads for reflective paint;
***6. Construction or road-base aggregate;***
***7.- (Option A, Secondary End Uses):***
***"Other uses as approved by the Department."***
***7.- (Option B, Secondary End Uses):***
"Other uses as approved by the Department ***for products with actual specifications that are sold in commerce."***

***(Option C, Secondary End Uses):***
***6. Road-base aggregate, meeting specifications of the Oregon Department of Transportation;***
***7.Other uses as approved by the Department.***

Options A and B would give glass container manufacturers "credit" on their required 50% recycled content rate for use of crushed glass by counties or other persons in such projects as building foundations or as road-base aggregate. It would not require that the glass used in such projects meet any particular specifications.

Option A would allow additional uses as approved by the Department to "count" towards the glass manufacturers' credit. The Department would review additional uses that came to its attention as to whether they comported with the kinds of uses specifically listed in the rule.

Option B would also allow additional uses if approved by the Department, but would restrict such uses to products with specifications for the use of glass and which are sold in commerce. The Oregon

Department of Transportation has established specifications for use of glass cullet as a substitute for aggregate in highway construction. Other than that, few specifications specially designed for the use of crushed glass exist, although construction specifications for structural materials in general are usually followed in construction projects. The "sold in commerce" requirement would likely exclude such uses as backfill for trenches. Option B would likely result in lower tonnages of secondary uses of glass counting towards the 50% requirement than would Option A.

Option C would allow road-base aggregate to "count" only if it met ODOT specifications. This would limit the qualifying road-base applications, since ODOT specifications are in general used only for state highways. Same "Department approval" provision as Option A.

These provisions would **not** affect persons wanting to use crushed glass for any of these applications, nor would they affect whether that use of glass qualified as "recovery" for purposes of calculating the state's recovery rate. The provisions would **only** affect the amount of "secondary end uses" of glass which would be counted towards the **50% content requirement for glass container manufacturers**.

The general public is not directly affected.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):** Landfill operators no longer have to demonstrate to the Department that any out-of-state local jurisdictions exporting solid waste to Oregon have recycling programs, **unless** they export **over 75,000 tons annually** for disposal in Oregon.

By extension, out-of-state jurisdictions (and other "persons" such as industries) sending waste to Oregon no longer need to have recycling programs meeting Oregon's "opportunity to recycle" unless they export over 75,000 tons of solid waste annually to Oregon. In the latter case, they will continue to have to provide a "waste reduction program."

The general public in Oregon is not affected.

**IV. Financial Assurance**

1. **Landfills.** Corporate owners of municipal and non-municipal solid waste landfills who want to use the corporate financial test to provide financial assurance will be affected. A number of existing provisions for that financial assurance mechanism would be changed somewhat. Note that the rule would apply the same changes in provisions for the corporate financial test to municipal ("Subtitle D") landfills and *non-municipal* landfills. See Attachment F, Corporate Financial Test Comparison.
2. **Composting facilities.** Owners of composting facilities required to obtain a "general permit" would be affected. The Department is soliciting public comment on two options, both of which would allow an exemption to the existing requirement that financial assurance be provided by all such facilities.

*The Department is soliciting public comment on* ***two options*** for this exemption:

Option A. Financial assurance is required **unless exempted by the Department;**
(*or*)

Option B. Financial assurance is **not required for "general permit"composting facilities**. (Financial assurance continues to be required for "full permit"composting facilities.)

Option A would require financial assurance of "general permit" composting facilities, unless they could demonstrate to the Department that none was reasonably necessary. The burden of proof would fall on the permittee in this Option.

Option B would exempt "general permit" composting facilities from having to provide financial assurance. However, the Department could require financial assurance from a problematic facility as part of a negotiated settlement in an enforcement action; or could require that a problematic "general permit" facility obtain a "full permit," one of the requirements of which is financial assurance.

The general public is not directly affected. Financial assurance protects the public against public costs for environmental cleanup if a facility operator causes a problem and has no financial resources to clean it up. On the other hand, maintaining financial assurance increases facility operating costs and thus may increase the cost to the public of solid waste disposal, having materials accepted for composting, or of buying finished compost product.

**V. Changes Identified by the Department:**

1. **DEQ Fee Audit**. Owners and operators of solid waste landfill sites will be subject to more specific requirements for keeping records on solid waste received. Operators of all types of solid waste disposal facilities (except transfer stations) will be specifically required to retain records on waste received for five years. **Use** of scales will specifically be required at those solid waste disposal sites where **presence** of scales is already required by rule.
2. **Other minor and housekeeping changes**. These include:
   - Requirements in permits: some requirements now in DEQ permit are added specifically to rule. Example: requirement to notify DEQ of changes in name or address of the facility owner or operator within 10 days of the change. This would affect solid waste permittees.
   - Practices now in Department guidance to conform to EPA or other requirements: some actions now set forth in Department guidance are added to rule. Example: certifications from municipal Subtitle D landfill operators if they choose to use a discount rate in the required annual closure cost calculation for purposes of providing sufficient financial assurance. Annual certification is required from a Registered Professional Engineer attesting to accuracy of closure cost estimates,

and from the permittee on accuracy of closure date. Affects MSW landfill permittees using a discount rate.

- Definitions: addition of definition from 1997 legislation ("waste prevention"); other changes identified as necessary by DEQ ("designated wellhead protection area"). The latter could affect a person who wants to establish a land disposal site in a sensitive hydrogeological environment.

**How will the rule be implemented?**

**I. Local Government and Other Recycling Programs (HB 3456):**

1., 2. 4. and 5. *Local Government Recycling Program Elements; Reporting; and Requirement to Maintain 1995 Recovery Rate.* The Department has already worked with wasteshed representatives and local governments to inform them of changes in and additions to recycling programs and associated reporting requirements made by HB 3456. When rules are adopted, a summary of these provisions will be sent to local governments. Counties will be notified by November 1 of a year if an "opportunity to recycle report" is required for that year.

3. *New 2% Credit Programs.* The Department has already met with and communicated in writing with wasteshed representatives and local governments about the opportunity for these new programs. Whether the credits would be available for programs already in place in 1997 has been a question. The proposed rule would allow credits for 1997, if existing programs meet the Program criteria in statute. The proposed rule would require counties to claim the credit for a calendar year by submitting a form to DEQ by February 28 of the following year. This timing does not work for calendar year 1997; so the Department plans to send forms to counties this August in which they could claim credit(s) for qualifying programs that were in place during the 1997 calendar year. Credit(s) would not be assigned until adoption of this rule by the EQC in October.

6. *Rigid Plastic Container Recycling Rate.* The Department will monitor the "all-plastics" recovery rate calculated as an adjunct to the annual state recovery rate. DEQ will also monitor overall level of plastics recycling programs in the State. If it appears that plastics recycling in general is decreasing sufficiently to cause concern, DEQ will develop a rigid plastic container recycling rate.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044):** The Department is already required to conduct an annual survey of glass container manufacturers to determine compliance with the glass minimum content law. This survey form will be modified to incorporate changes in SB 1044. A cover memo sent out with the survey on January 1, 1999, will outline changes made by SB 1044. The Department will review requests for exemption from enforcement for lack of available cullet if any are received. Beginning in 2002, the Department will determine the amount of "secondary end uses of glass" which can be credited toward the 50% glass recycled content requirement. DEQ will base this on the list of eligible secondary end uses in rule, and determine whether other secondary end uses either identified by the Department or brought to its attention by others would qualify in this calculation.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):** Through this rulemaking process all landfill owners and operators will receive notice that these requirements have changed. Most affected persons are already aware of the new provision.

**IV. Financial Assurance**

1. *Landfills.* All landfill permittees now using the corporate guarantee have been informed of pending changes. Through this rulemaking process all landfill owners and operators will receive notice that these requirements are being changed. A revised format has been drafted for use by permittees (see Attachment G, Format for Corporate Financial Test for financial assurance) incorporating proposed changes. This will be made available to those interested in using this financial assurance mechanism.
2. *Composting facilities.* The Department's composting "interested persons" list is receiving notice through this rulemaking of the two Options for change. They will also be notified of whichever option is adopted for increased flexibility for financial assurance for "general permit" composting facilities. The Department will also communicate the decision to Metro, which implements compost permitting in the Metro area under an agreement with DEQ, and coordinate implementation with them.

**V. Other minor and housekeeping changes.**

1. *DEQ Fee Audit.* These changes in recordkeeping, etc. will be part of a summary mailing to all solid waste permittees after rule adoption. DEQ is also considering whether to develop training for solid waste facility operators on what is required and "best management practices" for a recordkeeping and reporting system, perhaps including guidelines for internal control procedures.

Overall: the Department will issue revised administrative rules incorporating the adopted changes and make them available through all Department Offices to the general public on request.

**Are there time constraints?**

**I. Local Government and Other Recycling Programs.** HB 3456 went into effect October 4, 1997, so all its provisions were effective as of that date unless otherwise stated. The rule needs to be changed to correspond to the statute.

**II. Container Glass Minimum Recycled Content Requirements.** SB 1044 specified that the Department is not to enforce the 35% recycled content requirement until January 1, 1999, or the 50% recycled content requirement until January 1, 2002. Therefore the provisions for non-enforcement for "lack of availability of glass cullet" should be in place by 1/1/1999. The provisions for calculating the amount of glass for secondary uses need to be in place by 1/1/2002.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon.** SB 543 went into effect in the fall of 1997. The rule needs to be changed to correspond to statutory changes.

**IV. Financial Assurance**

1. *Landfills.* On April 10, 1998, EPA's regulation became effective, establishing the corporate financial test mechanism for financial assurance. There are inconsistencies between EPA's rule and the Department's on this financial assurance mechanism. These inconsistencies need to be resolved through DEQ rule.
2. *Composting facilities.* Composting facilities are required to obtain DEQ permits by January 31, 1999. The requirement for financial assurance for "general permit" composting facilities needs to be resolved far enough ahead of that date for applicants to obtain their permits in a timely manner.

**Contact for More Information**

**If you would like to receive a complete copy of the actual language of the proposed rule amendments**, or would like to be added to the mailing list, or have questions about the location of public hearings, please contact:

William Alsdorf
503-229-5913, or toll-free at 1-800-542-4011

If you would like more information on the subject matter of this rulemaking proposal, please contact:

Deanna Mueller-Crispin
503-229-5808, or toll-free at 1-800-542-4011

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

Attachment C-1

State of Oregon

# Department of Environmental Quality Memorandum

**Date:** August 31, 1998

To: Environmental Quality Commission

From: Leslie Kochan

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: August 24, 1998, beginning at 7:20 pm
Hearing Location: Portland Building, 1120 SW 5th Avenue, Portland, Ore.

Title of Proposal: Solid Waste "Catchall" Rulemaking

The rulemaking hearing on the above titled proposal was convened at 7:20 am. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Two people other than DEQ staff were in attendance, two people signed up to give testimony.

Prior to receiving testimony, Deanna Mueller-Crispin of the Department's Solid Waste Policy and Program Development Section briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony

**Tom Mabie, Western Regional Director, Glass Package Institute (GPI), represents Owens-Brockway.** Mr. Mabie raised two concerns:

1) Three options were presented in the proposed rules regarding the **secondary end** use of glass. GPI believes that the main concern is to encourage the diversion of glass away from landfills and to conserve energy and resources. Therefore, it should not matter where the glass goes as long as it is not to a landfill or to a process that creates pollution. GPI endorses the Department's Option A [related to "secondary uses of glass"] since it is the most inclusive definition. GPI is opposed to Option B because it is vague and overly restrictive in relation to Subsection G. Option B allows discretion on the part of DEQ to limit secondary uses. Option A is slightly broader than Option C.

2) The **availability of cullet** is becoming more and more of an issue in terms of collection and product specifications. Color specifications must be strictly maintained. GPI is opposed to the haulers treating recyclables as garbage (co-mingling issue). During the SWAG Glass Subgroup meeting there was consensus that inherent in the issue of availability is an economic issue. Neither of the Department's two options fully addresses cost. The 300-mile limit suggested in the Department's Option A [related to "availability of cullet"] is arbitrary (not based on transportation costs), does not consider the differences in regions in terms of transportation costs, and is not defined (e.g. as the crow flies, road mileage). Option B is even more objectionable. Option B would require manufacturers to set a price encouraging collection. Here GPI has the same objection as to Option A as well as the vagueness of this price concept. Price gouging could occur. There would be no way to determine if this is the market price. The economic issue should be explicitly addressed.

Mr. Mabie also handed in written testimony.

**Bill Linden, Legislative Issues for State of Oregon, Glass Packaging Institute.** Mr. Linden emphasized the following:

1) As regards **secondary uses of glass,** inclusiveness was key during discussions developing the legislation [in 1997 Legislative session]. Option A is closest to legislative intent. Option B does not work (same argument as above.) The legislative intent was not to limit options at DEQ discretion.

2) In determining **availability of cullet** do not use an arbitrary mileage limit. Inject economic issues into this. The Legislature deferred to DEQ regarding how to define "available." Transportation is part of the economic issue but not the determining issue.

Written Testimony

The following people handed in written comments but did not present oral testimony:

None

There was no further testimony and the hearing was closed at approximately 7:35 pm.

Attachment C-2

State of Oregon

# Department of Environmental Quality Memorandum

**Date:** 8/26/98

To: Environmental Quality Commission

From: Zach Loboy

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: 8/25/98, beginning at 7:00pm.
Hearing Location: Jackson County Courthouse Auditorium, Medford, Oregon

Title of Proposal: Solid Waste "Catchall" Rulemaking:
Financial assurance related to "general permit" composting facilities.
Criteria for local government programs for commercial and institutional composting.
Criteria for changes in recycled content requirements for container glass.
Changes in financial assurance requirements for corporate landfill owners.
Changes in record keeping requirements for solid waste disposal site permitees and waste tire storage sites.
Changes to rigid plastic container recycling rate annual calculation requirements.
Changes in and additions to local government recycling and waste prevention programs.

The rulemaking hearing on the above titled proposal was to be convened at 7:00pm.

Zero people were in attendance, zero people signed up to give testimony.

Summary of Oral Testimony

None was given

Written Testimony

The following people handed in written comments but did not present oral testimony:

None was handed in.

There was no testimony and the hearing was closed at 7:35pm.

hearing report, Medford.doc

State of Oregon
Department of Environmental Quality Memorandum

**To:** Environmental Quality Commission **Date:** September 17, 1998

**From:** Steve Kirk, Eastern Region

**Subject:** Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: August 26, 1998, beginning at 7:20 pm
Hearing Location: Bend Community College, Boyle Hall, Bend, Ore.

Title of Proposal: Solid Waste "Catchall" Rulemaking

On August 26, 1998, I served as Presiding Officer for a public hearing held in Bend, Oregon. The purpose of the hearing was to accept public testimony on the draft Solid Waste "Catchall" Rulemaking proposals.

The rulemaking hearing on the above titled proposal was convened at 7:20 am. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Six people other than DEQ staff were in attendance, but no one signed up to give testimony.

Deanna Mueller-Crispin of the DEQ Solid Waste Policy and Program Development Section answered several questions regarding the purpose of the draft rule and targeting of compost.

Written Testimony

The following people handed in written comments but did not present oral testimony:

None

The hearing was closed at approximately 7:45 pm.

hearing report, Bend.doc

Attachment C-4
List of Written Comments Received

1. C. Marcele Daeges, for Recycling Advocates, Portland, Oregon; 8/28/98
2. Glenn Zimmerman, Chairman, Composting Council of Oregon, Aumsville, Oregon; 8/28/98
3. Tim A. Larocco, Bend, Oregon; 8/27/98
4. Thomas H. Mabie, Glass Packaging Institute, Los Angeles, California; 8/24/98
5. Tim Shestek, American Plastics Council, Inc., Sacramento, California; 8/10/98
6. Jeanne Roy, Portland, Oregon; 8/5/98

One other person submitted written comments, but they were received on September 3, 1998 after the official close of the comment period. These comments have not been included in the evaluation in the staff report.

List, written comments.doc

# Attachment D
## Department's Evaluation of Public Comment

This attachment summarizes public comment received on the Department's "Catchall" Solid Waste Rulemaking, and the Department's responses.

Numbers correspond to the Topic numbering used in Langdon Marsh's October 15, 1998 Memo to the Environmental Quality Commission on this Agenda Item.

### I. Changes in Local Government and Other Recycling Programs

#### 1. Amendments to Expanded Education and Promotion Program Element.

**Comment:** from Jeanne Roy: a.) Please remove the word "prescriptive" describing the list of actions required for this program element. It unnecessarily raises a red flag.

b.) If a local government chooses to implement this program element by using the new option of developing a Plan (instead of using the "list" of items mentioned above), the Plan should be required to receive DEQ approval unless it includes all the minimum elements in the list. Otherwise how will anyone know whether it meets the intent of the law?

**Comment:** from Marcele Daeges for Recycling Advocates: We would like to see some type of language indicating that DEQ will review/approve the "Expanded Education and Promotion Plan."

**Department response:**

a). The Department agrees that the term "prescriptive program" may have negative connotations, and proposes to identify this implementation option instead as the "Specified Action Program." [Attachment E – p. 1]

b.) A 1997 legislative change allows a local government to submit a Plan to implement the Expanded Education and Promotion Program Element, rather than implementing a set list of actions. The concept was to allow additional flexibility to local jurisdictions in crafting an educational program to address local conditions. This flexibility should result in more effective programs, based on what works at the local level. The legislation (and the proposed rule) already require the education Plan to meet the "intent" which includes the specified actions. The Department would like to encourage local creativity in developing tailored education Plans, and believes the administrative burden on local governments of Plan submittal and Plan review by DEQ would run counter to this. If a wasteshed does not meet its 1995 recovery rate, then the Department would review all the program elements being implemented to see what could be improved. For those reasons, the Department does not propose to incorporate this recommendation.

#### 3. New "2% Credit" Programs

**Comment:** Marcele Daeges for Recycling Advocates: Some standards should be set for wastesheds to obtain these credits.

**Comment:** Jeanne Roy: DEQ should set minimum standards that must be met before getting the credit(s). The programs are so vague a local government could say they are being met by doing almost nothing.

**Department response:**

The actions listed in statute serve as minimum standards for program implementation. There was clear legislative intent that the "2% credit" programs should not be further defined in rule. The proposed rule treats this as a "self-certification," requiring a report from the county to DEQ on the programs implemented, which includes certification from the county that the statutory criteria have been met. The Department does not propose to incorporate this recommendation.

**4. Reporting Flexibility for Local Government Recycling Programs**

**Comment:** Jeanne Roy: An "opportunity to recycle" report is no longer required annually. It will be required only "as required by DEQ." A way for citizens to initiate an evaluation of the need for this report should be incorporated into rule, e.g., by request to the Environmental Quality Commission.

**Department response:**

There is no need for such a provision to be set in rule. Any citizen is free to petition the Commission to undertake this action. Therefore the Department does not propose to incorporate this recommendation.

**5. Requirement for Counties to Maintain their 1995 Recovery Rate**

**Comment:** Marcele Daeges for Recycling Advocates, and Jeanne Roy (in separate comments): There should be a deadline for when DEQ is required to notify a wasteshed that it has failed to achieve its recovery rate goal, so additional programs may be implemented in timely fashion.

**Department response:**

DEQ agrees that it is important for counties to know as early as possible that they have not met their statutory 1995 recovery rate. In the past, the Department has notified these counties as soon as the rate was calculated, usually in early fall. The Department proposes to add language to the rule that it will notify no later than November 1 those counties whose rate fell short for the previous calendar year. [Attachment E, p. 2]

**6. Determination of Rigid Plastic Container (RPC) Recycling Rate**

**Comment:** Marcele Daeges for Recycling Advocates: concerned that if the recycling rate isn't calculated annually, it may be years before government agencies and the public know how successful recycling is. Would like some solution to ensure this doesn't happen.

**Comment:** Tim Shestek, Manager, Government Affairs, Western Region, American Plastics Council, Inc. and Society of the Plastics Industry, Inc.: requests clarification of criteria DEQ staff would follow when determining the necessity of calculating a recycling rate for rigid plastic containers.

**Comment:** Jeanne Roy: DEQ now has discretion to decide when this recycling information is needed. Should be a way for citizens to initiate an evaluation of the need.

**Department response:**

Concerning the need for tracking the level of plastics recycling, and criteria for when a new RPC rate would be calculated: the Department calculates a recycling rate for rigid plastic containers annually for the *previous year* as part of its calculation of the state recovery rate. The rigid plastic container recycling rate for compliance purposes is determined *prospectively* so RPC manufacturers will know whether they are in compliance for the coming year. That calculated *prospective* rate remains in force until a new *prospective* rigid plastic container recycling rate for compliance purposes is calculated by the Department. The *annual* RPC recycling rate is a record of past RPC recycling success. DEQ would determine whether calculating a *prospective* RPC recycling rate for compliance purposes is necessary based primarily on significant changes in the following: the Oregon recycling rate of #1 and #2 plastic resins; the level of recycling programs and activities in Oregon; and the estimated amount of RPCs in Oregon's waste stream.

Concerning how citizens may initiate an evaluation of the need to calculate an RPC recycling rate: There is no need for such a provision to be set in rule. Any citizen is free to petition the Commission to undertake this action. Therefore the Department does not propose to incorporate this recommendation.

## II. Changes in Container Glass Minimum Recycled Content Requirements

### 1. Secondary End Uses of Glass

*DEQ put forward three Options for public comment. All three options list certain uses allowed outright. In addition:*
***Option A** allows construction or road-base aggregate as an outright use; and other uses as approved by DEQ.*
***Option B** allows construction or road-base aggregate as an outright use; and other uses as approved by DEQ if they are **products with actual specifications that are sold in commerce.***
***Option C** is allows road-base aggregate outright only if it meets **Oregon Department of Transportation specifications**; and other uses as approved by DEQ.*

**Comment:** From Jeanne Roy: add wording assuring secondary uses are actually products, not just beneficial ways of using waste, to meet definition of "recycling." Could change wording to: "'Secondary end uses' shall include the following products sold in commerce: [...]"
Or amend Option C to make DEQ approval of other uses the same as Option B: "other uses as approved by DEQ for products with actual specifications that are sold in commerce."

**Comment:** from Marcele Daeges for Recycling Advocates: two choices to amend Option C:
Add to 340-090-0110(3)(d): "'Secondary end uses' shall include the following products sold in commerce [...]"; or
Add to 340-090-0110(3)(d)(G): "Other uses as approved by the Department **for products with actual specifications that are sold in commerce.**"

**Comment:** from Tom Mabie, Western Region Director of the Glass Packaging Institute: the three Options are similar, and show an intent for the rule to be inclusive. GPI supports this. It is not important *what* the glass is used for as long as it is reused. Legislative intent was for DEQ to retain discretion to adapt to future secondary markets for glass.

Option A is the most inclusive, and is thus preferable to others.
Option B is vague and overly restrictive of the Department's discretion.

**Comment:** from Bill Linden, Legislative Issues for State of Oregon, Glass Packaging Institute (GPI): inclusiveness was key during discussions developing the legislation [in 1997 Legislative session]; intent was not to limit DEQ discretion to approve various secondary uses. Option A is closest to legislative intent. Option B does not work for reasons expressed by Mr. Mabie.

**Department Response:**

It should be stressed that the definition of "secondary end use of glass" has no effect on uses to which recovered glass may be put in Oregon. It *only* affects whether that use counts towards the 50% glass minimum recycled content requirement for glass container manufacturers. The Department agrees that secondary end uses of glass which count towards that requirement should be real products and not just beneficial ways of using waste. Otherwise there is little benefit in collecting glass for "recycling."

That being the case, the Department recommends a blend of Option A and Option C, a new "Option D." The original Option C was the recommendation of a Glass Sub-Group composed of Solid Waste Advisory Group (SWAG) members. The Glass Sub-Group met separately and had the advantage of a full meeting to deliberate this one issue. It consisted of persons closely affected by this issue (some of whom could not attend the meeting of the full SWAG when it considered this issue).

Original Option C required that glass meet Oregon Department of Transportation (ODOT) specifications if used for roadbed base, which use may offer opportunities for "disguised disposal." The SWAG commented that the requirement to use ODOT specifications was too restrictive, and that construction and road projects must be built to engineering specifications in any case. The Department believes that having construction and roadbed uses as "outright" uses is too broad. If legitimate construction and road-base applications of glass cullet must meet engineering specifications, making that explicit statement in the rule will not add any additional restrictions. The Department thus proposes the following language ("Option D"), which does not restrict the Department's options to approve other uses:

(d) It shall be the responsibility of a glass manufacturer to identify to the Department all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" shall include:

(A) Use on road surfaces as "glasphalt;"
(B) Fiberglass;
(C) Abrasives;
(D) Glass foam;
(E) Glass beads for reflective paint;
***(F) Construction uses, meeting engineering specifications;***
***(G) Road-base aggregate, meeting engineering specifications;***
***(H) Other uses as approved by the Department.***

Option D also leaves full discretion to the Department to approve other uses, as appropriate. [Attachment E, p.2.]

**2. Lack of Available Cullet Exemption**

*DEQ put forward two Options for public comment.*
***Option A** sets 300 miles "or another reasonable market distance as established by the Department" as the physical range within which cullet availability would be determined.*
***Option B** keeps the 300-mile range, but adds a provision that a glass manufacturer must demonstrate a **reasonable effort** to obtain glass cullet at a **price encouraging collection and delivery** of post-consumer glass within 300 miles of the manufacturing facility.*

**Comment:** from Marcele Daeges for Recycling Advocates: recommend Option B.

**Comment:** from Jeanne Roy: favor Option B; puts more emphasis on producer responsibility.

**Comment:** from Tom Mabie, Western Region Director of the Glass Packaging Institute (GPI): doesn't fully support Option A, but it's preferable to Option B.
Option B is more restrictive than the Legislature's intent. There is no basis for determining whether a price "encouraging collection and delivery" of cullet within 300 miles would be market competitive with other container manufacturers not in the same 300 mile region. Today's trend toward collecting mixed color cullet means that color specifications will become harder to meet, and thus manufacturer specifications become more critical.

"Availability" necessarily includes an economic component. The 300 mile limit in Option A may be an attempt to get at this, but it's vague and arbitrary and invites conflict or even litigation. Not based on any study of transportation costs; doesn't recognize regional differences in transportation costs (e.g., rail vs. truck); and is not defined (road mileage?). A geographic limit doesn't protect a manufacturer from a local cullet supplier who charges an unreasonable amount. GPI would endorse an explicit recognition of the cost factor to define cullet as "unavailable" when its cost, including transportation, exceeded a manufacturer's "batch cost," or the cost of raw materials replaced by cullet.

**Comment:** from Bill Linden, Legislative Issues for State of Oregon, Glass Packaging Institute (GPI): do not use an arbitrary mileage limit. Transportation is part of the economic issue but not the determining one. Agrees with Mr. Mabie that economic issues need to be explicitly addressed.

**Department response:**

The Department agrees with the two GPI commenters that Option B appears to go beyond what was intended in the statute, and is recommending a modified Option A.

DEQ agrees that it is desirable to clarify the area from which glass manufacturers would be expected to seek available cullet. To address this, we propose changing the 300-mile criterion for glass manufacturers located in Oregon to "wastesheds in which container glass is a principal recyclable material." These wastesheds (in general, counties) are designated in OAR 340-090-0070. They represent roughly a 300-mile radius from Portland where Oregon's only glass manufacturer is located, and they have good major highway access. For out of state glass manufacturers, a geographic market range would be established that would be the area within which the manufacturer sells new glass containers, but in no case further than 300 miles from the glass manufacturing plant. [Attachment E, p. 3]

The Department appreciates the glass manufacturers' concern about undue price hikes by local cullet suppliers. The Department had considered adding a provision to allow glass manufacturers to request non-enforcement of the minimum content requirements if they could demonstrate that cullet meeting specifications is available only at an "unreasonable" price. However, during discussion of this issue at the September 29 SWAG meeting, SWAG members commented that it is not the collectors who set the price of cullet, but rather the glass manufacturer, as the buyer, who does. SWAG recommended that the rule not attempt to directly address the economic issue; this would be reaching beyond the plain concept of "availability" in the statute. The Department agrees with the SWAG recommendation, and is not proposing that the rule include the price of cullet as a consideration in the "availability" determination.

## IV. Changes in Financial Assurance Requirements

### 2. Composting "general permit" facilities

*The Department put forward two options for public comment.*
*Option A would require financial assurance for "general permit" composting facilities unless exempted by the Department.*
*Option B would exempt "general permit" composting facilities from having to provide financial assurance.*

**Comment:** from Tim A. Larocco, Instant Landscaping Co., Bend: supports Option B. It is less duplicative and would be most cost effective for DEQ, compost facilities and Oregon taxpayers.

**Comment:** from Glenn Zimmerman, Chairman, Composting Council of Oregon: Commented that the issue of providing financial assurance wasn't brought up during DEQ's rulemaking on composting facilities, but only appeared as an administrative issue after the rules were adopted. Noted that DEQ's composting regulations separate composting facilities into three classes: registration, general permit and full permit, and that the first two pose a low risk to the environment and health and therefore are not heavily regulated. Since "general permit" facilities are low risk, they should not have this additional requirement for financial assurance. One intent of the DEQ commercial composting rules is to encourage composting as a means of waste reduction. The Composting Council strongly supports Option B (DEQ's preferred option).

**Comment:** Marcele Daeges for Recycling Advocates supports Option B.

**Comment:** Jeanne Roy strongly recommends Option B. "General permit" facilities are generally low risk. The rules shouldn't add unnecessarily to the composters' financial burden (the DEQ composting rules are already restrictive).

**Department response:** For the reasons given in the public comments, and those stated on page 6 of the July 14, 1998, Memorandum to Interested and Affected Public on this rulemaking, the Department is recommending adoption of Option B. [Attachment E, p. 4]

# Attachment E
## Detailed Changes to Original Rulemaking Proposal Made in Response to Public Comment

In response to public comment, the Department has made the following changes (or decisions, regarding three instances of language in which Options were given in rule language put forward for public comment). In one case, an additional change has been added which had been inadvertently omitted from the "Full Text, Proposed Solid Waste Rule Amendments;" this changed section is given after the changes in response to public comment.

Numbers correspond to the Topic numbering used in the Department's July 14, 1998 Memo to Interested and Affected Public.

➢ Changes from the rule as proposed for public comment are shown in ***underlined bold italics***.

## I. Changes in Local Government and Other Recycling Programs

### 1. Amendments to Expanded Education and Promotion Program Element.

**Local Government Recycling Program Elements**
**340-090-0040**

[...]

(2)(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3)~~.~~, and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) The expanded program:

(i) Shall inform all solid waste generators of how to prevent waste, reuse, recycle and compost material;

(ii) Shall inform all solid waste generators of the benefits of preventing waste, reusing, recycling and composting materials;

(iii) Shall promote the use of available recycling services; and

(iv) Shall target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials shall encourage each commercial collection customer to have a goal to achieve 50 percent recovery from its solid waste stream by the year 2000.

(B) The expanded program shall be provided in one of the two following ways:

(i) A "~~prescriptive~~" ***"Specified Action"*** program, which ~~The expanded program~~ shall include at a minimum the following elements:

~~(A)~~(I) All new residential and commercial collection service customers shall each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling should be done;

~~(B)~~(II) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-090-0040(3)(c)~~(A)~~(B)(i)(I) at least ~~quarterly~~ four times a calendar year through a written notice or ~~more~~ effective alternative to reach various solid waste generators, ~~notice~~ or combination of both;

~~(C)~~(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection;

~~(D)~~(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;

~~(E)~~(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste~~.~~; or

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan shall:

(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;

(II) Include such actions as necessary to fulfill the intent of this subsection;

(III) Include a timetable for implementation, which shall be implemented; and

(IV) Be submitted to the Department:

(i) By February 28 of the first year that the Plan is to be in effect, or

(ii) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.

[...]

### 5. Requirement for Counties to Maintain their 1995 Recovery Rate

**Local Government Recycling Program Elements (continued)**
**340-090-0040**

[...]

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when ~~the Recycling Markets Development Council determines that~~ a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

(6) If a wasteshed fails to achieve in any calendar year the recovery rate set forth in OAR 340-090-0050, any city with a population of 4,000 or more, or a county responsible for the area between the city limits and the urban growth boundary of such city shall implement~~, not later than January 1, 1998~~ two additional program elements selected from section (3) of this rule. The Department shall notify a wasteshed if it failed to meet the recovery rate in OAR 340-090-0050 for any given calendar year. ***The notification shall be made no later than November 1 of the year following the calendar year in which the rate is not met.*** The two additional program elements shall be implemented by July 1 of the calendar year following the year in which the Department so notifies a wasteshed.

[...]

## II. Changes in Container Glass Minimum Recycled Content Requirements

### 1. Secondary End Uses of Glass

**Minimum Content Reporting Requirements**
**340-090-0110**

[...]

(3) Each manufacturer of glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located ~~sold or distributed~~ in Oregon, shall report the following information:

[...]

(d) It shall be the responsibility of a glass manufacturer to identify to the Department all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" shall include:

(A) Use on road surfaces as "glasphalt;"

(B) Fiberglass;

(C) Abrasives;

(D) Glass foam;

(E) Glass beads for reflective paint;

***(F) Construction uses, meeting engineering specifications;***

***(G) Road-base aggregate, meeting engineering specifications;***

(H) Other uses as approved by the Department.

### 2. Lack of Available Cullet Exemption

(3)(e) Upon request from a glass container manufacturer, the Department shall not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if the Department determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet within ~~300 miles (or another reasonable market distance as established by the Department)~~ ***Oregon wastesheds where container glass is a principal recyclable material, and*** that meets reasonable specifications established by the manufacturer. ***For glass container manufacturers located outside of Oregon, the geographic market range within which cullet availability is to be assessed shall be the area within which the manufacturer sells new glass containers, but in no case further than 300 miles from the manufacturer's manufacturing plant.*** However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement shall not exempt a glass container manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a glass container manufacturer shall include sufficient detail for the Department to be able to reasonably make a determination as to the availability of appropriate cullet, and shall:

(A) Be made to the Department in writing by February 28 of a year to apply to use of cullet in the previous calendar year.

(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer shall demonstrate to the Department why such restrictions are necessary.

(C) Include the tonnage of the shortfall of available cullet.

## IV. Changes in Financial Assurance Requirements

### 2. Composting "general permit" facilities

**Special Rules Pertaining to Composting: Conditions**

**340-096-0028** (1) Feasibility Study Report shall include but not be limited to:

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

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

(c) A proposed facility closure plan of a conceptual "worst case" scenario ~~(including evidence of financial assurance, pursuant to OAR 340-095-0090(1))~~ to dispose of unused feedstocks, partially processed residues and finished compost, unless exempted from this requirement by the Department pursuant to OAR 340-095-0090 (2). The plan will include a method for disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes~~;~~. ***The facility closure plan shall also include evidence of financial assurance, pursuant to OAR 340-095-0090(1), for all composting facility full permits;***

[...]

**Rule Change Inadvertently Omitted from "Full Text, Proposed Solid Waste Rule Amendments" put forward for public comment.**

**Relates to Topic I: Local Government and Other Recycling Programs, Sub-Topic I-4, Reporting Flexibility.**

**Submittals, Approval, and Amendments for Waste Reduction Programs**

**340-091-0080** (1) For persons within the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the person before waste from that person may be accepted by the disposal site.

(2) For persons outside the State of Oregon, information required for approval of waste reduction programs pursuant to OAR 340-091-0070 shall be submitted by the disposal site operator accepting waste from the person. The site operator shall submit this information to the Department no later than two years after the date when waste is first received from the person at the site, pursuant to OAR 340-091-0035(4).

(3) Where the waste proposed to be disposed of comes from more than one jurisdiction, information submitted for approval shall cover all affected jurisdictions.

(4) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-091-0070, are met.

(5) If the Department does not approve the waste reduction program, the Department shall notify the disposal site operator and, for persons within the State of Oregon, the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-091-0040.

(6) In order to demonstrate continued implementation of the waste reduction program, by February 28 of each year, information required in OAR 340-090-0100 and any solid waste management plan specifications as well as information in OAR 340-091-0070(2) must be submitted for the preceding calendar or fiscal year as specified by the Department.

(7) If a person amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-091-0070 are met.

Detailed rule changes.doc

# Department of Environmental Quality
# Advisory Group
*-on-*
# Solid Waste Rule Amendments

## Membership

■■■

| Name | Representing | Affiliation |
|---|---|---|
| Ron Cease | Task Force Chair | Portland State University |
| Max Brittingham | hauler trade assn. | Oregon Refuse and Recycling Assn. |
| Don Cordell | landfill operator | Rogue Waste Systems, Inc. (Medford) |
| (Laura Culberson) replaced by Marcele Dacges | public interest | (OSPIRG) Recycling Advocates |
| Jim Erwin | county | Douglas County Solid Waste |
| Martha Gross | public | Master Recycler |
| Lynn Guenther | small city | City of Hood River |
| JoAnn Herrigel | recycling trade assn. | Association of Oregon Recyclers |
| Sue Keil | large city | City of Portland |
| Shawn Kirkland | manufacturer | Owens-Brockway Glass Containers |
| Susan McHenry | rural hauler | Pendleton Sanitary Service, Inc. |
| Rick Paul | processor | Far West Fibers |
| Bruce Warner | regional government | Metropolitan Service District |

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste "Catchall" Rulemaking

Rule Implementation Plan

Summary of the Proposed Rule

This rulemaking implements requirements of several bills passed by the 1997 Oregon legislature, new federal regulations, and several changes identified by the Department as necessary for effective administration of solid waste programs. These rule amendments deal with several diverse subject areas of recycling and solid waste management. They are discussed under five major Topic groupings in the cover memo from Langdon Marsh to the Environmental Quality Commission. These same Topic groupings are used in this implementation plan.

Proposed Effective Date of the Rule

Upon adoption by the Environmental Quality Commission, scheduled for October 30, 1998.

Proposal for Notification of Affected Persons

**I. Local Government and Other Recycling Programs (HB 3456):**

1., 2. 4. and 5. *Local Government Recycling Program Elements; Reporting; and Requirement to Maintain 1995 Recovery Rate.* General: the Department has already worked with wasteshed representatives and local governments to inform them of changes in and additions to recycling programs and associated reporting requirements made by HB 3456. A written summary of the new provisions will be sent to local governments after rule adoption. Counties will be notified by November 1 of a year if an "opportunity to recycle report" is required for that year.

3. *New 2% Credit Programs.* The Department has already communicated with wasteshed representatives and local governments about the opportunity for these new programs. The proposed rule would allow credits for 1997, if existing programs meet the Program criteria in statute. The above-mentioned written summary will note that credits will (or will not) be allowed for 1997, depending on Commission action.

6. *Rigid Plastic Container Recycling Rate.* The plastics industry was made aware of the proposed rule change through the public notice process. A representative of the American Plastics Council, Inc. and the Society of the Plastics Industry, Inc. commented on the rules. He will receive a copy of the report to the Commission on this rule adoption.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044):** Representatives of the Glass Packaging Institute have been involved with the rulemaking, and will receive copies of the report to the Commission on this rulemaking. The Department will modify the annual survey form it sends to glass container manufacturers to incorporate changes in SB 1044. A cover memo sent out with the survey on January 1, 1999, will outline changes made by SB 1044 and this rulemaking.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):** Through this rulemaking process all landfill owners and operators have received notice that these requirements have changed. Most affected persons were already aware of the new provision.

**IV. Financial Assurance**

1. *Landfills.* A summary mailing of this rulemaking will be done to all solid waste permittees after rule adoption.
2. *Composting facilities.* The Department's composting "interested persons" list will be notified of the option adopted for financial assurance for "general permit" composting facilities. The Department will also communicate the decision to Metro, which implements compost permitting in the Metro area under an agreement with DEQ, and will coordinate any needed implementation with them.

**V. Other minor and housekeeping changes.**

1. *DEQ Fee Audit.* The changes in recordkeeping, etc. will be part of the summary mailing to all solid waste permittees after rule adoption.

Overall: the Department will issue revised administrative rules incorporating the adopted changes and make them available through all Department Offices to the general public on request.

Proposed Implementing Actions

**I. Local Government and Other Recycling Programs (HB 3456):**

1., 2. 4. and 5. *Local Government Recycling Program Elements; Reporting; and Requirement to Maintain 1995 Recovery Rate.* The Department has and will continue to provide technical assistance to local governments concerning the new provisions for certain recycling program elements. Local governments choosing to implement these amended (or the one new) program elements will have to modify their programs to meet the new criteria. If required by DEQ, wastesheds will have to submit an "opportunity to recycle report" by February 28 of the following year. A wasteshed not meeting its 1995 target recovery rate will have to implement two additional program elements by July 1 of the following year.

3. *New 2% Credit Programs.* In August the Department sent forms to wastesheds to use for claiming credits for 1997 for any qualifying programs being implemented during that year. These 2% credit programs are optional. For each program a wasteshed chooses to implement, one mandatory program component must be provided, and two others from a menu of several components. In the future, counties will claim the credit for a calendar year by submitting a report to DEQ on a form provided by the Department, by February 28 of the following year. DEQ will publish the 2% credits for these programs together with the annual state and wasteshed recovery rates it calculates.

6. *Rigid Plastic Container Recycling Rate.* DEQ will determine a rigid plastic container (RPC)

recycling rate for compliance purposes if it appears that plastics recycling in general and recycling of RPCs in particular may be decreasing sufficiently to cause concern. DEQ will base that decision primarily on significant changes in the following: the Oregon recycling rate of #1 and #2 plastic resins; the level of recycling programs and activities in Oregon; and the estimated amount of RPCs in Oregon's waste stream.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044):** A modified survey form will be sent to affected glass container manufacturers. A glass container manufacturer may submit to DEQ a request for exemption from enforcement due to lack of available cullet, together with information required by rule to demonstrate lack of available cullet. This should be returned together with the completed survey form. The Department will review requests for exemption from enforcement if any are received. Beginning in 2002, the Department will determine the amount of "secondary end uses of glass" which can be credited toward the 50% glass recycled content requirement. DEQ will base this on the list of eligible secondary end uses in rule, and determine whether other secondary end uses either identified by the Department or brought to its attention by others would qualify in this calculation. Manufacturers will not have to provide information about how much glass was used in these secondary uses; the Department will gather that information as part of its annual determination of the state recovery rate.

**III. Recycling Program Requirements for Out-of-State Waste Disposed of in Oregon (SB 543):** Landfill operators receiving less than 75,000 tons a year of solid waste from one "person" originating outside of Oregon will no longer have to demonstrate to the Department that that person is implementing an "opportunity to recycle" program. Landfill operators have two years from first receiving over 75,000 tons of solid waste from one "person" to demonstrate to DEQ that that person is implementing a "waste reduction" program. DEQ has changed its internal review procedures to conform to the new legislation.

**IV. Financial Assurance**

1. *Landfills*. DEQ has drafted a revised format for the corporate guarantee for use by permittees. This will be made available to those corporate permittees interested in using this financial assurance mechanism. Those permittees will have to comply with the new requirements, which are quite similar to the existing ones.
2. *Composting facilities*. DEQ will include whichever financial assurance option is adopted by the EQC in its composting facility permit procedures. If the staff recommendation (exemption from financial assurance for "general permit" facilities) is adopted, then these permittees will not have to provide financial assurance. If a "general permit" composting facility appears to be adversely affecting human health or the environment, either of two alternatives will be followed: 1.) Financial assurance could be required as part of a negotiated settlement in an enforcement action, among other required actions; or 2.) The Department could require the facility to apply for and comply with the provisions of a composting facility "full permit." Among other requirements, "full permit" composting facilities must provide financial assurance.

**V. Other minor and housekeeping changes.**

1. *DEQ Fee Audit*. Solid waste permittees will have to maintain more detailed records of daily, monthly and quarterly loads of solid waste received. Most records concerning waste received will have to be kept for a minimum of five years. The Department will modify permit templates to incorporate these changes.

Proposed Training/Assistance Actions

**I. Local Government and Other Recycling Programs (HB 3456):**

1., 2. 4. and 5. *Local Government Recycling Program Elements; Reporting; and Requirement to Maintain 1995 Recovery Rate.* The Department will continue to work with local governments and haulers to provide information on implementing these new provisions.

3. *New 2% Credit Programs.* The Department will continue to work with local governments on these new programs. The Department is also preparing "model program" fact sheets on each of the three Program areas for use by local governments in putting together their own programs.

**II. Container Glass Minimum Recycled Content Requirements (SB 1044):** Assistance will include the modified glass manufacturer survey form and answering questions on the new provisions.

**IV. Financial Assurance**

1. *Landfills.* DEQ's financial officer will work with permittees who want to use the corporate financial test.

**V. Other minor and housekeeping changes.**

1. *DEQ Fee Audit.* DEQ will make presentations to industry groups on these changes as requested. DEQ is also considering whether to develop training for solid waste facility operators on what is required and "best management practices" for a recordkeeping and reporting system, perhaps including guidelines for internal control procedures.

## ATTACHMENT H

**Letter From Chief Financial Officer and Corporate Guarantee**

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of Guarantor]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure, and post-closure costs, and the costs of the selected remedy for any corrective action as specified in OAR 340-94-145(6)(f). The data used in meeting the financial test have been derived from the independently audited year end financial statements for the most recently completed fiscal year

[Wherever appropriate provide the required information regarding permitted facilities and associated cost estimates. For each facility, include its DEQ Permit Number, name, address, and current closure, post-closure and selected remedy cost estimates. Identify each cost estimate as to whether it is for closure or post-closure plan permit requirements or selected remedy described in the corrective action report. Attach and reference any corrective action reports].

1. This firm (herein "Guarantor") is providing a corporate guarantee of financial assurance for closure and post-closure care, as well as the cost of any selected remedy for any identified corrective action required for the facilities described herein through the financial test specified in OAR 340-94-145(6)(f), subparts (A) or (B). The current closure and/or post-closure plan permit requirements or selected remedy described by the corrective action report are shown below for each facility.

2. Guarantor is providing this guarantee because: (choose whichever of (i) through (v) is appropriate;) (i) The facilities are owned or operated by Guarantor as Permittee; (ii) Permittee is a corporate subsidiary of Guarantor; (iii) Permittee is corporate parent of Guarantor; (iv) Permittee is corporate sibling of Guarantor; or (v) Guarantor and Permittee have a substantial ongoing business relationship -- describe it -- and Guarantor is issuing the guarantee as an act incident to that relationship. Compensation to Guarantor for providing this guarantee is --

3. This letter constitutes the guarantee specified in OAR 340-94-145(6)(f). By this letter the firm guarantees the completion of closure or post-closure plan permit requirements or selected remedy described in the corrective action report for the facilities described herein . The current cost estimates for the closure or post-closure plan permit requirements or selected remedy described in the corrective action report so guaranteed are shown for each facility. Guarantor meets the financial criteria set forth in the [Alternative] Financial Test.

4. This letter guarantees that within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure or post-closure plan and permit, or the selected remedy described in the corrective action report, as applicable, or service of a written notice from the Department that the Guarantor no longer meets the criteria of the financial test, Guarantor will provide and fully fund an alternative financial assurance mechanism acceptable to the Department.

5. As chief financial officer I possess the requisite authority to bind this firm to the guarantee and acknowledge that this corporate guaranty is an ongoing, continuing and binding obligation of the firm. I will

notify DEQ within 15 days anytime that the Guarantor no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code.

6. By this letter this firm as Guarantor is demonstrating financial assurance for closure or post-closure plan permit requirements or selected remedy described in the corrective action report for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart G of 40 CFR part 258. The closure or post-closure plan permit requirements or selected remedy described in the corrective action report covered by such a test are shown for each facility.

7. The fiscal year of the firm ends on [month,day]. Attached are (a) a copy of the independent CPA's report on examination of the Guarantor's financial statements for the latest completed fiscal year and (b) an agreed upon procedures letter prepared in accordance with standards established by the American Institute of Certified Public Accountants from Guarantor's independent CPA stating that the CPA has compared the data which this letter specifies as having been derived from the independently audited year end financial statements for the latest fiscal year with the amount in such financial statement and that such data correspond, or explaining to the satisfaction of the Department any deviation therein

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

If you are meeting the criteria for the Financial Test complete items 1. through 10.
If you are meeting the criteria for the Alternative Financial Test complete items 1. through 24.
Specify which test you are using.

1. [a.] Cost estimates for closure or post-closure plan permit requirements or selected remedy described in the corrective action report . $ ___

[b.] Total of other environmental liabilities including petroleum underground storage facilities, PCB storage facilities and hazardous waste treatment, storage and disposal facilities.

2. Total liabilities $___

3. Tangible net worth $___

4. Current Assets $___

5. Current Liabilities $___

6. Net working capital [line 4 minus line 5] $___

7. Net income $___

8. The sum of depreciation, depletion, and amortization $___

9. Total Assets. $____

10. Total assets in U.S. $___

11. Retained Earnings. $ ___

12. Earnings before interest and taxes. $ ___

13. Interest expense. $_____

14. Net Sales. $____

15. Federal income tax credits (fuel tax, investment in regulated investment companies). $_____

16. Federal income tax. $_____

17. Recurring book income not subject to income tax. $_____

18. Internally generated cash .(Line 8 plus line 12 plus line 15 plus line 17 minus line 13 minus line 16). $____

19. Liquid Asset Ratio. (Line 6 divided by line 9) ____

20. Earned Surplus Ratio (Line 11 divided by line 9). ____

21. Productivity. (Line 12 divided by line 9). ___

22. Equity Ratio. (Line 3 divided by line 2). ___

23. Efficiency. (Line 14 divided by line 9). ____

24. Altman's Z. {Sum of (0.717 times line 19) plus (0.847 times line 20) plus (3.07 times line 21) plus (0.42 times line 22) plus (0.998 times line 23).} ____

FINANCIAL TEST

To meet the criteria of this financial test you must be able to answer yes to at least two of the three parts of A. and to all parts of B., C., and D.

A.i. Is line 2 divided by line 3 less than 1.5 ? (Yes/No).
A.ii. Is (line 7 plus line 8 minus $10 million) divided by line 2 greater than 0.1? (Yes/No)
A.iii. Is line 4 divided by line 5 greater than 1.5? (Yes/No)
B.i. Is line 6 divided by line 1[a.] at least 4.0? (Yes/No)
B.ii. Is line 3 divided by line 1[a.] at least 6.0? (Yes/No)
C. Is (line 3 minus line 1.[a.]) at least $ 10 million? (Yes/No)
D. Is line 10 divided by line 1 at least 6.0? (Yes/No)

ALTERNATIVE FINANCIAL TEST

To meet the criteria of this alternative financial test you must be able to answer yes to part A. and to two of the three parts of B.

A. Is line 3 minus line 1.[a.] at least $10 million? (Yes/No)
B.i. Is line 12 divided by line 13 at least 2.0? (Yes/No)
B.ii. Is line 18 divided by line 2 at least 0.2? (Yes/No)
B.iii. Is line 24 at least 2.9? (Yes/No)

I hereby certify that all representations contained in this letter are, to the best of my knowledge, true, complete and accurate. This letter constitutes a binding and continuing obligation of [Guarantor ] and is enforceable in accordance with its terms.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

The Chief Financial Officer's signature must be notarized.

Attachment G - corp guar.doc

## Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item D**
**October 30, 1998 Meeting**

**Title:**

UST Cleanup Rule Revisions

**Summary:**

The Department is proposing to revise the Underground Storage Tank (UST) cleanup rules to incorporate risk-based corrective action and provide additional cleanup options that will allow for streamlining the cleanup process for many UST cleanup sites. This proposed rulemaking will address the establishment of acceptable risk levels, a new category of cleanup sites "low-impact sites" with streamlined cleanup procedures, provisions for the development of generic remidies and a new Division177 for administrative requirements for the clean up of releases from residential heating oil tanks.

**Department Recommendation:**

It is recommended that the Commission adopt the proposed amendments to the UST Cleanup Rules (OAR 340-122-0205 through 340-122-0360) and the proposed rules for Residential Heating Oil USTs (OAR 340-177-0001 through 340-177-0120) as presented in Attachment A of the Department Staff Report.

Michael R. Anderson — Report Author
Mary Wahl — Division Administrator
Director

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

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

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**Date:** October 15, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh

**Subject:** Agenda Item D, UST Cleanup Rule Revisions, October 30, 1998 EQC Meeting

**Background**

On July 15, 1998, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed revisions to the Cleanup Rules for Leaking Petroleum Underground Storage Tank (UST) Systems (OAR 340-122-0205 through 340-122-0360), and proposed rules for Residential Heating Oil USTs (OAR 340-177-0001 through 340-177-0120).

Pursuant to the authorization, hearing notice was published in the Secretary of State's *Bulletin* on August 3, 1998. The Hearing Notice and informational materials were mailed on July 16, 17, 20 and 21 to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of approximately 9000 persons known by the Department to be potentially affected by or interested in the proposed rulemaking action.

Public Hearings were held in Portland on August 18, Eugene on August 19, Medford on August 20, Ontario on August 25, and Bend on August 26. Laurie McCulloch served as Presiding Officer. Written comment was received through September 4, 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, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment E.

The following sections summarize the issues 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.

## Issues this Proposed Rulemaking Action is Intended to Address

The proposed rulemaking is intended to revise the UST cleanup rules to incorporate risk-based corrective action and provide additional cleanup options that may streamline the cleanup process for many UST cleanup sites. These additional options are needed to help deal with an increased number of UST sites that are expected to be discovered as tank owners and operators attempt to meet the December 22, 1998 deadline for tank upgrades.

## Relationship to Federal and Adjacent State Rules

The UST Cleanup Rules were first adopted in 1988 in order to establish state regulations that would meet federal requirements enacted in 40 CFR Part 280. In the proposed revisions one specific change was made to ensure consistency with federal regulations. The reportable quantity for above-ground releases from UST systems has been changed from 42 gallons to 25 gallons (OAR 340-122-0220(1)(b)).

The proposed UST cleanup rule revisions are not based on rules from other states. However, the new analytical methods for total petroleum hydrocarbons (TPH) included in the proposed rules (OAR 340-122-0218(1)(c)(A)) were developed with the State of Washington Department of Ecology so that the same TPH methods could be used in both states.

## Authority to Address the Issue

The authority for this rulemaking is established in ORS 465.400 and 466.746. This rulemaking will implement ORS 465.200 through 465.455 and ORS 466.706 through 466.835.

## Process for Development of the Rulemaking Proposal

The Department developed the proposed rule revisions with the assistance of the Cleanup Advisory Committee (CAC) and the UST Cleanup Rule Technical Work Group (TWG). Over a period of eight months the Department held six meetings with the CAC and seven meetings with the TWG to discuss proposals, solicit ideas, and review draft rules. In addition to providing assistance with the format, language, and technical requirements in the proposed rules, the CAC and TWG were asked to discuss and make recommendations on the following issues:

- *Should a table of generic risk-based cleanup levels be included in the rules or developed in a generic remedy?* Committee members favored developing the table of generic cleanup levels in the form of a generic remedy in order to allow greater flexibility to keep the table up-to-date without requiring rule revision.

- *Should a separate set of rules be developed for the administrative requirements for releases from residential heating oil tanks?* Committee members preferred to have separate simplified administrative requirements for releases from residential heating oil tanks.

- *Should the low-impact site (LIS) requirements be placed in rule or developed in a generic remedy?* The CAC saw advantages to both alternatives. Since draft rule language had already been discussed they favored keeping it in rule so that it would be effective immediately upon adoption. However, they agreed that changes may be needed in the future and suggested that a sunset clause be included in the rule allowing the Department to replace the LIS rule with a generic remedy if changes are needed in the future. (See Appendix H for additional discussion of the low-impact site option.)

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

This proposed rulemaking is designed to address each of the following:

- Establish acceptable risk levels consistent with ORS 465.315;
- Streamline the cleanup process for a new category of sites: "low-impact sites;"
- Include provisions for the development of generic remedies as directed by ORS 465.315;
- Combine two sets of cleanup rules into one set and restructure them for easier reading and implementation; and
- Establish a new Division 177 for administrative requirements for the cleanup of releases from residential heating oil tanks.

The topic that received the most discussion both during the development of the rules with the advisory committee and in public comment is the rule which establishes a new category of sites known as low-impact sites (OAR 340-122-0243). Most agreed that it is a good idea to have a streamlined process for those sites where the initial release was not very extensive, the source has been removed and all remaining contamination is controlled, there are no current unacceptable risks, and the site use will be controlled to avoid future unacceptable risks. The issue is whether the proposed rules have the correct set of conditions for defining those sites.

**Summary of Significant Public Comment and Changes Proposed in Response**

The Department considered the option of developing a generic remedy for low-impact sites instead of incorporating the requirements in rule. Given that the low-impact site classification is entirely new and there are still some questions about what specific conditions should be required, a generic remedy would allow the Department to provide such an alternative while still having the flexibility to efficiently modify some of the requirements if improvements are needed. Some were concerned, however, that it might take the Department too long to develop a generic

remedy and therefore preferred keeping the requirements in rule. The Department feels that by putting the requirements in rule with a sunset clause, it can incorporate the best features of the two options. Having the LIS requirements in rule ensures that this alternative will be available immediately upon adoption of the rules. The sunset clause will allow the Department to develop a generic remedy in the future if one is needed to make improvements to that alternative. Therefore, the proposed rule package still includes the low-impact site alternative that went out for public comment, but also provides the Department with the option of developing a low-impact site generic remedy if needed.

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

Since the proposed rule package consists of revisions to existing rules for a well-established program, the Department already has a full complement of staff working on UST cleanup projects, and tank owners and operators are well aware of the basic requirements to report releases, investigate the nature and extent of contamination, and clean up their sites. Therefore, the main goal for implementing the proposed rules will be to get information out to the regulated community about the new cleanup options available to them and how these options might be applied at their sites. To accomplish this the Department intends to:

- Brief all UST cleanup staff on the rule package;
- Offer training to tank owners and operators, contractors, consultants and other interested parties;
- Prepare guidance on the rules in general as well as on some specific topics like low-impact sites;
- Develop a generic remedy with tables of generic risk-based cleanup levels; and
- Draft policy statements as needed to clarify issues that may arise during implementation of the rules.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the proposed amendments to the UST Cleanup Rules (OAR 340-122-0205 through 340-122-0360) and the proposed rules for Residential Heating Oil USTs (OAR 340-177-0001 through 340-177-0120) presented in Attachment A of the Department Staff Report.

**Attachments**

A. Proposed Rules
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Advisory Committee Membership
G. Rule Implementation Plan
H. Development of the Low-Impact Site Option

**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment C)

Approved:

Section: Mike Kortenhof

Division: Mary Wahl

Report Prepared By: Michael R. Anderson

Phone: (503) 229-6764

Date Prepared: October 15, 1998

MRA:mra
E:\UST Program\Rule Revisions\Staff Report.doc
10/15/1998

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment A**
**Proposed Amendments to UST Cleanup Rules**
**and**
**Proposed Rules for Residential Heating Oil Underground Storage Tanks**

## DIVISION 122

## HAZARDOUS SUBSTANCE REMEDIAL ACTION RULES

### Cleanup Rules for Leaking Petroleum UST Systems

**Purpose**

**340-122-0205** These rules establish the standards and process ~~to be used~~ for the ~~determination of~~ investigation, monitoring, and ~~cleanup~~ remedial activities necessary to protect ~~the~~ public health, safety, and welfare and the environment in the event of a release or threat of a release from a petroleum UST system subject to ~~regulation under~~ ORS 466.705 ~~to~~through 466.835, 466.994~~895~~, ~~and~~ 465.200 ~~to~~through 465.455~~380~~, and 465.900.

Stat. Auth.: ORS ~~465.200 - 465.320 & 466.705 - 466.995~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 465.405 & 466.746~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1991, f. & cert. ef. 8-14-91

**Definitions**

**340-122-0210** ~~For the purpose of this section, t~~Terms not defined in this rule have the meanings set forth in ORS 465.200, and 466.706~~5 and OAR 340-122-0310~~. Additional terms are defined as follows unless the context requires otherwise:

(1) "Above-Ground Release" means any release to the land surface ~~of the land~~ or to surface water. This includes, but is not limited to, releases from the above-ground portion of a petroleum UST system and releases associated with overfills and transfer operations during petroleum deliveries to or dispensing from a petroleum UST system.

(2) "Acceptable Risk Level" has the meanings set forth in OAR 340-122-0115(1) through (6).

(3~~2~~) "Ancillary Equipment" means any devices, including, but not limited to, ~~such devices as~~ piping, fittings, flanges, valves, and pumps, used to distribute, meter, or control the flow of petroleum~~regulated substances~~ to and from a petroleum UST system.

(4) "Aquatic Sediments" means any collection of fine-, medium-, and coarse-grained minerals and organic particles that are found within aquatic habitats.

(53) "Below-Ground Release" means any release to the land subsurface ~~of the land or to groundwater~~ having ~~that has~~ concentrations ~~which are reportable~~detected by ~~DEQ TPH-HCID test revised 12-11-90~~the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or to groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218. This includes~~,~~ but is not limited to~~,~~ releases from the below-ground portion of a petroleum UST system and releases to the land subsurface or groundwater associated with overfills and transfer operations as the petroleum is delivered to or dispensed from a petroleum UST system.

(6) "Buildings" means any structure occupied by residents, workers, or visitors, including convenience stores for retailing of food. For purposes of these rules, "buildings" does not include service station kiosks under 45 square feet in size if the kiosk is exclusively dedicated to services for motor vehicles.

~~(4) "Cleanup" or "Cleanup Activity" has the same meaning as "corrective action" as defined in ORS 466.705 or "remedial action" as defined in ORS 465.200.~~

(7) "Certified Drinking Water Protection Area" is an area that has been delineated by the Oregon Health Division in accordance with OAR 333-061-0057 and certified by the Department in accordance with OAR 340-040-0180.

**Note:** To obtain information about certified drinking water protection areas, contact the Oregon Health Division's Drinking Water Program (503-731-4010).

(8) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or detected in groundwater by any appropriate analytical method specified in OAR 340-122-0218.

(9) "Contaminant of Concern" means a hazardous constituent contained in petroleum present at a concentration posing a potentially unacceptable risk to public health, safety, or welfare or the environment.

~~(5) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.~~

(10) "Engineering Control" means a remedial method used to prevent or minimize exposure to petroleum and hazardous substances, including technologies that reduce the mobility or migration of petroleum and hazardous substances. Engineering controls may include but are not limited to capping, horizontal or vertical barriers, hydraulic controls, and alternative water supplies.

(11~~6~~) "Excavation Zone" means ~~the~~an area containing ~~the tank~~a petroleum UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the petroleum UST system is placed at the time of installation.

(12~~7~~) "Free Product" means ~~petroleum in the~~ non-aqueous phase liquid petroleum~~(e.g., liquid not dissolved in water)~~.

(13) "Gasoline" means any petroleum distillate used primarily for motor fuel of which more than 50 percent of its components have hydrocarbon numbers of C10 or less. For purposes of OAR 340-122-0205 through 340-122-0360, the concentration of gasoline in soil or

groundwater is the level determined by the Northwest Total Petroleum Hydrocarbon Method NWTPH-Gx.

(14) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(15) "Hazardous Substance" has the meaning set forth in OAR 340-122-0115(30).

(168) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4-heavy, No. 5-light, No. 5-heavy, orand No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); orand other fuels when used as substitutes for one of these fuel oils.

(17) "Heating Oil Tank" means any one or combination of underground tanks and above-ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation, or water heating not used for commercial processing.

(18) "Institutional Control" means a remedial method such as a legal or administrative tool or action used to reduce the potential for exposure to petroleum and hazardous substances. Institutional controls may include but are not limited to use restrictions and site access and security measures.

(19) "Motor Fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or 2 diesel fuel, or any grade of gasohol, typically used in the operation of a motor engine.

(20) "Native Soil" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an underground storage tank.

(21) "Non-Gasoline Fraction" means diesel and any other petroleum distillate used for motor fuel or heating oil of which more than 50 percent of its components have hydrocarbon numbers of C11 or greater. For purposes of OAR 340-122-0205 through 340-122-0360, the concentration of non-gasoline fraction in soil or groundwater is the level determined by the Northwest Total Petroleum Hydrocarbon Method NWTPH-Dx.

~~(10) "Owner", as used in this section, has the meaning set forth in ORS 466.705(8).~~

~~(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.705(9).~~

(122) "Petroleum" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum--related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. "Petroleum"
~~NOTE: This definition~~ does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(123) "Petroleum UST System" means any one or combination of tanks, including underground pipes connected to ~~the~~ tanks, ~~that is~~ used to contain an accumulation of petroleum and the volume of which, including the volume of ~~the~~ underground pipes connected to the tank, is ten percent or more beneath the surface of the ground;. "Petroleum UST System" also ~~and~~ includes associated ancillary equipment and containment systems.

(24) "Remediation" or "Remedial Measures" include "remedial action" as defined in ORS 465.200(22), "removal" as defined in ORS 465.200(24), and "corrective action" as defined in ORS 466.706(3).

(25) "Remediation Level" means a concentration of petroleum or petroleum constituents in environmental media such as soil and groundwater that alone, or in combination with institutional controls or engineering controls, is determined to be protective of public health, safety, and welfare and the environment in accordance with these rules.

(26) "Residential Heating Oil Tank" is a heating oil tank used primarily for single-family dwelling purposes.

(2714) "Responsible Person" includes "owner" as defined in ORS 466.706(13), "permittee" as defined in ORS 466.706(14), "owner or operator" as defined in ORS 465.200(19), and any other person liable for or voluntarily undertaking remediation under ORS 465.200, *et seq*. or ORS 466.706, *et seq*~~means any person ordered or authorized to undertake remedial actions or related activities under ORS 465.200 through 465.380~~.

(28) "Risk-Based Concentration" means a concentration of petroleum or petroleum constituents in environmental media such as soil and groundwater that is determined to be protective of public health, safety, and welfare and the environment in accordance with these rules without requiring institutional controls or engineering controls.

(29) "Soil" means any unconsolidated geologic materials including but not limited to clay, loam, loess, silt, sand, gravel, and tills or any combination of these materials.

(30) "Surface Water" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(31) "Suspected Release" means evidence of a release as described in 40 CFR § 280.50. **Note**: 40 CFR § 280.50 requires owners and operators of UST systems to report suspected releases. Suspected releases generally include: the discovery by owners, operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water); unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank); and monitoring results from a release detection method that indicates a release may have occurred.

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

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.200, 465.400, 466.706 & 466.746~~465.200 - 465.455 & 466.706 - 466.835

Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Scope and Applicability**

**340-122-0215** (1) OAR 340-122-0205 through 340-122-0360 of these rules apply to remediation of leaking petroleum UST systems required or undertaken in accordance with ORS 465.200 *et seq.* or ORS 466.706, *et seq.*~~:~~

~~(a) An owner or permittee ordered or authorized to conduct cleanup or related activities by the Director or the Department under ORS 466.705 to 466.835 and 466.895; or~~

~~(b) Any person ordered or authorized to conduct remedial actions or related activities by the Director or the Department under ORS 465.200 to 465.380.~~

(2) Notwithstanding ~~su~~bsection (1)~~(b)~~ of this rule and OAR 340-122-0360(3), the Department may require that remediation~~investigation and cleanup~~ of a release from a petroleum UST system be governed by OAR 340-122-0010 through~~to~~ 340-122-0115~~0~~, if, based on the magnitude or complexity of the release or other considerations, the Department determines that application of OAR 340-122-0010 through 340-122-0115~~0~~ is necessary to protect the public health, safety, and welfare ~~and~~or the environment.

(3) Remediation~~Cleanup~~ of releases from UST systems containing regulated substances, as defined in ~~under~~ ORS 466.706(16)~~5~~, other than petroleum are~~shall be~~ governed by OAR 340-122-0010 through~~to~~ 340-122-0115~~0~~ or as otherwise provided under applicable law.

(4) Notwithstanding section (1) of this rule, remediation of releases from residential heating oil tanks are governed by OAR 340-177-0001 through 340-177-0120.~~The Department may determine that the investigation and cleanup of releases from petroleum underground storage tank systems which are exempted under ORS 466.710(1) through (10) inclusive, shall be conducted under OAR 340-122-0205 to 340-122-0260, based upon the authority provided under ORS 465.200 to 465.380.~~

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Requirements and Remediation Options**

**340-122-0217** (1) For a release of petroleum from an UST system, the responsible person must complete the following requirements:

(a) Perform initial response, abatement, and site characterization in accordance with OAR 340-122-0220 through 340-122-0230.

(b) Remove free product to the maximum extent practicable in accordance with OAR 340-122-0235.

(c) Where results of the initial site characterization indicate that the magnitude and extent of soil contamination have not been fully delineated, or that groundwater contamination may

extend beyond the tank pit, complete additional site investigation in accordance with OAR 340-122-0240.

(d) Based on site investigations, perform one of the following remediation approaches:

(A) Remediation in accordance with OAR 340-122-0320 through 340-122-0360 for motor fuel and heating oil in soils;

(B) Closure or remediation in accordance with OAR 340-122-0243 for low-impact sites;

(C) Remediation pursuant to a corrective action plan developed in accordance with OAR 340-122-0244 and 340-122-0250;

(D) Remediation pursuant to a generic remedy developed in accordance with OAR 340-122-0252; or

(E) Any appropriate combination of subsections (A), (C), and (D) of this rule.

(e) Submit all reports, plans, laboratory data, and other documentation required in these rules or otherwise requested by the Department during the course of investigation and remedial measures.

(2) The measures described in section (1) of this rule are subject to Department review and approval as specified in these rules, and to public review and comment as specified in OAR 340-122-0260.

Stat. Auth.: ORS 465.400 & 466.746
Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835
Hist.: New

**Sampling and Analysis**

**340-122-0218** (1) To streamline the investigation of petroleum UST release sites, a responsible person may use expedited site assessment methods (e.g., push probe samplers) for sample collection and analysis as long as all methods and results are documented in subsequent reports to the Department. However, samples used to demonstrate compliance with remediation levels must be collected and analyzed in accordance with this section.

(a) Sample collection, preservation, storage, and handling methods must conform with appropriate procedures in "Test Methods for Evaluating Solid Waste," SW-846, 3rd Edition, Final Updates I, II, IIA, IIB and III, Revised May 1997 (U.S. EPA).

(b) Samples must be tested for all reasonably-likely contaminants of concern relevant to the petroleum released, the age of the release, and the medium contaminated taking into account appropriate remediation levels. The following must be considered and, where appropriate, sampled:

(A) Total Petroleum Hydrocarbons (TPH) in the gasoline range and TPH in the diesel/lube oil range, as appropriate;

(B) For gasoline releases, benzene, toluene, ethylbenzene and total xylenes (BTEX); naphthalene, lead, ethylene dibromide (EDB), ethylene dichloride (EDC), and methyl t-butyl ether (MTBE);

(C) For diesel or heating oil releases, BTEX and polynuclear aromatic hydrocarbons (PAHs); and

(D) For waste oil releases, BTEX, PAHs, volatile chlorinated hydrocarbons, and leachable concentrations of cadmium, chromium, and lead.

(c) Groundwater samples collected for the purpose of testing for lead must be filtered immediately upon collection using a 0.45 micron filter and analyzed for dissolved lead.

(d) The following analytical methods must be employed.

(A) Total Petroleum Hydrocarbons must be analyzed by the Northwest Total Petroleum Hydrocarbon Methods (DEQ, December 1996) including, as appropriate:

(i) Hydrocarbon Identification by NWTPH-HCID;

(ii) Gasoline Range Hydrocarbons by Method NWTPH-Gx; and

(iii) Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx.

(B) Leachable concentrations of cadmium, chromium, and lead must be analyzed by EPA Method 1311 (Toxicity Characteristic Leaching Procedure).

(C) All other contaminants of concern must be analyzed by appropriate procedures described in "Test Methods for Evaluating Solid Waste," SW-846, 3rd Edition, Final Updates I, II, IIA, IIB and III, Revised May 1997 (U.S. EPA).

(e) The Department may accept alternative sampling and analytical methods that have been shown to be appropriate for the contaminants of concern and the media of interest, and that have acceptable quality control measures, and limits of detection.

(2) The Department may request additional tests if site-specific conditions warrant additional information.

Stat. Auth.: ORS 465.400 & 466.746
Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835
Hist.: New

**Initial Response**

**340-122-0220** For a suspected or confirmed~~Upon suspicion or confirmation of a~~ release ~~or after a release~~ from athe petroleum UST system, ~~is identified in any manner, owners, permitteesthe or~~ responsible persons mustshall perform the following initial response actions within 24 hours:

(1) Report the following ~~suspected or confirmed~~ releases to the Department:

(a) All below-ground releases ~~from the petroleum UST system~~;

(b) All above-ground releases to the land surface ~~from the petroleum UST system~~ in excess of 2542 gallons, or releases of less than 2542 gallons if the ~~owner, permittee or~~ responsible person is unable to contain or clean up the release within 24 hours; and

(c) All above-ground releases to surface water thatwhich result in a sheen on the water.

(2) Take immediate action to prevent any further release of the petroleum~~regulated substance~~ into the environment.

(3) Identify and mitigate fire, explosion, and vapor hazards.

Stat. Auth.: ORS ~~465.200 - 465.320 & 466.705 - 466.995~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835

Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1991, f. & cert. ef. 8-14-91

**Initial Abatement Measures and Site Check**

**340-122-0225** (1) Unless directed to do otherwise by the Department, ~~owners, permittees or~~a responsible persons mustshall perform the following abatement measures:

(a) Remove as much of the petroleum~~regulated substance~~ from the UST system as is necessary to prevent further release to the environment;

(b) Visually inspect any above-ground releases or exposed below-ground releases and prevent further migration of the released petroleum~~substance~~ into surrounding soils and groundwater;

(c) ~~Continue to m~~Monitor and mitigate any ~~additional~~ fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures;

(d) Remediate~~y~~ hazards posed by contaminated soils that are excavated or exposed during~~as a result of release~~ confirmation, site investigation, abatement, or remedial~~cleanup~~ activities. ~~If these remedies~~For remedial measures include~~ing~~ treatment or disposal of soils, the ~~owner, permittee or~~ responsible person mustshall comply with applicable state and local requirements;

(e) Measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, the ~~owner, permittee and~~ responsible person mustshall consider the nature of the stored petroleum~~substance~~, ~~the~~ type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release; and

(f) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable ~~and~~ in accordance with OAR 340-122-0235.

(2) Contaminated soil shall be managed in accordance with solid waste regulations.

(3~~2~~) Within 20 days after release confirmation, or within a longer period of time approved by the Department, ~~another reasonable period of time determined by the Director, owners, permittees or~~the responsible persons shall submit a report to the Department summarizing the ~~initial abatement~~ steps taken under OAR 340-122-0220 and 340-122-0225~~section (1) of this rule~~ and any resulting information or data.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Initial Site Characterization**

**340-122-0230** (1) Unless directed to do otherwise by the Department, ~~owners, permittees or~~a responsible persons ~~shall assemble~~ must collect information about the site and the nature of the release, including information obtained~~gained~~ while confirming the release or completing ~~the~~ initial abatement measures ~~in~~under OAR 340-122-0225(1). This information mustshall include~~, but is not necessarily limited to~~ the following, as appropriate:

(a) Data on the nature and estimated quantity of the release;

(b) Data from available sources and/or site investigations regarding ~~concerning the following factors: surrounding populations, water quality,~~ use and approximate locations of wells potentially affected by the release, presence of a certified drinking water protection area, distance to the nearest surface water, subsurface soil conditions, locations of subsurface sewers, water lines, and other utilities, ~~climatological conditions,~~ and land use for all adjacent properties and all properties potentially affected by the release;

(c) Results of the measurements required under OAR 340-122-0225(1)(e); ~~and~~

(d) Results of the free product investigations required under OAR 340-122-0225(1)(f), to be used by ~~owners, permittees, or~~the responsible persons to determine whether free product mustshall be recovered ~~under OAR 340-122-0235~~;

(e) A site map, drawn to scale, showing the location of buildings, current and former locations of UST systems, utility lines, sample locations, and other relevant site information~~.~~; and

(f) Other information necessary to characterize the site.

(2) Within 45 days of release confirmation, or within a longer period of time approved ~~another reasonable period of time determined~~ by the Department, ~~owners, permittees or~~ a responsible persons mustshall submit the information collected ~~in compliance with~~under section (1) of this rule and required under OAR 340-122-0235(5) to the Department ~~in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Department~~.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Free Product Removal**

**340-122-0235** At sites where investigations under OAR 340-122-0225(1)(f) indicate the presence of free product, ~~owners, permittees or~~the responsible persons mustshall remove the free product to the maximum extent practicable ~~as determined by the Department~~ while continuing, as necessary, any actions initiated under OAR 340-122-0220 through 340-122-0230, or while preparing for actions required under OAR 340-122-0240 through 340-122-0250. In meeting the requirements of this rule, ~~owners, permittees or~~ the responsible persons mustshall:

(1) Initiate free product removal as soon as practicable.

(2~~1~~) Conduct free product removal in a manner that minimizes the spread of contamination into previously-uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations.

(3~~2~~) Use abatement of free product migration as a minimum objective for the design of the free product removal system.

(43) Handle any flammable products in a safe ~~and competent~~ manner to prevent fires or explosions.

(54) Include in the report submitted under OAR 340-122-0230(2) a summary of free product removal activities, describing~~Unless directed to do otherwise by the Department, prepare and submit to the Department, within 45 days after confirming a release, a free product removal report that provides at least the following information~~:

(a) The name of the contractor or responsible person~~(s) responsible for implementing~~ performing the free product removal measures;

(b) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(c) The type of free product recovery system used;

(d) ~~Whether any discharge has taken place~~The location of any on-site or off-site wastewater discharge associated with~~during~~ the recovery operation~~ and where this discharge is located or will be located~~;

(e) The type of treatment applied to, and the effluent quality from, any wastewater discharge;

(f) The steps that have been or are being taken to obtain necessary permits for any wastewater discharge; and

(g) The disposition of ~~the~~ recovered free product; and

(h) Other information relevant to the recovery of free product at the site~~matters deemed appropriate by the Department~~.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Investigations for Magnitude and Extent of Contamination~~Soil and Groundwater Cleanup~~**

**340-122-0240** (1) If data collected during the initial site characterization do not identify the full nature, magnitude, and extent of soil and groundwater contamination, the responsible person must conduct an investigation for this purpose.~~In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners, permittees or responsible persons shall conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:~~

~~(a) There is evidence that groundwater wells have been affected by the release;~~

~~(b) Free product is found to need recovery in compliance with OAR 340-122-0235;~~

~~(c) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under OAR 340-122-0225 through 340-122-0235); or~~

~~(d) The Department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.~~

(a) The areal and vertical extent of soil contamination must be determined.

(b) The areal extent of groundwater contamination must be determined, including an estimate of groundwater velocity and flow direction.

(c) Representative samples of all affected media must be analyzed for reasonably-likely contaminants of concern based on the nature of the release and applicable remedial options under OAR 340-122-0217.

(d) Expedited site assessment tools (e.g., push-probe samplers) may be used to provide a preliminary measure of the magnitude and extent of groundwater contamination.

(e) If groundwater contamination appears to have migrated beyond the immediate vicinity of the tank pit, additional groundwater investigation must be performed in accordance with section (2) of this rule unless the responsible person can demonstrate to the Department that the contamination presents no potential threat to human health or the environment.

(2) Groundwater investigations required by section (1) of this rule, and groundwater monitoring under corrective action plans required by OAR 340-122-0250 must be carried out as follows:

(a) Groundwater monitoring systems must include a minimum of one hydraulically-upgradient and two hydraulically-downgradient groundwater monitoring wells, capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination. Additional monitoring wells may be required by the Department if necessary to adequately characterize the site or to establish compliance monitoring points. All monitoring wells must be designed, completed and, when appropriate, removed according to the Water Resources Department's administrative rules, OAR 690-240-0005 through 690-240-0180 (Construction and Maintenance of Monitoring Wells and Other Holes in Oregon).

(b) When the installation of monitoring wells is impractical due to specific site conditions, the responsible person must notify the Department and develop an alternative course of action which must be approved by the Department.

(c) Groundwater sampling events must meet the following minimum requirements:

(A) Initially, samples must be collected at quarterly intervals. After four consecutive quarters of groundwater monitoring, if site conditions warrant more or less frequent sampling, an alternative sampling schedule may be proposed;

(B) Water elevation measurements must be made in all monitoring wells during each sampling event, unless the Department has approved measurements from a reduced number of wells that provide sufficient data for the determination of the groundwater flow direction;

(C) Formal chain-of-custody records must be prepared and maintained for each sample; and

(D) All sampling events for purposes of identifying contaminants of concern, or for verifying either preliminary compliance or final compliance, must include adequate quality assurance and quality control (QA/QC) measures.

(3~~2~~) ~~Owners, permittees or~~The responsible persons shall submit the information collected under sections (1) and (2) of this rule to the Department within 45 days of completing field work, or within a longer period of time approved~~as soon as practicable or in accordance with a schedule~~

~~established~~ by the Department. Groundwater monitoring reports must be submitted after each monitoring event unless an alternative schedule has been approved by the Department, and must contain the following information:

(a) A site map, drawn to scale, showing the location of all monitoring wells and the direction of groundwater flow;

(b) A summary of all sampling, handling, and chain-of-custody procedures followed, including, as appropriate, a discussion of any routine maintenance procedures performed during the quarter and any problems encountered (e.g., failure of a pump, clogging of a well screen, an unexplained change in the quality of the water, or any other unusual event) and what actions were taken, or will be taken, in response to such occurrences;

(c) A summary of the analytical data, including QA/QC results for the sampling event;

(d) Water elevation measurements from each monitoring well, unless the Department approves elevation measurements from a reduced number of wells; and

(e) A written evaluation of data, describing trends or other pertinent information derived from the sampling event, and specifying the method or methods of statistical analysis used to describe the significance of these trends.

~~(3) When results of an investigation performed pursuant to section (1) of this rule indicate that groundwater has been contaminated beyond the confines of the tank excavation, the investigation to determine the nature, magnitude and extent of the groundwater contamination shall be carried out according to OAR 320-122-0242.~~

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

~~**Groundwater Investigation and Cleanup**~~

**~~340-122-0242~~** ~~Groundwater investigations required by OAR 340-122-0240(3) and cleanup and monitoring of groundwater contamination under corrective action plans required by OAR 340-122-0250 shall be performed as specified in this rule:~~

~~(1) Groundwater Monitoring System Requirements:~~

~~(a) A minimum of one hydraulically upgradient and two hydraulically downgradient groundwater monitoring wells, capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of contamination, are required. Additional monitoring wells may be required by the Department to adequately characterize the site or to establish compliance monitoring points required by section (6) of this rule.~~

~~NOTE: All monitoring wells must be designed, completed and, when appropriate, removed according to the Water Resources Department's administrative rules, OAR 690-240-005 through 690-240-180 (Construction and Maintenance of Monitoring Wells and Other Holes in Oregon).~~

~~(b) When the installation of monitoring wells is impractical due to specific site conditions (e.g., some residential areas), the owner, permittee or responsible person shall notify the~~

~~Department and develop an alternative course of action which must be approved by the Department.~~

~~(2) Sampling Requirements. The proper collection and analysis of water samples is required to verify that a site meets the requirements of these rules:~~

~~(a) All sampling required by this rule must conform to recommended procedures in Test Methods for Evaluating Solid Waste (U.S. EPA SW-846, 1986);~~

~~(b) Groundwater samples shall initially be collected at quarterly intervals. If site conditions warrant more or less frequent sampling, an alternative sampling schedule may be proposed in the corrective action plan;~~

~~(c) Water elevation measurements shall be made in all monitoring wells during each sampling event, unless the Department has approved measurements from a reduced number of wells which provide sufficient data for the determination of the water table gradient;~~

~~(d) Formal chain-of-custody records must be prepared and maintained for each sample;~~

~~(e) All sampling events for purposes of identifying contaminants of concern (section (3) of this rule), or for verifying either preliminary compliance (section (7) of this rule), or final compliance (section (8) of this rule) shall include the preparation of proper field (trip) blanks, transfer blanks and duplicates for adequate quality assurance and quality control.~~

~~NOTE: The Department's Quality Assurance Project Plan Guidelines for State of Oregon Leaking Underground Storage Tank Program, 1988 provides sampling and QA/QC guidance.~~

~~(3) Contaminants of Concern:~~

~~(a) During the initial rounds of sampling performed in order to complete an investigation for groundwater cleanup (OAR 340-122-0240(3)) owners, permittees or responsible persons shall sample groundwater for all relevant hazardous constituents that are likely to be in the groundwater as a result of the petroleum release:~~

~~(A) Benzene, toluene, ethylbenzene and xylenes (BTEX) shall be analyzed at all sites where gasoline, diesel, No. 1 or 2 heating oil, or waste oil has been released and where either free product is found floating on the groundwater or detectable levels of total petroleum hydrocarbons (TPH) have been found in any soil sample collected at a depth greater than or equal to the depth of the water table;~~

~~(B) Polynuclear Aromatic Hydrocarbons (PAHs) shall be analyzed at all sites where diesel or other non-gasoline petroleum hydrocarbons have been released and where either free product is found floating on the groundwater or TPH levels greater than 100 parts per million (ppm) have been found in any soil sample collected at a depth greater than or equal to the depth of the water table. Under these conditions, owners, permittees, or responsible persons may use TPH analyses on groundwater samples as a preliminary screen. The TPH method detection limit shall be no greater than 0.5 ppm. Any groundwater sample for which TPH is detected shall be analyzed for PAHs;~~

~~(C) Ethylene dibromide (EDB) and Ethylene dichloride (EDC) shall be analyzed at all sites where leaded gasoline has been released and where either free product is found floating on the groundwater or TPH levels greater than 40 ppm have been found in any soil sample collected at a depth greater than or equal to the depth of the water table;~~

~~(D) Dissolved lead shall be analyzed at all sites where leaded gasoline or waste oil has been released and where either free product is found floating on the groundwater or TPH levels greater than 40 ppm for leaded gasoline releases, or 100 ppm for waste oil releases, have been found in any soil sample collected at a depth greater than or equal to the depth of the water table. Groundwater samples for analysis of dissolved lead shall be filtered immediately upon collection using a 0.45 micron filter;~~

~~(b) Based on the results of the investigation, owners, permittees or responsible persons shall propose in a corrective action plan prepared pursuant to OAR 340-122-0250, what actions, if any, are necessary to monitor and/or remediate groundwater contamination found at the site. These actions may not necessarily require sampling from all wells nor monitoring for all contaminants detected during the investigation as long as:~~

~~(A) Hydrogeological and contamination data, as well as compliance point requirements of section (6) of this rule, support the choice of wells to be monitored;~~

~~(B) Appropriate indicator compounds, as approved by the Department, are analyzed at regular intervals during the cleanup and monitoring phases, as specified in an approved corrective action plan;~~

~~(C) Cleanup levels required by section (4) of this rule are considered; and~~

~~(D) All contaminants of concern detected during the investigation are addressed in the corrective action plan and are analyzed to confirm preliminary and final compliance.~~

~~(4) Cleanup Levels:~~

~~(a) The basic numeric groundwater cleanup levels for petroleum UST contaminated sites are:~~

~~Volatile Aromatic Hydrocarbons~~
~~Benzene 5 ppb~~
~~Ethylbenzene 700 ppb~~
~~Toluene 1000 ppb~~
~~Total Xylenes 10,000 ppb~~

~~Gasoline Additives~~
~~Lead 5 ppb~~
~~1,2-dibromoethane 1 ppb~~
~~(ethylene dibromide, EDB)~~
~~1,2-dichloroethane 5 ppb~~
~~(ethylene dichloride, EDC)~~

~~Polynuclear Aromatic Hydrocarbons (PAHs)~~
~~Carcinogenic PAHs~~
~~Benzo(a)pyrene .2 ppb~~
~~Benzo(a)anthracene .1 ppb~~
~~Benzo(b)fluoranthene .2 ppb~~
~~Benzo(k)fluoranthene .2 ppb~~

~~Chrysene .2 ppb~~
~~Dibenzo(a,h)anthracene .3 ppb~~
~~Indenopyrene .4 ppb~~

~~Non-carcinogenic PAHs~~
~~Acenaphthene 420 ppb~~
~~Anthracene 2100 ppb~~
~~Fluoranthene 280 ppb~~
~~Fluorene 280 ppb~~
~~Naphthalene 28 ppb~~
~~Pyrene 210 ppb~~

~~(b) At sites where sensitive ecosystems or drinking water supplies are threatened or impacted, the Department may require that groundwater be cleaned to federal or state water quality standards or secondary maximum contaminant levels (SMCLs), where available, in order to protect public health, safety and welfare or the environment;~~

~~(c) For sites at which cleanup levels less stringent than those listed in this section are being proposed, a risk assessment and technical feasibility study justifying those levels and showing adequate protection of public health, safety and welfare and the environment must be submitted to and approved by the Department, through the corrective action plan procedures described in OAR 340-122-0250.~~

~~(5) Analytical Methods. All sampling events for purposes of identifying contaminants of concern (section (3) of this rule), or for verifying either preliminary compliance (section (7) of this rule) or final compliance (section (8) of this rule) shall use the following analytical methods:~~

~~(a) Volatile aromatic hydrocarbons shall be analyzed by means of EPA Method 8020 or 8240;~~

~~(b) Polynuclear Aromatic Hydrocarbons (PAHs) shall be analyzed by means of EPA Method 8310 or other comparable methods approved by the Department;~~

~~(c) 1,2-dibromoethane (EDB) and 1,2-dichloroethane (EDC) shall be analyzed by means of EPA Method 8010 or 8240;~~

~~(d) Dissolved lead shall be analyzed by means of EPA Method 7421;~~

~~(e) Total Petroleum Hydrocarbons (TPH) in water shall be analyzed by EPA Method 418.1, and TPH in soils by the appropriate method(s) listed in OAR 340-122-0350;~~

~~(f) The Department may approve alternative analytical methods which have been clearly shown to be applicable for the compounds of interest and which have detection limits at least as low as the methods listed above.~~

~~(6) Compliance Monitoring Points. In a corrective action plan prepared for a site requiring cleanup and/or monitoring of groundwater contamination, the owner, permittee or responsible person shall recommend which monitoring well or wells shall serve as compliance points for the site. This recommendation is subject to the Department's approval:~~

~~(a) Compliance monitoring points shall be established to define a lateral area surrounding the source of contamination, outside of which all appropriate cleanup levels must be attained and~~

~~maintained, out to the edge of the contaminant plume. Compliance monitoring points shall be located as close as practicable to the source of contamination and shall not be located beyond the release site property boundary, unless authorized by the Department;~~

~~(b) The compliance monitoring points shall establish a vertical boundary extending from the uppermost level of the saturated zone to the lowest depth which could potentially be affected by the release.~~

~~(7) Preliminary Compliance:~~

~~(a) Preliminary compliance is attained when the first sampling event following the installation of all required monitoring wells shows that all samples collected from the compliance monitoring points out to the edge of the contaminant plume meet the required cleanup levels for all of the specified contaminants of concern;~~

~~(b) An owner, permittee or responsible person may suspend groundwater treatment system operation any time after achieving preliminary compliance;~~

~~(c) The Department may require a groundwater treatment system that has been shut down following the attainment of preliminary compliance to be restarted if any of the water samples collected at or beyond the compliance monitoring points during the required period of monitoring are found to contain any contaminant concentrations in excess of the required cleanup levels. If the treatment system is restarted, treatment shall continue until preliminary compliance is again attained.~~

~~(8) Final Compliance:~~

~~(a) Final compliance shall be attained when the following conditions have been met:~~

~~(A) A minimum of four consecutive quarterly groundwater monitoring events have been completed following shutdown of the treatment system, in which all samples collected from the compliance monitoring points, as approved in a corrective action plan, out to the edge of the contaminant plume meet the required cleanup levels for all of the specified contaminants of concern. The four consecutive sampling events may include the sampling event at which preliminary compliance is achieved, provided that all specified contaminants of concern are included in the analysis;~~

~~(B) Site specific hydrogeologic and contaminant level data have been presented in a written report to the Department which clearly show that any remaining contaminants shall not move beyond the compliance monitoring points at levels in excess of cleanup levels;~~

~~(C) A final report meeting the requirements of section (10) of this rule has been submitted to and approved by the Department.~~

~~(b) Notwithstanding the provisions of subsection (8)(a) of this rule, the Department may required continued treatment and/or monitoring of the groundwater in situations where site-specific conditions warrant such measures;~~

~~(c) If a remediation system employing the best available treatment technology is operated as designed but the contaminant concentrations stabilize above the numeric cleanup level, the Department may allow the corrective action to be terminated provided that a risk assessment or other information demonstrates to the Department that the remaining contaminant concentrations and/or such other measures (e.g., supplemental site controls) as the Department determines are necessary, are protective of public health, safety and welfare and the environment.~~

~~(9) Supplemental Site Controls. In the event that contamination levels above cleanup standards are allowed to remain on site pursuant to subsection (4)(c) and/or (8)(c) of this rule, the Department may require the use of institutional controls (e.g., deed addendums) and/or engineering controls (e.g., hydraulic controls) in order to assure protection of public health, safety and welfare and the environment.~~

~~(10) Reporting Requirements:~~

~~(a) Reports regarding groundwater contaminant concentrations shall be submitted after every required sampling event. Reports shall be submitted within 45 days of each sampling event unless the Department determines that some other time interval is acceptable;~~

~~(b) At a minimum, groundwater monitoring reports required by the Department shall contain:~~

~~(A) A summary of all sampling, handling and chain-of-custody procedures followed, including, when appropriate, a discussion of any routine maintenance procedures performed during the quarter and any problems encountered such as failure of a pump, clogging of a well screen, an unexplained change in the quality of the water, or any other unusual event, and what actions were taken, or will be taken, in response to such occurrences;~~

~~(B) A summary of all of the analytical data including QA/QC results for the sampling event;~~

~~(C) Water elevation measurements from each monitoring well, unless the Department has approved elevation measurements from a reduced number of wells;~~

~~(D) A written evaluation of the data describing trends or other pertinent information derived from the sampling event, specifying the method or methods of statistical analysis used to prove the significance of these trends; and~~

~~(E) If necessary, a proposal for any modifications necessary to improve system performance or cleanup strategies.~~

~~(c) The Department may request additional data and/or information as deemed necessary;~~

~~(d) In addition to the other reporting requirements of this section, a report submitted for the purpose of requesting the Department's concurrence that final groundwater compliance have been attained must include a summary of all groundwater data collected at the site, an analysis of the data demonstrating that the final compliance requirements of section (8) of this rule have been met, and any other relevant information necessary to demonstrate that all of the requirements of this rule have been met.~~

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

~~Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835~~
~~Stats. Implemented: ORS 465.260, 465.400, 466.746, 466.765 & 466.810~~
~~Hist.: DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92~~

**Low-Impact Sites**

**340-122-0243** Upon completion of all applicable requirements of OAR 340-122-0205 through 340-122-0240, a responsible person may propose closure of a facility as a low-impact

site if information gathered during site investigations clearly demonstrates that site conditions have stabilized (i.e., significant future migration of contamination is unlikely) and that the site is likely to have low current and potential future impact on the basis of risk or impairment of beneficial land and water uses. The purpose of the low-impact site designation is to provide a streamlined process for operating gas stations or other industrial properties that allows these facilities to remain in operation while the responsible person manages any potential risk from contamination remaining at the site. If the Department develops a generic remedy for low-impact sites in accordance with OAR 340-122-0252, then the low-impact site requirements specified in this rule (OAR 340-122-0243) will no longer be in effect. Until such time as a low-impact site generic remedy is in effect, the steps for low-impact closure are described below.

(1) The site must meet each of the following conditions:

(a) The source of the release has been repaired or removed, and all tanks, lines, and associated equipment at the site have been upgraded to meet applicable technical and regulatory standards.

(b) The facility must continue to be used as a gas station or other industrial or commercial use precluding potential routine exposure to children.

(c) Other than minimal amounts of petroleum product in the tank pit at the time of tank removal, no measurable free product was found on the groundwater.

(d) Concentrations of gasoline in the contaminated soil should not exceed 1000 ppm TPH, and concentrations of diesel and other non-gasoline fraction hydrocarbon in the contaminated soil should not exceed 10,000 ppm TPH.

(e) Contaminated soil remaining at the site should not be located within 3 feet of the land surface, unless:

(A) Contaminant concentrations do not exceed generic risk-based concentrations for direct contact developed in accordance with OAR 340-122-0252; or

(B) Department-approved institutional or engineering controls have been implemented and will be maintained to prevent direct contact with soils.

(f) Contamination is not located in utility corridors, unless:

(A) The contamination is shown to have been stabilized and is unlikely to result in vapor or groundwater problems;

(B) Contaminant concentrations do not exceed generic risk-based concentrations for a trench worker scenario developed in accordance with OAR 340-122-0252; and

(C) The corresponding utility has been notified of the contamination.

(g) Service station and other nonresidential buildings must not be located over or within 10 lateral feet and residences must not be located over or within 50 lateral feet of contaminated soil, unless:

(A) Contaminant concentrations do not exceed generic risk-based concentrations for volatilization from soils into buildings developed in accordance with OAR 340-122-0252; or

(B) It is demonstrated that potential exposure from volatilization into buildings from this contamination does not exceed acceptable risk levels; or

(C) Department-approved actions have been taken to mitigate potential vapor problems.

(h) If groundwater contamination is found at the site:

(A) There are no water supply wells located within one-quarter mile of the source of contamination;

(B) The groundwater plume is less than 250 feet in length as measured from the center of the source;

(C) Monitoring data are available to demonstrate that the groundwater plume has stabilized, or is diminishing in size;

(D) The groundwater plume does not leave the source property at concentrations exceeding generic risk-based concentrations developed in accordance with OAR 340-122-0252, unless owners of other affected properties consent to institutional or engineering controls necessary to prevent exposure due to the contaminated groundwater; and

(E) Service station and other nonresidential buildings must not be located over or within 10 lateral feet and residences must not be located over or within 50 lateral feet of contaminated groundwater, unless:

(i) Contaminant concentrations within the plume do not exceed generic risk-based concentrations for volatilization from groundwater into buildings developed in accordance with OAR 340-122-0252; or

(ii) It is demonstrated that potential exposure from volatilization into buildings from this contamination does not exceed acceptable risk levels; or

(iii) Department-approved actions have been taken to mitigate potential vapor problems.

(2) The responsible person must implement institutional or engineering controls, in a form acceptable to the Department, necessary to ensure that a site's designation as a low-impact site remains unchanged.

(3) The responsible person must submit a low-impact-site-closure report to the Department that includes the following:

(a) A site summary with appropriate scaled maps, a discussion of current and reasonably likely future land uses for the site and adjacent properties, including information from local government comprehensive planning plans and zoning ordinances, and information on geology, hydrogeology, topography, and other relevant factors on which the low-impact closure is based.

(b) Information about the release, including a history of all actions taken, data from all samples collected at the site, and a description of all contamination, including scaled maps showing the locations of contamination that was treated or removed from the site and contamination remaining at the site at the time of the report.

(c) Sufficient discussion and supporting data to address each of the specific low-impact site requirements listed in section (1) of this rule.

(d) If groundwater contamination is present at concentrations exceeding generic risk-based concentrations, a discussion of current and reasonably likely future water uses.

(e) If groundwater contamination is present at concentrations exceeding generic risk-based concentrations and the site is located within a certified drinking water protection area (DWPA), a description of the DWPA and what additional information has been gathered and measures taken to ensure that there are no current or potential future adverse impacts to the groundwater in the aquifer within the DWPA.

(f) A proposal, subject to Department approval, for any institutional or engineering controls necessary to maintain low-impact site conditions.

(4) Upon review of the low-impact site closure report, the Department may:

(a) Approve the report and, upon receipt of adequate documentation showing that any necessary institutional or engineering controls have been implemented and will be maintained, issue a low-impact site closure letter stipulating the site conditions that must be maintained;

(b) Request that additional information be submitted or work be performed in support of the proposed low-impact closure; or

(c) Determine that the site does not meet the conditions for low-impact closure and require that additional actions be taken under other relevant sections of OAR 340-122-0205 through 340-122-0360.

(5) The Department shall require public notice consistent with applicable requirements of OAR 340-122-0260 for sites proposed for low-impact closure.

(6) The owner of any property requiring controls under this rule must notify the Department of any future changes that might affect the facility's designation as a low-impact site.

Stat. Auth.: ORS 465.400 & 466.746
Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835
Hist.: New

**Risk-Based Concentrations**

**340-122-0244** This rule describes the requirements for developing risk-based concentrations for use in establishing remediation levels in corrective action plans under OAR 340-122-0250.

(1) A conceptual model must be developed for the site describing how exposure to contaminants is reasonably likely to occur.

(a) The conceptual site model must be based on, at a minimum:

(A) The magnitude and areal and vertical extent of soil and groundwater contamination;

(B) The concentration of applicable contaminants of concern in each contaminated medium;

(C) The likelihood for exposure to occur, given the concentration, location, and mobility of the contaminants in conjunction with factors such as local climate, geology, and hydrogeology; and

(D) Information on current and reasonably likely future land and water uses in the area of potential impact.

(b) Subject to site-specific conditions, the following exposure pathways must be considered in the conceptual site model:

(A) Direct contact with contaminated soils resulting in exposure due to a combination of dermal contact, soil ingestion, vapor inhalation, and particulate inhalation;

(B) Leaching from soils to underlying groundwater with subsequent groundwater ingestion;

(C) Volatilization from soils to outdoor air and subsequent inhalation;

(D) Volatilization from soils to indoor air and subsequent inhalation;

(E) Ingestion or other exposure to contaminated groundwater;

(F) Volatilization from groundwater to outdoor air and subsequent inhalation; and

(G) Volatilization from groundwater to indoor air and subsequent inhalation.

(c) Subject to site-specific conditions, the following exposure scenarios must be considered in the conceptual site model:

(A) Exposure to adults and children as typified by single-family residential living conditions;

(B) Exposure to adults as typified by industrial or commercial working conditions; and

(C) Exposure to adults whose occupation requires increased direct contact with soil as typified by a trench worker.

(d) Depending on conditions found at the site, the Department may require the evaluation of additional exposure pathways and scenarios.

(2) Risk-based concentrations must be developed for contaminants of concern identified during the site characterization or other site investigation activities, including total petroleum hydrocarbons (TPH) when appropriate, for exposure pathways and scenarios identified in the conceptual site model.

(a) The Department shall develop and maintain, in accordance with OAR 340-122-0252, a table of generic risk-based concentrations that may be used for this purpose; or

(b) A responsible person may calculate site-specific risk-based concentrations by employing contaminant fate, transport, and exposure models.

(A) Sources of models and default exposure parameters include:

(i) Applicable Department of Environmental Quality generic remedy guidance documents developed pursuant to OAR 340-122-0252;

(ii) ASTM Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites (ASTM E 1739-95); and

(iii) US EPA Risk Assessment Guidance for Superfund.

(B) The Department may approve the use of other models if they are deemed appropriate for the proposed task.

(C) A responsible person may propose, subject to the Department's approval, the use of site-specific exposure parameters in place of default exposure parameters.

(3) Risk-based concentrations for protection of the environment must be developed if contamination poses a potential risk exceeding the acceptable risk levels for ecological receptors. Unless the Department determines that screening is required for threatened and endangered species, screening for potential ecological impact is not required if:

(a) Contaminated soils are only present at a depth greater than 3 feet below ground surface, or, if present at a shallower depth, such soils cover an area no greater than 0.125 acre;

(b) Surface water has not been affected by the release;

(c) Contaminated groundwater does not and is not reasonably likely to discharge to surface waters or otherwise reach the surface in a manner that might result in contact with ecological receptors; and

(d) Contaminated groundwater does not and is not reasonably likely to come into contact with aquatic sediments.

Stat. Auth.: ORS 465.400 & 466.746
Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835
Hist.: New

**Corrective Action Plan**

**340-122-0250** (1) ~~At any point after reviewing the information submitted in compliance with OAR 340-122-0220 through 340-122-0230 or 340-122-0305 through 340-122-0360, the Department may require owners, permittees or responsible persons to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners, permittees or responsible persons shall submit the plan according to a schedule and format established by the Department. Alternatively, owners, permittees or responsible persons may, after fulfilling the requirements of OAR 340-122-0220 through 340-122-0230 or OAR 340-122-0305 through 340-122-0360, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners, permittees or responsible persons are responsible for submitting a plan that provides for adequate protection of public health, safety, welfare and the environment as determined by the Department, and shall modify their plan as necessary to meet this standard.~~Subject to section (12) of this rule, a responsible person proposing to remediate a site to risk-based remediation levels must submit a corrective action plan for responding to contaminated soil and groundwater.

(2) A remediation level must be proposed for each contaminant of concern in soil and groundwater based on:

(a) Site-specific risk-based concentrations calculated according to OAR 340-122-0244, or generic risk-based concentrations developed under OAR 340-122-0252;

(b) Current or future reasonably likely significant adverse effects to beneficial uses of groundwater or surface water not addressed by risk-based concentrations under subsection (a) of this section; and

(c) Proposed institutional and engineering controls, if any.

(3) The corrective action plan must be submitted to the Department within 45 days of completing field work necessary for its development, or within a longer period of time approved by the Department, and must contain sufficient information to support the proposed remedial measures including, at a minimum:

(a) The site history and a summary of all previous actions taken in response to the release;

(b) A summary and analysis of all sampling data, including site maps, drawn to scale, showing the magnitude and extent of contamination;

(c) The conceptual site model and an explanation for each remediation level proposed under section (2) of this rule;

(d) Land and water use information necessary to support the conceptual site model, including current uses, and comprehensive plan and zoning designations for adjacent properties, and all properties potentially affected by the release; and

(e) A discussion of all remedial measures including institutional and engineering controls, addressing any contamination exceeding acceptable risk levels and non-risk impacts.

(4) A corrective action plan which contains a proposal for groundwater monitoring or remediation must include:

(a) A recommendation for which monitoring well or wells will serve as compliance points for the site based on the following minimum requirements:

(A) Compliance monitoring points must define an area surrounding the source of contamination, outside of which remediation levels must be attained and maintained.

(B) The compliance monitoring points shall establish a vertical boundary extending from the uppermost level of the saturated zone to the lowest depth which could potentially be affected by the release;

(C) Compliance monitoring points must be located close enough to the source of contamination so that they reasonably detect contamination, if present; and

(D) Compliance monitoring points may not be located beyond the source property boundary except as approved by the Department.

(b) At least one monitoring point which measures contaminant concentrations in the source area.

(c) A discussion of all actions being proposed to monitor or remediate the groundwater contamination. These actions might not require sampling from all wells or monitoring for all contaminants detected during the investigation, provided:

(A) Hydrogeological and contamination data, as well as compliance point requirements, support the wells proposed for monitoring;

(B) Appropriate indicator compounds are analyzed at regular intervals during remediation and monitoring;

(C) Analytical parameters are consistent with remediation levels; and

(D) All contaminants of concern detected during the investigation are sampled and analyzed to confirm preliminary and final compliance.

(5~~2~~) The Department shall approve the corrective action plan only after ensuring that implementation of the plan, including any applicable remediation levels, will adequately protect human~~public~~ health, safety, and welfare and the environment, and after providing any public notice consistent with the requirements of OAR 340-122-0260. ~~In making this determination, the Department shall consider the following factors, as appropriate:~~

~~(a) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;~~

~~(b) The hydrogeologic characteristics of the facility and the surrounding area;~~

~~(c) The proximity, quality, and current are future uses of nearby surface water and groundwater;~~

~~(d) The potential effects of residual contamination of nearby surface water and groundwater;~~

~~(e) An exposure assessment;~~

~~(f) Any information assembled in compliance with this subsection, or with OAR 340-122-0240 and 340-122-0242;~~

~~(g) The impact of the release on adjacent properties; and~~

~~(h) Other matters deemed appropriate by the Department.~~

(6~~3~~) Upon approval of the corrective action plan ~~or as directed~~ by the Department, ~~owners, permittees or~~a responsible persons mustshall implement the plan, including any modifications to the plan made by the Department. ~~They shall~~The responsible person must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Department.

(7) For remediation of groundwater contamination:

(a) Preliminary compliance is attained when the first sampling event following the installation of all required monitoring wells shows that all samples collected from all compliance monitoring points and out to the edge of the contaminant plume meet the remediation levels for all contaminants of concern. When preliminary compliance has been attained, the responsible person may suspend groundwater treatment system operation at any time. The Department may require that a suspended groundwater treatment system be reactivated if any of the water samples collected at or beyond the compliance monitoring points during the required period of monitoring are found to contain any contaminant concentrations in excess of remediation levels. If the treatment system is reactivated, treatment must be continued until preliminary compliance is again attained.

(b) Final compliance is attained when:

(A) A minimum of four consecutive quarterly groundwater monitoring events has been completed following shutdown of the treatment system, and all samples collected from all compliance monitoring points and out to the edge of the contaminant plume meet the remediation levels for all contaminants of concern. The four consecutive sampling events may include the sampling event at which preliminary compliance is achieved, provided that all contaminants of concern are included in the sampling and analysis;

(B) Site-specific hydrogeologic and contaminant level data are presented in a written report to the Department demonstrating that any remaining contaminants will not migrate beyond the compliance monitoring points at levels exceeding remediation levels; and

(C) A final report containing a summary of all groundwater data collected at the site, an analysis of the data demonstrating that the final compliance requirements have been met, and any other relevant information deemed necessary by the Department to demonstrate that all of the requirements of this rule have been met is submitted to and approved by the Department.

(c) Notwithstanding final compliance, the Department may require continued monitoring of groundwater in situations where site-specific conditions warrant such measures.

(8~~4~~) ~~Owners, permittees or~~The responsible persons mustshall submit additional information or develop and submit a modified correction action plan at the Department's request if the Department determines that remedial~~cleanup~~ activities must be modified or that treatment system performance (e.g., rate of cleanup) is not achieving results as projected in the approved corrective action plan.

(9~~5~~) When all requirements of an approved corrective action plan have been met to the Department's satisfaction, the Department shall issue a no further action~~site closure~~ letter to the ~~owner, permittee or~~ responsible person.

(10) In the event that contamination exceeding risk-based concentrations remains, the Department may require the implementation of institutional or engineering controls necessary to ensure protection of public health, safety, and welfare and the environment.

(11~~6~~) ~~Owners, permittees or~~A responsible persons may, in the interest of minimizing environmental contamination and promoting more effective remediation~~cleanup~~, begin remediation~~cleanup~~ of soil and groundwater before the corrective action plan is approved provided that the~~y~~ responsible person:

(a) Notifies~~y~~ the Department of its~~their~~ intention to begin remediation~~cleanup~~;

(b) Complies~~y~~ with any conditions imposed by the Department including halting remediation~~cleanup~~ or mitigating adverse consequences from remedial~~cleanup~~ activities; and

(c) Incorporates ~~these~~ self-initiated remedial~~cleanup~~ measures in the corrective action plan that is submitted to the Department for approval.

(12) The requirement that a corrective action plan be used does not apply to low-impact site closures, or to generic remedies unless specified by the Department in generic remedy guidance. However, the Department may require that a corrective action plan be developed and implemented for sites being considered for remediation under the soil matrix cleanup options (OAR 340-122-0320), as low-impact sites (OAR 340-122-0243), or under generic remedies (OAR 340-122-0252) if, upon review of available information, the Department determines that conditions at the site are not appropriate for the initial proposed remedial option or the proposal does not provide adequate protection to human health, safety, and welfare and the environment.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.260, 465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Generic Remedies**

**340-122-0252** (1) The Department may identify or develop generic remedies for releases from petroleum UST systems.

(a) For purposes of this rule, a generic remedy may include:

(A) Generic risk-based concentrations for use in closure of low-impact sites, or remediation under a corrective action plan; and

(B) Remedial technologies or methods for use at eligible sites on a streamlined basis.

(b) A generic remedy must describe criteria making sites eligible for use of the generic remedy.

(c) Any generic remedy that allows for implementation of specified remedial measures (e.g., treatment technologies, excavation and off-site disposal, engineering controls, institutional controls) must be based on a generic feasibility study evaluating a range of potential remedial measures providing protection of human health and the environment and protection or restoration of beneficial uses of waters.

(d) Any generic remedy that includes risk-based concentrations must be based on a generic risk assessment documenting the Department's conclusions with respect to how sites eligible for use of the generic remedy will achieve acceptable risk levels.

(2) In developing generic remedy guidance, the Department will provide opportunities for public participation regarding the scope and content of the guidance.

(3) The Department may approve use of a generic remedy at a site if site-specific information demonstrates that the proposed generic remedy or the completed generic remedy as implemented at the site is consistent with Department generic remedy guidance.

Stat. Auth.: ORS 465.400 & 466.746
Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835
Hist.: New

~~**Additional Reporting**~~

~~**340-122-0255** The owner, permittee, or responsible person shall provide any additional information beyond that required under OAR 340-122-0225(2) of this rule, as requested by the Department.~~

~~Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835~~
~~Stats. Implemented: ORS 465.400 & 466.746~~
~~Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92~~

**Public Participation**

**340-122-0260** (1) The Department shall maintain a list of all confirmed releases and ensure that site release and cleanup information are made available to the public for inspection upon request.

~~(2) For each confirmed release, upon written request by ten or more persons or by a group having ten or more members, the Department shall conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding proposed cleanup activities, except for those cleanup activities conducted under OAR 340-122-0305 through 340-122-0360.~~

(2~~3~~) For each confirmed release that requires a corrective action plan under OAR 340-122-0250, or that requires implementation of engineering or institutional controls for designation as a low-impact site under OAR 340-122-0243 or as part of a generic remedy under OAR 340-122-0252, the Department shall provide notice to affected property owners and the public ~~by means designed to reach those members of the public directly affected by the release and the planned corrective action~~. This notice may include~~,~~ but is not limited to~~,~~ public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(3) For each confirmed release, the Department, upon written request by ten or more persons or by a group having ten or more members, shall conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding proposed remedial activities, except for those activities conducted under OAR 340-122-0320 through 340-122-0360.

(4) The Department shall ensure that site release information and decisions concerning completed and proposed petroleum UST remedial measures~~the corrective action plan~~ are made available to the public for inspection upon request.

(5) Before approving a corrective action plan, the Department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other good reason.

~~(6) The Department shall give public notice that complies with section (3) of this rule if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.~~

Stat. Auth.: ORS ~~Ch. 466~~465.400 & 466.746
Stats. Implemented: ORS ~~465.215, 465.235, 465.320 & 465.405~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89)

## ~~Numeric Soil Cleanup Levels for Motor Fuels and Heating Oil~~

~~**Purpose**~~

~~**340-122-0305** These rules establish numeric soil cleanup standards pursuant to ORS 466.745 and OAR 340-122-0245 (1988) for the remediation of motor fuel and heating oil releases from underground storage tanks. The soil cleanup levels have been developed to facilitate the cleanup of these releases while maintaining a high degree of protection of public health, safety, welfare and the environment.~~

~~Stat. Auth.: ORS Ch. 466~~
~~Stats. Implemented: ORS 465.400 & 466.746~~
~~Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89)~~

~~**Definitions**~~

~~**340-122-0310** Terms not defined in this section have the meanings set forth in ORS 466.200, 466.705, and OAR 340-122-0210. Additional terms are defined as follows unless the context requires otherwise:~~

~~(1) "Gasoline" means any petroleum distillate used primarily for motor fuel of which more than 50 percent of its components have hydrocarbon numbers of C10 or less.~~

~~(2) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.~~

~~(3) "Native Soil" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an underground storage tank.~~

~~(4) "Non-Gasoline Fraction" means diesel and any other petroleum distillate used for motor fuel or heating oil of which more than 50 percent of its components have hydrocarbon numbers of C11 or greater.~~

~~(5) "Soil" means any unconsolidated geologic materials including, but not limited to, clay, loam, loess, silt, sand, gravel, tills or any combination of these materials.~~

~~Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835~~
~~Stats. Implemented: ORS 465.200 & 465.400, 466.706 & 466.746~~
~~Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91~~

~~**Scope and Applicability**~~

~~**340-122-0315** (1) These rules shall apply to the cleanup of releases from UST systems containing motor fuel and heating oil, and shall take effect March 1, 1991.~~

~~(2) Matrix cleanup levels established by these rules are not applicable to the cleanup of petroleum releases which, due to their magnitude or complexity, are ordered by the Director to be conducted under OAR 340-122-0010 through 340-122-0110.~~

~~Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835~~
~~Stats. Implemented: ORS 465.260, 466.765 & 466.810~~
~~Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91~~

**Soil Matrix Cleanup Options**

**340-122-0320** A responsible person may elect to clean up petroleum contaminated soils according to the procedures and standards set forth in OAR 340-122-0320 through 340-122-0360. For purposes of the soil matrix cleanup rules, "cleanup" means excavation and offsite disposal, or treatment, of contaminated soils. When using the numeric soil cleanup standards specified in these rules, the ~~owner, permittee, or~~ responsible person has the option of:

(1) Cleaning up the site as specified in these rules to the numeric soil cleanup standard defined as Level 1 in OAR 340-122-0335(2); or

(2) Evaluating the site as specified in OAR 340-122-0325 to determine the required Matrix cleanup level, and then cleaning up the site as specified in these rules to the numeric soil cleanup standard defined by that Matrix cleanup level.

Stat. Auth.: ORS ~~Ch. 466~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89)

**Evaluation of Matrix Cleanup Level**

**340-122-0325** (1) In order to determine a specific Matrix cleanup level, the site must first be evaluated by:

(a) Assigning a numerical score to each of the five site-specific parameters in OAR 340-122-0330(1) - (5); and

(b) Totaling the parameter scores to arrive at the Matrix Score.

(2) The Matrix Score mustshall then be used to select the appropriate numeric soil cleanup standard as specified in OAR 340-122-0335.

Stat. Auth.: ORS Ch. 466465.400 & 466.746
Stats. Implemented: ORS 465.400, 466.746, 466.765 & 466.810465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89)

**Evaluation Parameters**

**340-122-0330** The site-specific parameters are to be scored as specified in this section. If any of the parameters in sections (1) - (5) of this rule is unknown, that parameter mustshall be given a score of ten:

(1) Depth to Groundwater: This is the vertical distance (rounded to the nearest foot) from the surface of the ground to the highest seasonal elevation of the saturated zone. The score for this parameter is:

(a) > 100 feet, 1;

(b) 51 - 100 feet, 4;

(c) 25 - 50 feet, 7;

(d) < 25 feet, 10.

(2) Mean Annual Precipitation: This measurement may be obtained from the nearest appropriate weather station. The score for this parameter is:

(a) < 20 inches, 1;

(b) 20 - 45 inches, 4;

(c) > 45 inches, 10.

(3) Native Soil or Rock Type: The score for this parameter is:

(a) Low permeability materials such as clays, silty clays, compact tills, shales, and unfractured metamorphic and igneous rocks, 1;

(b) Moderate permeability materials such as fine and silty sands, sandy loams, loamy sands, and clay loams; moderately permeable limestones, dolomites and sandstones; and moderately fractured igneous and metamorphic rocks, 5;

(c) High permeability materials such as ~~fine and silty sands,~~ sands and gravels, highly fractured igneous and metamorphic rocks, permeable basalts and lavas, and karst limestones and dolomites, 10.

(4) Sensitivity of the Uppermost Aquifer: Due to the uncertainties involved in the Matrix evaluation process, this factor is included to add an extra margin of safety in situations where critical aquifers have the potential to be affected. The score for this parameter is:

(a) Unusable aquifer, either due to water quality conditions such as salinity, etc.; or due to hydrologic conditions such as extremely low yield, 1;

(b) Potable aquifer not currently used for drinking water, but the quality is such that it could be used for drinking water, 4;

(c) Potable aquifer currently used for drinking water; alternate unthreatened sources of water readily available, 7;

(d) Sole source aquifer currently used for drinking water; there are no alternate unthreatened sources of water readily available, 10.

(5) Potential Receptors: The score for potential receptors is based on both the distance to the nearest well and also the number of people at risk. Each of these two components is to be evaluated using the descriptors defined in this section:

(a) The distance to the nearest well is measured from the area of contamination to the nearest well that draws water from the aquifer of concern. If a closer well exists which is known to draw water from a deeper aquifer, but there is no evidence that the deeper aquifer is completely isolated from the contaminated aquifer, then the distance must be measured to the closer, deeper well. The distance descriptors are:

(A) Near, <1/2 mile;

(B) Medium, 1/2 - 2 miles;

(C) Far, < 2 miles.

(b) The number of people at risk is to include all people served by drinking water wells which are located within two miles of the contaminated area. For public wells, count the number of users listed with the Oregon Health Division, Drinking Water Systems Section. For private wells, assume three residents per well. In lieu of a door-to-door survey of private wells, it may be assumed that there is one well per residence. The number descriptors are:

(A) Many, > 3000;

(B) Medium, 100 - 3000;

(C) Few, < 100.

(c) The score for this parameter is taken from the combination of the two descriptors using the following grid:

| | Many | Medium | Few |
|---|---|---|---|
| Near | 10 | 10 | 5 |
| Medium | 10 | 5 | 1 |
| Far | 5 | 1 | 1 |

(6) The Matrix Score for a site is the sum of the five parameter scores in sections (1) - (5) of this rule.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835

Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91

**Numeric Soil Cleanup Standards**

**340-122-0335** (1) If the Matrix Score evaluated in OAR 340-122-0330 is:

(a) Greater than 40, the site must be cleaned up to at least the Level 1 standards listed in section (2) of this rule;

(b) From 25 to 40, inclusive, the site must be cleaned up to at least the Level 2 standards listed in section (2) of this rule;

(c) Less than 25, the site must be cleaned up to at least the Level 3 standards listed in section (2) of this rule.

(2) The following table contains the required numeric soil cleanup standards based on the level of Total Petroleum Hydrocarbons (TPH) as measured by the analytical methods specified in OAR 340-122-0218~~350~~.

| | Level 1 | Level 2 | Level 3 |
|---|---|---|---|
| TPH (Gasoline) | 40 ppm | 80 ppm | 130 ppm |
| TPH (Diesel) | 100 ppm | 500 ppm | 1000 ppm |

(3) A sample of contaminated soil must be collected from each separate release area and~~The Hydrocarbon Identification (HCID) test specified in OAR 340-122-0350(3) shall be~~ used to identify the petroleum product contamination present at that location~~the site~~. The Hydrocarbon Identification test specified in OAR 340-122-0218(1)(c) (NWTPH-HCID) must be used for that purpose. The NWTPH-HCID test is not required for petroleum product identification for releases from residential heating oil tanks. The results of the NWTPH-HCID test must~~shall~~ be used to determine which analytical method or methods are required for verifying compliance with the Matrix cleanup levels. At locations where the soil is contaminated with both gasoline and diesel or other non-gasoline fraction hydrocarbons, the gasoline contamination must~~shall~~ be shown to meet the appropriate gasoline cleanup standard and the diesel or other non-gasoline fraction contamination must~~shall~~ be shown to meet the appropriate diesel cleanup standard.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Sample Number and Location**

**340-122-0340** The collection and analysis of soil samples is required to verify that a site meets the requirements of these rules. These samples must represent the soils remaining at the site and must~~shall~~ be collected after contaminated soils have been removed or remediated. Each

sample must represent a single location; composite samples are not allowed. The number of soil samples required for a given site and the location at which the samples are to be collected are as follows:

(1) A minimum of two soil samples must be collected from the site:

(a) These samples must be taken from those areas where obviously stained or contaminated soils have been identified and removed or remediated;

(b) If there are two or more distinct areas of soil contamination, then a minimum of one sample must be collected from each of these areas;

(c) The samples must be taken from within the first foot of native soil directly beneath the areas where the contaminated soil has been removed, or from within the area where in-situ remediation has taken place;

(d) A field instrument sensitive to volatile organic compounds may be used to aid in identifying areas that should be sampled, but the field data may not be substituted for laboratory analyses of the soil samples;

(e) If there are no areas of obvious contamination, then samples must be collected from the locations specified in sections (2) - (5) of this rule which are most appropriate for the situation;

(f) If it is being proposed that a pocket of contamination be left in place pursuant to OAR 340-122-0355(4), then sufficient samples mustshall be collected from the site in order to estimate the extent, volume, and level of contamination in this pocket, and the likelihood for the remaining contamination to result in unacceptable risk levels due to volatilization into buildings.

(2) If water is not present in the tank pit:

(a) Soil samples must be collected from the native soils located no more than two feet beneath the tank pit in areas where contamination is most likely to be found;

(b) For the removal of an individual tank, samples must be collected from beneath both ends of the tank. For the removal of multiple tanks from the same pit, a minimum of one sample must be collected for each 150 square feet of area in the pit.

(3) In situations where leaks have been found in the piping, or in which released product has preferentially followed the fill around the piping, samples are to be collected from the native soils directly beneath the areas where obvious contamination has been removed. Samples should be collected at 20 lateral foot intervals.

(4) If water is present in the tank pit, regardless of whether obvious contamination is or is not present, the Department must be notified of this fact. The owner, permittee, or responsible person shall then either continue the investigation under OAR 340-122-0240, or do the following:

(a) Purge the water from the tank pit and dispose of it in accordance with all currently applicable requirements. This might requiremay include obtaining appropriate permits from the Department or local jurisdictions;

(b) If the pit remains dry for 24 hours, testing and cleanup may proceed according to the applicable sections of these soil matrix cleanup rules. If water returns to the pit in less than 24 hours, a determination must be made as to whether contamination is likely to have affected the groundwater outside of the confines of the pit as indicated below:

(A) For the removal of an individual tank, soil samples are to be collected from the walls of the excavation next to the ends of the tank at the original soil/water interface. For the removal of multiple tanks from the same pit, a soil sample is to be collected from each of the four walls of the excavation at the original soil/water interface;

(B) At least one sample must be taken of the water in the pit regardless of whether obvious contamination is or is not present. This sample shall be collected as required by OAR 340-122-0345(4);

(C) The soil samples must be analyzed for TPH and benzene, toluene, ethylbenzene, and xylenes (BTEX). The water sample must be analyzed for BTEX at all sites, and for PAHs where releases of non-gasoline fractions have occurred. ~~Owners, permittees or r~~Responsible persons may use TPH analyses on groundwater samples as a preliminary screen for PAHs. The TPH method detection limit mustshall be no greater than 0.5 ppm. Any groundwater sample for which TPH is detected mustshall be analyzed for PAHs. These analyses mustshall be made using the methods specified in OAR 340-122-021842(5). The results of these analyses mustshall be submitted to the Department;

(D) The Department shall then determine how the cleanup shall proceed as specified in OAR 340-122-0355(3).

(5) In situations where tanks, pumps, and lines willare to remain in place in areas of suspected contamination, the owner, permittee or responsible person mustshall submit a specific soil sampling plan to the Department for its approval.

(6) In situations where TPH analysis indicates that contamination is present due to a release from a waste oil tank, at least one sample of the waste oil contaminated soils must be collected and analyzed for volatile chlorinated solvents, volatile aromatic solvents, and leachable metals (Cadmium, Chromium and Lead) using the analytical methods specified in OAR 340-122-0218(1)(c)0350. Analysis for PCBs is also required if the contamination is from a waste oil tank other than one used exclusively for storage of automotive waste oils.

Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835465.400 & 466.746
Stats. Implemented: ORS 465.400, 466.746, 466.765 & 466.810465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92

**Sample Collection Methods**

**340-122-0345** (1) The following information must be kept during the sampling events:

(a) A sketch of the site must be made which clearly shows all of the sample locations and identifies each location with a unique sample identification code;

(b) Each soil and water sample must be clearly labeled with its sample identification code. A written record must be maintained which includes, but is not limited to: the date, time and location of the sample collection; the name of the person collecting the sample; how the sample was collected; and any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity;

(c) Formal chain-of-custody records must be maintained for each sample.

(2) If soil samples cannot be safely collected from the excavation, a backhoe may be used to remove a bucket of native soil from each of the sample areas. The soil is to be brought rapidly to the surface where samples are to be immediately taken from the soil in the bucket.

(3) The following procedures must be used for the collection of soil samples from open pits or trenches:

(a) Just prior to collecting each soil sample, approximately three inches of soil must be rapidly scraped away from the surface of the sample location;

(b) To minimize the loss of volatile materials, it is recommended that samples be taken using a driven-tube type sampler. A clean brass or stainless steel tube of at least one inch in diameter and three inches in length may be used for this purpose. The tube should be driven into the soil with a suitable instrument such as a wooden mallet or hammer;

(c) The ends of the sample-filled tube must be immediately covered with clean aluminum foil. The foil must be held in place by plastic end caps which are then sealed onto the tube with a suitable tape;

(d) Alternatively, samples may be taken with a minimum amount of disturbance and packed immediately in a clean wide-mouth glass jar leaving as little headspace as possible. The jar must then be immediately sealed with a teflon-lined screw cap;

(e) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4 °C (39 °F) until being prepared for analysis by the laboratory. All samples must be analyzed within 14 days of collection.

(4) The following procedures must be used for the collection of water samples from the tank pit:

(a) After the water has been purged from the pit in accordance with OAR 340-122-0340(4)(a), samples shall be collected as soon as sufficient water has returned to the pit to allow representative sampling;

(b) Samples are to be taken with a device designed to reduce the loss of volatile components. A bailer with a sampling port is suitable for this purpose;

(c) The water is to be transferred into two identical glass vials with as little agitation as possible and immediately sealed with a teflon-lined caps. The vials must be filled completely so that no air bubbles remain trapped inside;

(d) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4° C~~.~~ (39° F~~.~~) until being prepared for analysis by the laboratory. All samples must be analyzed within 14 days of collection.

(5) The Department may approve alternative sampling methods which have been clearly shown to be at least as effective with respect to minimizing the loss of volatile materials during sampling and storage as the methods listed in sections (1) - (4) of this rule.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835

Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91

~~**Required Analytical Methods**~~

~~**340-122-0350** The following methods are to be used for the analysis of the soil and water samples, as applicable:~~

~~(1) Total Petroleum Hydrocarbons (TPH) for Gasoline shall be analyzed by means of DEQ Laboratory Method TPH-G.~~

~~(2) Total Petroleum Hydrocarbons (TPH) for Diesel and other non-gasoline fraction hydrocarbons shall be analyzed by means of either EPA Method 418.1 using the sample extraction and preparation technique specified by the Department, or by means of the DEQ Laboratory Method TPH-D.~~

~~(3) Hydrocarbon Identification (HCID) shall be determined by means of DEQ Laboratory Method TPH-HCID.~~

~~(4) Benzene, Toluene, Ethylbenzene and Xylenes (BTEX) shall be analyzed by means of EPA Methods documented in SW-846 (Test Methods for Evaluating Solid Waste).~~

~~(5) Waste oil contaminated soils shall be analyzed for volatile chlorinated solvents, volatile aromatic solvents, and PCBs by EPA Methods documented in SW-846 (Test Methods for Evaluating Solid Waste); for leachable metals by EPA Toxicity Characteristic Leaching Procedure (TCLP); and for TPH by EPA Method 418.1 using the sample extraction and preparation technique specified by the Department.~~

~~(6) The Department may approve alternative analytical methods which have been clearly shown to be applicable for the compounds of interest and which have detection limits at least as low the methods listed in sections (1) - (5) of this rule.~~

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

~~Stat. Auth.: ORS 465.200 - 465.420 & 466.705 - 466.835~~
~~Stats. Implemented: ORS 465.400, 466.746, 466.765 & 466.810~~
~~Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91~~

**Evaluation of Analytical Results**

**340-122-0355** (1) The results of the soil analyses shall be interpreted as follows:

(a) If a sample has a concentration less than or equal to the required matrix level, the area represented by that sample ~~shall have met~~ meets the requirements of these rules;

(b) If a sample has a concentration exceeding the required matrix level by more than ten percent, the area represented by that sample does~~has~~ not meet the requirements of these rules. Further remediation, sampling, and testing is necessary until the required level is attained;

(c) If a sample has a concentration exceeding the required matrix level by less than ten percent, the responsible person has the option of collecting and analyzing two more samples from the same area and using the average of all three to determine if the standard has been met;

or further remediating the area and then collecting and analyzing one new sample and using the concentration of the new sample to determine if the standard has been met~~;~~. Alternatively, ~~or~~ the Department has the options of approving the cleanup with no further action, requiring that more samples be taken, or requiring further cleanup and subsequent sampling. Such a decision shall be made based upon the analytical results of other samples from the site, best professional judgement made from a visit to the site, the apparent extent of contamination, and other site specific factors deemed appropriate.

(2) A site shall be considered sufficiently clean when all of the sampled areas have concentrations less than or equal to the required matrix cleanup level, and when the possibility of any human contact with the residual soil contamination remaining on the site has been precluded.

(3) If water is present in the tank pit, the Department shall decide if cleanup may proceed under these rules or if further action must be taken pursuant to OAR 340-122-0240~~such as the installation of monitoring wells, or the development of a Corrective Action Plan under OAR 340-122-0250~~. This decision shall be based on, but is not limited to:

(a) The apparent extent of the contamination;

(b) The likelihood that groundwater contamination exists beyond the boundaries of the tank pit;

(c) The likelihood that the BTEX concentrations in the water and the BTEX and TPH concentrations in the soil indicate a situation which poses a threat to public health, safety, and welfare ~~and~~or the environment; and

(d) Any other site-specific factors deemed appropriate by the Department.

(4) If a pocket of contamination exceeding the required Matrix cleanup level is located under a building or other structure where further removal would endanger the structure or be prohibitively expensive, the Department must be notified of this situation. The ~~Director~~Department shall then decide whether such contamination can remain without threatening ~~human~~public health, safety, and welfare ~~and~~or the environment. If not, the Department shall require further remediation.

(5) For waste oil contaminated sites, all detectable levels of volatile chlorinated solvents, volatile aromatic hydrocarbons, PCBs, or leachable metals shall be reported to the Department as soon as these results are known. The Department shall then decide whether the cleanup shall continue under these rules or whether further investigation is warranted under OAR 340-122-0205 through 340-122-0260 or 340-122-0010 through 340-122-0115~~0~~.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91

**Reporting Requirements**

**340-122-0360** (1) Within 60 days of completing work at a soil matrix~~the~~ site cleaned up pursuant to OAR 340-122-0320 through 340-122-0360, or within a longer period of time

approved ~~another reasonable period of time determined~~ by the Department, ~~an owner, permittee, or~~the responsible person mustshall submit to the Department a final report ~~to the Department for a site that has been cleaned up according to these rules,~~ which ~~report~~ mustshall contain~~, but is not limited to~~:

(a) A narrative section describing how the release was discovered, what initial measures were taken to control the spread of contamination, what was observed when the tank was removed from the pit (e.g., odor, sheen, stained soils, holes in tank or lines~~, etc.~~), what information was used to score the site, how the cleanup was done, how much contaminated soil was removed, what was done with the contaminated soil and the decommissioned tank and piping, who collected the samples, how the samples were collected, stored, and shipped to the lab, and any problems encountered during the cleanup or sample collection process;

(b) A site map drawn to scale showing relevant information such as the location of tanks, lines, utilities, buildings, and other structures, excavated soils, samples, and any pockets of contamination left pursuant to OAR 340-122-0355(4);

(c~~b~~) Properly filled out copies of the Department's Matrix Checklist and Matrix Score Sheet;

(d~~c~~) All of the sampling documentation required in OAR 340-122-0345;

(e~~d~~) Copies of the laboratory reports and chain of custody forms for all soil and water samples collected at the site;

(f~~e~~) Copies of all receipts or permits related to the disposal of free product, contaminated soil, contaminated water, and decommissioned tanks and piping;

(g~~f~~) A brief explanation of what was done in the case of any samples that initially exceeded the required cleanup levels;

(h~~g~~) A summary of the concentrations measured in the final round of samples from each sampling location;

(i~~h~~) In cases where groundwater was present in the pit, a summary of the data collected and the decision made by the Department under OAR 340-122-0355(3);

(j~~i~~) In cases where pockets of excess contamination remain on site in accordance with OAR 340-122-0355(4), a description of this contamination including location, approximate volume and concentration; and

(k~~j~~) In cases where waste oil contamination required extra sampling and analyses as specified in OAR 340-122-0340(6), a summary of the data collected and, if appropriate, the decision made by the Department under OAR 340-122-0355(5).

(2) The ~~owner, permittee, or~~ responsible person shall retain a copy of the report submitted to the Department under this section until the time of first transfer of the property, plus ten years.

(3) ~~Within 120 days after receipt of the final report under this section,~~Upon review of the report, the Department shall:

(a) Provide the responsible person ~~submitting the report~~ a written statement that, based upon information contained in the report, the soil present at the site has been cleaned up in accordance with OAR 340-122-032005 through 340-122-0360; or

(b) Request the ~~owner, permittee, or~~ responsible person to submit additional information or perform additional~~further~~ investigation; or

(c) Request the ~~owner, permittee, or~~ responsible person to conduct additional remedial action~~develop and submit a corrective action plan~~ in accordance with OAR 340-122-0250 or 340-122-0252.

Stat. Auth.: ORS ~~465.200 - 465.420 & 466.705 - 466.835~~465.400 & 466.746
Stats. Implemented: ORS ~~465.400, 466.746, 466.765 & 466.810~~465.200 - 465.455 & 466.706 - 466.835
Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91

# DIVISION 177

# RESIDENTIAL HEATING OIL UNDERGROUND STORAGE TANKS

## Purpose and Scope

**340-177-0001** (1) This Division specifies requirements for the remediation of releases of petroleum from underground residential heating oil tanks.

(2) These rules do not apply to a release from an underground heating oil tank used for non-residential purposes or from an above-ground heating oil tank, unless the Department makes a determination on a case-by-case basis that the conditions of the release are similar to those for a residential heating oil tank and that application of these rules is appropriate.

Stat. Auth.: ORS 465.200 - 465.320
Stats. Implemented: ORS 465.400, 465.405
Hist.: New

## Definitions

**340-177-0005** As used in this Division, the following definitions apply:

(1) "Above-Ground Release" means any release to the land surface or to surface water from the above-ground portion of a residential heating oil tank system and releases associated with overfills and transfer operations during heating oil deliveries to or dispensing from a residential heating oil tank system.

(2) "Below-Ground Release" means any release to the land subsurface having concentrations detected by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996), or any release to groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218. This includes but is not limited to releases from the below-ground portion of a residential heating oil tank and releases to the land subsurface or groundwater associated with overfills and transfer operations as the heating oil is delivered to or dispensed from a residential heating oil tank system.

(3) "Confirmed Release" means petroleum contamination observed in soil or groundwater as a sheen, stain, or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996), or analytical results of 50 mg/kg or greater for Diesel/Lube Oil Range Hydrocarbons by Method NWTPH-Dx (DEQ, December, 1996), or detected in groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218.

(4) "Decommissioning" or "Removal" means to remove an underground storage tank from operation by abandonment in place (e.g. cleaning and filling with an inert material) or by removal from the ground.

(5) "Department" means the Oregon Department of Environmental Quality.

(6) "Excavation Zone" means an area containing a residential heating oil tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the residential heating oil tank system is placed at the time of installation.

(7) "Free Product" means petroleum in the non-aqueous phase (e.g., liquid not dissolved in water).

(8) "Heating Oil" means petroleum that is No. 1, No. 2, No. 4-Heavy, No. 5-Light, No. 5-Heavy, or No. 6-Technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); or other fuels when used as substitutes for one of these fuel oils.

(9) "Heating Oil Tank" means any one or combination of underground tanks and above-ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation, or water heating not used for commercial processing.

(10) "Petroleum" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. "Petroleum" does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(11) "Remediation" or "Remedial Measures" means "Remedial Action" as defined in ORS 465.200(22) and "Removal" as defined by ORS 465.200(24).

(12) "Residential Heating Oil Tank" is a heating oil tank located on property used primarily for single-family dwelling purposes.

(13) "Responsible Person" means "owner or operator" as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200.

(14) "Service Provider" means an individual or firm licensed by the Department to perform Matrix Cleanup services in Oregon who is hired by a person responsible for a residential heating oil tank to provide such services.

Stat. Auth.: ORS 465.200 - 465.420
Stats. Implemented: ORS 465.200, 465.400
Hist.: New

**Remediation and Reporting Requirements**

**340-177-0110** (1) Within 72-hours after a confirmed release from a residential heating oil tank is identified, the responsible person must take the following initial abatement actions for any release which has or may result in a sheen on surface water or groundwater, any below-ground release, any above-ground release in excess of 25 gallons, or any above-ground release of less than 25 gallons if the responsible person is unable to contain or clean up the release within 24 hours:

(a) Take immediate action to prevent any further release of heating oil into the environment;

(b) Identify and mitigate any fire or safety hazards posed by vapors or free product, and;

(c) Report the release to the Department by telephone. The Department will issue a "site identification or log number" for each release, which will serve as confirmation of reporting.

(2) If groundwater is encountered at any time during release identification or remediation, or if any fire or safety hazards are posed by vapors or free product that has migrated from the excavation zone, the Department must be notified immediately. The Department may require that additional investigation or remediation be conducted before proceeding further with the requirements of OAR 340-177-0110(3) and (4). Any free product observed must be removed in accordance with the requirements of OAR 340-122-0235;

(3) The following actions must be taken for each release:

(a) Remove as much of the product as possible from the residential heating oil tank to prevent further release to the environment;

(b) Conduct a visual inspection of any above-ground release(s) or exposed below-ground release(s) and take actions necessary to prevent any further migration of the heating oil into surrounding soils and groundwater;

(c) Remedy any hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or remediation. If remediation includes treatment or disposal of contaminated soils, the responsible person and service provider must comply with all applicable state and local requirements. Excavated contaminated soil shall be managed in accordance with solid waste regulations.

(d) Measure for the presence of a release where contamination is most likely to be found at the residential heating oil tank site. In selecting sample types, sample locations, and measurement methods, the responsible person or service provider must consider the nature of the stored substance, the type of back-fill material that is present, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release;

(4) Within forty-five days after the date a release from a residential heating oil tank is reported to the Department, the responsible person or service provider must submit a written initial remediation report to the Department, if groundwater is encountered at any time during remediation or during tank investigation, if any fire or safety hazards posed by vapors or free product have not yet been eliminated, or if remediation at the site is not expected to begin until after forty-five days from the date the release is reported.

(a) The written report may be a narrative report or on a form provided by the Department, that adequately describes any and all actions taken in accordance with section (3) of this rule;

(b) The amount in gallons of heating oil removed and the name of the disposal or reuse location must be included in the report, and;

(c) If remediation has not been initiated within the first forty-five days after the release is discovered, a proposed schedule for remediation of the release must be included in the report.

(5) Within sixty days of completing remediation at a residential heating oil tank release site or within another longer period of time approved by the Department, the responsible person or service provider must submit to the Department, as a narrative report or on a form provided by the Department, a final remediation report, which includes, as a minimum, the following information:

(a) A narrative section describing how the release was discovered, what initial measures were taken to control the spread of contamination, what was observed when the tank was removed from the pit (odor, sheen, stained soils, holes in tank or lines, etc.), how the remediation was done, how much contaminated soil was removed, what was done with the contaminated soil and the decommissioned tank and piping, who collected the samples, how the samples were collected, stored, and shipped to the laboratory, and any problems encountered during the remediation or sample collection process;

(b) A description of all actions taken under OAR 340-177-0110(3), as a narrative report or on a form provided by the Department;

(c) A site map, drawn approximately to scale, showing the location of all buildings on the property and on adjacent properties, and location of the residential heating oil tank;

(d) Photographs taken at the time of residential heating oil tank decommissioning and remediation;

(e) A sketch of the site that clearly shows all of the sample locations and depths and identifies each location with a unique sample identification code;

(f) Copies of chain-of-custody forms for all soil and water samples collected, which forms include, but are not limited to: the date, time and location of the sample collection; the name of the person collecting the sample; how the sample was collected; and any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity;

(g) Copies of all laboratory data reports;

(h) Copies of all receipts or permits related to the disposal of free product, contaminated soil, contaminated water, or decommissioned tanks and piping;

(i) A summary of the concentrations measured in the final round of samples from each sampling location;

(j) In cases where groundwater was present in the tank excavation zone, a summary of the data collected and the decision made by the Department in accordance with OAR 340-122-0355(3);

(k) The type of remediation option selected and implemented under OAR 340-177-0120(1); and

(l) Any other relevant information that adds clarity to the specifics of the individual remediation project.

(6) All written reports and correspondence required to be submitted to the Department must include the following information:

(a) Name of property owner and address of property;

(b) Site identification or log number assigned to the property by the Department;

(c) Name of the service provider(s) working on the project, if any, including license number and expiration date; and

(d) Name and signature of the person preparing the report.

(7) Upon review of the final residential heating oil tank remediation report the Department will:

(a) Provide the responsible person a written statement that, based upon information contained in the report, remediation at the site has been completed in accordance with these rules; or

(b) Request the responsible person to submit additional information or perform further investigation; or

(c) Request the responsible person to select and implement a different type of remediation option to adequately protect human health, safety, welfare and the environment.

Stat. Auth.: ORS 465.200 - 465.400
Stats. Implemented: ORS 465.260
Hist.: New

**Remediation Options and Technical Requirements**

**340-177-0120** (1) Depending on the extent of contamination and other relevant factors, the responsible person must determine which type of remediation option is best suited for the release, using the following:

(a) Soil Matrix, OAR 340-122-0320 through 340-122-0360;

(b) Risk-Based, OAR 340-122-0244 and Corrective Action Plan, 340-122-0250; or

(c) Generic Remedy, as approved by the Department pursuant to OAR 340-122-0252 and as applicable to residential heating oil tank releases.

(2) For the specific remediation option selected, additional written report requirements may be required and must be included as specified by the applicable regulations.

(3) Public participation will be provided by the Department as required for the specific remediation option selected in section (1) of this rule.

(4) Sampling and analysis must be conducted in accordance with OAR 340-122-0218, unless otherwise specified by the remediation option selected in section (1) of this rule.

(5) All samples must be collected in accordance with OAR 340-122-0340 and 340-122-0345.

(6) Evaluation of analytical results must be conducted in accordance with OAR 340-122-0355.

Stat. Auth.: ORS 465.200 - 465.420
Stats. Implemented: ORS 465.260, 465.400
Hist.: New

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment B1**
**Legal Notice of Hearing**

Secretary of State
**NOTICE OF PROPOSED RULEMAKING HEARING**
A Statement of Need and Fiscal Impact accompanies this form.

| | |
|---|---|
| DEQ - Waste Management & Cleanup | Chapter 340 |
| Agency and Division | Administrative Rules Chapter Number |
| Susan M. Greco | (503) 229-5213 |
| Rules Coordinator | Telephone |

811 S.W. 6th Avenue, Portland, OR 97213
Address

| | | | |
|---|---|---|---|
| August 18, 1998 | 1:30 pm | Portland | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 19, 1998 | 3:30 pm | Eugene | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 20, 1998 | 1:00 pm | Medford | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 25, 1998 | 1:00 pm | Ontario | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 26, 1998 | 1:00 pm | Bend | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |

Are auxiliary aids for persons with disabilities available upon advance request?
✓ Yes ☐ No

## RULEMAKING ACTION

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 340-122-0217, 340-122-0218, 340-122-0243, 340-122-0244, and 340-122-0252

OAR Chapter 340, Division 177 - 340-177-0001, 340-177-0005, 340-177-0110, and 340-177-0120

## NOTICE OF PROPOSED RULEMAKING HEARING

**AMEND:**

OAR 340-122-0205, 340-122-0210, 340-122-0215, 340-122-0220, 340-122-0225, 340-122-0230, 340-122-0235, 340-122-0240, 340-122-0242, 340-122-0250, 340-122-0260, 340-122-0320, 340-122-0325, 340-122-0330, 340-122-0335, 340-122-0340, 340-122-0345, 340-122-0355, and 340-122-0360

**REPEAL:**

OAR 340-122-0255, 340-122-0305, 340-122-0310, 340-122-0315, and 340-122-0350

**RENUMBER:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
None

**AMEND AND RENUMBER:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
None

Stat. Auth.: ORS 465.400 and 466.746
Stats. Implemented: ORS 465.200 through 465.455 and 466.706 through 466.835

**RULE SUMMARY**

The proposed rules are revisions to the existing UST Cleanup Rules, OAR 340-122-0205 through 340-122-0360. Rule changes are necessary to ensure consistency with the 1995 cleanup law (HB 3352). This affects acceptable risk levels and the process for achieving risk-based remediation levels. New sections are added for "low impact sites" and Generic Remedies. The revisions include reorganization of the rules for easier reference.

In addition, administrative requirements for releases from residential heating oil tanks are removed from Division 122 and placed in a new Division 177. This will simplify the process for homeowners and heating oil tank contractors.

| | |
|---|---|
| September 4, 1998 | Susan Greco July 15, 1998 |
| Last Day for Public Comment | Authorized Signer and Date |

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment B2**
**Fiscal and Economic Impact Statement**

## Introduction

The proposed rules are revisions to the existing Underground Storage Tank (UST) Cleanup rules, OAR 340-122-0205 through 340-122-0360. Rule changes are necessary to ensure consistency with the amended cleanup law (HB 3352). The overall goal of these revisions is to provide remediation options that cost less, while still being protective of human health and the environment.

Each cleanup project at an UST facility is unique and costs can vary widely, depending on the extent of contamination, whether or not groundwater has been impacted, and numerous other site specific factors. Remediation costs generally range from approximately $5000 for a small facility with soil-only petroleum contamination, to several hundred thousand dollars for a catastrophic leak from a tank that impacted public drinking water. Cleanup project costs can be broken down into four rough categories: 1) investigation, 2) remediation, 3) disposal of contaminated media, and 4) consultation. The new remediation options added by these rule revisions – "low impact site" criteria and Generic Remedies - may have impacts on each of these categories. Overall, these rule changes are expected to reduce cleanup costs by eliminating some evaluation and remediation work where risks are not significant. Complex cleanup projects may be less costly if the new remediation options are applicable. Simple cleanup projects may also cost less if a generic remedy is applicable. Cleanup costs become a business decision that include important factors such as the amount of time that tanks are out-of-service (impacting revenue from gasoline sales) and the costs of ongoing sampling and monitoring requiring the services of professional environmental consultants.

Releases from residential heating oil tanks will see cost benefits in simplified written report requirements (homeowners could complete the forms on their own in many cases). The UST Cleanup Program is considering the development of a Generic Remedy specific to residential heating oil releases, which could reduce sampling and remediation costs.

There have been 5,725 releases reported from regulated USTs and 4,761 releases reported from heating oil tanks as of July, 1998. The deadline for all regulated USTs to be replaced, upgraded, or removed is December 22, 1998. It is anticipated that there will be a large surge in the number of releases reported as result of this deadline. The real estate market continues to be the

major driving force in the increasing number of heating oil releases, as new owners are reluctant to assume possible liability for cleanup.

**General Public**

The general public will not be impacted by these rule revisions. Retail fuel stations are motivated to keep prices competitive, and thus are less likely to rely on increased revenue to compensate for cleanup costs. The majority of costs are incurred within the first year after active remediation is initiated.

Homeowners with either active tanks that leak or abandoned heating oil underground storage tanks that are decommissioned will benefit from these rule revisions by the provision for development of Generic Remedies. The UST Cleanup Program is considering developing a Generic Remedy for residential heating oil releases. Estimated cost savings will not be known until the new remediation option is complete.

**Small Business**

The economic impact on a site by site basis is the same for small business and large business. Oregon law requires that all contamination be cleaned up to protective levels. Approximately 85% of UST removal projects require some cleanup; the cleanup of contamination is a general business expense. For some marginal businesses, the cost to clean up a release that has impacted groundwater or is otherwise severe may cause them to go out of business. Some small businesses may be better able to afford cleanup expenses as a result of these proposed rule changes.

**Large Business**

Large business may see the greatest cost savings by implementation of new remediation options for generic remedy and low impact site criteria because they generally perform several cleanups. The number of facilities owned, and thus the potential cleanup sites, is a large factor in the total cost to a business.

**Local Governments**

Any impacts to local governments would be comparable to either a large or small business, depending on the total number of UST facilities operated.

**State Agencies**

Department of Environmental Quality - No net fiscal impact, but will cause shift in cleanup staff work priorities. Implementing these rule revisions will require that some staff resources be redirected from cleanup project review efforts to training cleanup contractors. Staff hours needed to provide training are estimated to be approximately 40-50 hours for each session, plus travel time and expenses if the training is outside of Portland. One to three training sessions may be scheduled. Additional time may be necessary for written guidance development, including generic remedies.

Depending on the number of cleanup projects that use either the generic remedy or low-impact site options, staff time required to review projects will be reduced. Any reductions in project-specific time will allow a greater number of projects to be reviewed. At the same time, some back-logged projects will be proposed for cleanup approval, displacing other higher priority work. If this is extreme, there could be a need for additional cleanup staff to maintain current levels of environmental protection.

Department of Transportation - The proposed revisions may have both positive and negative fiscal impacts on the Department of Transportation (DOT). As with other UST owners, DOT will very likely benefit from reduced cleanup costs for releases from their own tanks. However, application of less stringent standards at properties along roadways might eventually result in the DOT having to purchase more heavily contaminated properties when future rights-of-way are acquired. If these properties require additional cleanup or engineering controls as part of the highway construction then the rules may result in additional costs for some highway projects.

Other Agencies - Any state agency that owns USTs would be impacted comparable to either a large or small business since these agencies may also benefit from potentially reduced cleanup costs as a result of the rule revisions. Potential savings will depend on the total number of UST facilities operated and on the size of the releases being addressed.

**Assumptions**

Assumptions are set forth in the Introduction.

**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.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment B3**
**Land Use Evaluation Statement**

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

The proposed rules are revisions to the existing UST Cleanup Rules, OAR 340-122-0205 through 340-122-0360. Rule changes are necessary to ensure consistency with the amended cleanup law (HB 3352). This affects acceptable risk levels and the process for achieving risk-based remediation levels. New options are added for "low impact sites" and Generic Remedies. The revisions include reorganization of the rules for easier reference.

In addition, administrative requirements for releases from residential heating oil tanks are removed from Division 122 and placed in a new Division 177. The amount of time the homeowner has to report a release is increased to 72 hours and written report requirements are reduced a single final report in most circumstances. This will simplify the process for homeowners and heating oil tank contractors.

**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:**

Not applicable.

**b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? ☐ Yes ☐ No (if no, explain):**

Not applicable.

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
   a. resources, objectives or areas identified in the statewide planning goals, or
   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:
- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

The proposed rule revisions are not considered to affect land use. The revisions add less costly remediation options and consistency with other agency cleanup programs, but do not impose changes that affect land use.

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

Not applicable.

[original signed by]

| | | |
|---|---|---|
| Mary Wahl | Roberta Young | 7/13/98 |
| Division Administrator | Intergovernmental Coordinator | Date |

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**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. Federal requirements for corrective action at Underground Storage Tank (UST) facilities containing petroleum and other hazardous substances are contained in 40 CFR Part 280 Subparts E and F. Oregon's UST Cleanup rules are based in part on federal requirements, including the federally approved guidance for Risk Based Corrective Action. These revisions are more detailed in describing what actions are necessary for compliance. Federal regulations defer actual cleanup standards to each state.

There are no federal requirements for the cleanup of releases from residential heating oil tanks.

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

Federal requirements for corrective action at regulated UST facilities with a release are performance based.

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

Yes. Federal requirements address the primary reason Oregon is concerned about releases from USTs, in that protection of groundwater resources is the basis for the federal UST program. Data and information used on a national level compares to Oregon - approximately 80% of homes rely on groundwater as either the primary or backup source for drinking water.

**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?**

Federal requirements are very general with only requirements for a corrective action plan (CAP) to address cleanup. The UST Cleanup rule revisions add new alternatives to the CAP, including "low impact site" criteria, Risk-Based Corrective Action, and Generic Remedies. The program has had Soil Matrix Cleanup Requirements for several years. Each of these remedial options have the potential to reduce cleanup costs.

Placing administrative requirements for the cleanup of releases from residential heating oil tanks in a separate Division will make it easier for homeowners to comply. It also reduces the uncertainty that exists as to what specific requirements apply to heating oil releases.

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

Not applicable.

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

Not applicable.

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

All UST cleanup projects have the same remediation options available. Residential heating oil tank cleanups will have streamlined administrative requirements that are appropriate for the (generally) less complex nature of heating oil releases.

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

Not applicable.

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

Oregon's requirements are fundamentally the same as federal, with more detail contained in rule to assist the regulated community in compliance.

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

Not applicable.

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

Pollution prevention is achieved by providing cleanup options that are protective of human health and the environment, as opposed to specific contaminant levels that are applied at all sites. Some contaminated media may be left in some situations, as long as protective measures are in place, such as institutional or engineering controls. When contaminated soil is left in place instead of being exposed to the air during removal actions, air pollution from the volatile organic constituents in petroleum is prevented. Adding more options for remediation methods may result in less costly cleanup actions in many cases. Natural attenuation as a remediation method is often less costly than active cleanup methods, such as pump-and-treat.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment B5**
**Cover Memorandum from Public Notice**

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

**Date:** August 1, 1998

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal and Rulemaking Statements - UST Cleanup Rule Revisions

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt rule amendments regarding Underground Storage Tank (UST) Cleanups. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's (Commission) intended action to adopt a rule.

This proposal would revise the existing Underground Storage Tank (UST) Cleanup rules, OAR 340-122-0205 through 340-122-0360 in the following ways:

- Establish acceptable risk levels consistent with the 1995 cleanup law (HB 3352);
- Create a new category of UST cleanup sites: "low impact sites";
- Include provisions for the development of Generic Remedies;
- Restructure the rules for easier reading and implementation; and
- Establish a new Division 177 for administrative requirements for the cleanup of releases from residential heating oil tanks

The Commission's authority for this rulemaking is ORS 465.400 and 466.746. This rulemaking will implement ORS 465.200 through 465.455 and 466.706 through 466.835.

**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 | List of Cleanup Advisory Committee members |
| Attachment E | Additional information regarding "low impact sites" and Generic Remedy |

**Hearing Process Details**

The Department is conducting five public hearings around the state at which comments will be accepted either orally or in writing. The hearings will be held as follows:

**Date:** August 18, 1998
**Time:** 1:30 pm
**Place:** 811 SW 6th, Room 3A
Portland

**Date:** August 19, 1998
**Time:** 3:00 pm
**Place:** 125 E. 8th, B/C room
Eugene

**Date:** August 20, 1998
**Time:** 1:00 pm
**Place:** 10 South Oakdale, Auditorium
Medford

**Date:** August 25, 1998
**Time:** 1:00 pm
**Place:** 388 SW 2nd, Library
Ontario

**Date:** August 26, 1998
**Time:** 1:00 pm
**Place:** 63055 N. Hwy 97 (ODOT)
Bend

There will be an information session before each hearing. Laurie McCulloch will be the Presiding Officer at the hearings.

**Deadline for submittal of Written Comments:** September 4, 1998
Received by 5:00 pm. at the address below.

Written comments can be presented at the hearings or to the Department any time prior to the date and time above. Comments should be sent to:

Department of Environmental Quality
Attn: Laurie McCulloch
811 SW Sixth 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 be 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 Commission 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 Commission as originally proposed or with modifications made in response to public comments received. The Department will specifically review comments on the "low impact site" option and make a decision whether to keep this remediation option in rule or as a Generic Remedy. Refer to Attachment F for more detail.

The Commission 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 October 29-30, 1998 in Ontario, Oregon. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final Commission action if you present oral testimony at one of the hearings 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 or check for updates on the Department's UST Cleanup Program Web Page.

**Background on Development of the Rulemaking Proposal**

**Why is there a need for the rule?**

Revisions to the UST Cleanup rules are required to ensure consistency with 1995 amendments to the cleanup law (HB 3352) and provide requirements for risk based corrective action cleanup projects. In addition, two new sections have been added that will provide UST owners new options for remediation: "low impact site" criteria, and Generic Remedies.

To simplify the process for releases from residential heating oil tanks, administrative requirements have been pulled out of Division 122 and placed in a new Division 177. The period of time the homeowner has to report a release has been increased to 72 hours. For most situations, written report requirements have been reduced to one single report due when cleanup is complete.

**How was the rule developed?**

The rule revisions were developed using a Cleanup Advisory Committee to provide policy guidance and input, and a Technical Work Group comprised of external remediation experts and petroleum industry representatives. An Internal Work Group, comprised of senior UST Cleanup Specialists, was formed to ensure the proposed rules can be implemented appropriately.

House Bill 3352 was the cornerstone for some revisions to the UST Cleanup Rules. In accordance with ORS 183.335(2)(b)(D), this document may be reviewed by contacting Laurie McCulloch by one of the means listed at the end of this memorandum. No other documents were relied upon in this rulemaking.

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

These rule revisions primarily affect owners of underground storage tanks leaking petroleum to the environment, and consultants and licensed service providers who provide services to the UST owners. State and other local government agencies may be affected if the agency is an owner of an underground storage tank(s). Homeowners with a leaking residential heating oil tank are also impacted.

The rule revisions impact all owners of underground storage tanks by adding new remediation options that can potentially decrease the costs of remediation of contaminated soil and groundwater. In addition, homeowners with a residential heating oil tank that leaks will benefit from reduced and simplified administrative requirements. The UST Cleanup Program is considering development of a generic remedy for residential heating oil tank releases which would have the potential to decrease remediation costs.

**How will the rule be implemented?**

Upon adoption, copies of the revised rules will be available to the regulated community and the public. UST owners and licensed service providers will be notified by direct mail notices. The final rules will be published by the Secretary of State and on the Internet via the UST Program's Web Page. Training sessions for UST owners and cleanup service providers and consultants will be offered in early 1999 to help explain the revisions and answer questions.

Homeowners will be notified by direct mail from a mailing list that has been developed during the last year. The Department will also issue press releases as appropriate.

**Are there time constraints?**

No. However, December 22, 1998 is the final deadline for all regulated USTs to be upgraded, replaced, or removed. A surge in reported releases is anticipated as a result of this deadline. Adoption of the revised rules prior to this date will allow UST cleanup projects to benefit from the new remediation options, which may cost less in many cases.

**Contact for More Information**

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

Laurie McCulloch
UST Policy Coordinator
811 SW Sixth Avenue
Portland, OR 97204
503-229-5769 Phone

503-229-6954 Fax
EMAIL: mcculloch.laurie.j@deq.state.or.us
Toll Free: 1-800-742-7878 (answering machine, please leave message)

Or visit the UST Cleanup Program Web Page at:

**http://www.deq.state.or.us/wmc/tank/ust-lust.htm**

**Copies of the draft rules will be available after August 1, 1998**

On the UST Cleanup Program Web Page or hard copy by request

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment C**
**Presiding Officer's Report**
**On Public Hearing**

State of Oregon
Department of Environmental Quality — Memorandum

To: Environmental Quality Commission — Date: September 30, 1998

From: Laurie J. McCulloch, UST Program

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: UST Cleanup Rule Revisions

Five separate rulemaking hearings on the proposed revisions to the Underground Storage Tank Cleanup rules were held around the State. At each meeting, people were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Prior to receiving testimony, Michael Anderson briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

| | |
|---|---|
| Hearing Date and Time: | August 18, 1998, beginning at 1:30 pm, ending at 2:10 pm |
| Hearing Location: | Portland |
| Number of People in Attendance: | 5 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 19, 1998, beginning at 3:08 pm, ending at 3:30 pm |
| Hearing Location: | Eugene |
| Number of People in Attendance: | 4 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 20, 1998, beginning at 1:05 pm, ending at 1:40 pm |
| Hearing Location: | Medford |
| Number of People in Attendance: | 2 |
| Number of People Giving Testimony: | 0 |

UST Cleanup Rule Revisions
Presiding Officer's Report on Public Hearing

| | |
|---|---|
| Hearing Date and Time: | August 25, 1998, scheduled to begin at 1:00 pm |
| Hearing Location: | Ontario |
| Number of People in Attendance: | 0 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 26, 1998, scheduled to begin at 1:00 pm |
| Hearing Location: | Bend |
| Number of People in Attendance: | 1 |
| Number of People Giving Testimony: | 0 |
| | Note: No hearing was actually held as the one person attending had planned to attend the UST Compliance hearing. |

## Summary of Oral Testimony

No persons gave oral testimony at any of the five hearings.

## Written Testimony

No person handed in written comments during the public hearings. Five people submitted written comments during the public comment period. All five expressed a general approval of the rule changes. One person submitted comments after the September 4, 1998 5:00 pm deadline. However, their comments were exactly the same as Commentator No. 5, except for the cover page.

Commentator No. 1 - Mr. Mike Hawkins' (Hawk Oil Company) comments centered on the "low impact site" section of rules (certain criterion "too strict", some editorial suggestions, and interested in wording of "closure letter") and the "generic remedy" section (need to see what one looks like before commenting, but concerned about interpretation).

Commentator No. 2 - Mr. Chris Wohlers (Wohlers Environmental Services, Inc.) had several comments regarding specific sections of the rules, including removal of 340-122-0242 (suggests guidance on rule changes instead), low impact sites (several very specific recommendations), and use of risk based concentrations (some constituent concentrations may be too strict).

Commentator No. 3 - Mr. Larry Duckett (OPMA) commented on the "low impact site" section (keep section in rule and develop a generic remedy), use of the term "sheen" (should be clarified what it means in different context), and the term "well" should be further defined (suggested "water supply well points").

Commentator No. 4 - Mr. Daniel Riley (WSPA) provided several very specific comments on several sections of the rules. In addition, a general comment was made that the "low impact site" section be kept both in rule and by a generic remedy. Mr. Riley was also concerned how certain

parts of the rules would be implemented (i.e. whether there was discretion in some requirements, such as information required during the site characterization phase).

Commentator No. 5 - Mr. John Riedl (ODOT) provided very general comments regarding possible implementation of the proposed rules at sites affecting public right-of-way, sites where engineering or institutional controls are used, and what might be the impact if the rules were used for above ground petroleum releases. In addition, Mr. Riedl had concerns about any changes in the definition of "responsible party" and that low impact sites with moderately high total petroleum hydrocarbon levels may have constituents that are mobile in certain soil conditions.

DEQ's response to these comments will be contained in the Staff Report to the Commission.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment D**
**Department's Evaluation of Public Comments**

Public comments are summarized below along with the Department's responses. Copies of the complete comments are available on request. Please refer to the Presiding Officer's Report (Attachment C) for information about the public comment period and hearings.

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**General Comments**

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COMMENT: All five commenters offered general remarks about the proposed rule package that were favorable. Commenter #1 was "extremely grateful the DEQ is finally recognizing" studies that show the impact of natural attenuation. Commenter #2 appreciated the Department's efforts to "provide practical modifications to the existing cleanup rules..." Commenter #3 appreciated "the recognition of 'low impact' sites and the attempt to simplify" work with such sites. Commenter #4 felt that the proposed rule package "is a very positive rule change in that it allows sites to be remediated to the degree necessary to manage real risk..." Commenter #5 stated that the proposed rules "will generally have a positive impact..." on UST cleanups.

RESPONSE: No response.

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COMMENT: The majority of comments submitted by Commenter #5 have to do with implementation and policy issues such as the possible use of these rules by the spill response program, dealing with contamination that migrates onto highway rights-of way, and the need for future vigilance at sites where contamination remains in place under engineering or institutional controls.

RESPONSE: The Department agrees with these concerns and will be working within the agency as well as with other state agencies such as the Department of Transportation to consider these factors when developing policy and guidance on the rule package. However, no change is being proposed to the rules as a result of these comments.

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**OAR 340-122-0210**

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COMMENT: Commenter #5 expressed concern about the change to the definition of "responsible party" to now include the term "owner" under ORS 466.706(13).

RESPONSE: Although the wording in the proposed rules was changed to simplify the text, the parties regulated by these rules have not changed. The existing rules use the phrase "owner, permittee or responsible person." The proposed revisions simply use the phrase "responsible person." In order to maintain the same coverage the term "responsible person" has now been defined to *include* owners and permittees. Therefore, there is actually no change in who is covered by the rules. No change is being proposed as a result of this comment.

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**OAR 340-122-0218**

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COMMENT: Commenter #4 states that OAR 340-122-0218(1)(b) requires that all samples be tested for all contaminants of concern, and recommends that the rule allow for use of indicator compounds or elimination of some compounds from certain samples.

RESPONSE: The proposed rules do not require all samples collected on a project to be tested for all contaminants of concern. Only samples used to show that cleanup levels have been attained must meet this requirement. OAR 340-122-0218(1) gives responsible parties the option of using expedited site assessment methods as long as "samples used to demonstrate compliance with remediation levels" are collected and analyzed according to the rules. Additional clarification will be provided in guidance. No change is being proposed as a result of this comment.

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COMMENT: Commenter #4 recommends that the requirement in OAR 340-122-0218(1)(b)(B) for sampling lead be changed to "dissolved lead."

RESPONSE: Existing UST cleanup rules require analysis of groundwater samples for "dissolved" lead instead of "total" lead. When sampling requirements were consolidated into OAR 340-122-0218 in the proposed rules the specific requirement for "dissolved" lead was inadvertently omitted. The Department agrees that this should be retained and has proposed revisions.

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**OAR 340-122-0225**

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COMMENT: Commenter #4 would like the Department to include an allowable time period for staging soils on site during excavation and preparation of reports and permits.

RESPONSE: The Department considered this idea with the advisory committee during the development of the proposed rules. Although the committee was generally in favor of specifying an allowable time for on-site soil storage, the Department's Solid Waste Program indicated that specifying such a time would conflict with solid waste rules. A change is being proposed to clarify the need for responsible parties to be in compliance with solid waste rules. The Department feels that the issue of on-site soil storage time can be adequately addressed in guidance.

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**OAR 340-122-0230**

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COMMENT: Commenter #4 suggests that a reference be provided for determining the "presence of a certified drinking water protection area."

RESPONSE: Since certified drinking water protection areas are relatively new, the Department agrees that it would be helpful to provide a reference. A note has been inserted into the rules to provide this information.

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**OAR 340-122-0240**

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COMMENT: Commenter #4 notes that OAR 340-122-0240(1)(a) and (b) require characterization of the magnitude and extent of contamination. This commenter asks if it is necessary to determine the extent out to non-detect concentrations.

RESPONSE: The requirement to determine the extent of contamination is not a new one, nor is the question of how far does a responsible party have to go to determine it. The Department feels that flexibility is needed in this matter and that specifying what "extent" means in rule, either by requiring non-detect or some set of specified detectable values, may end up being too stringent in some cases or not enough in others. This is an important issue, however, and the Department intends to cover it in guidance and training. No change is being proposed as a result of this comment.

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COMMENT: Commenter #4 asks why OAR 340-122-0240(2)(c)(B) requires collection of water elevations at all wells and suggests that the rule be rewritten to only require elevations from a minimum of three wells with additional wells if needed.

RESPONSE: The Department feels that initially water table elevations should be measured from all wells to obtain the best information about the local groundwater flow. Groundwater does not always behave so ideally that it sits in a perfect plane defined by three points. The rule already states that such measurements are required "unless the Department has approved measurements from a reduced number of wells that provide sufficient data for the determination of the groundwater flow direction." Therefore, the Department feels that sufficient flexibility is provided for responsible parties to reduce such measurements where appropriate. No change is being proposed as a result of this comment.

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COMMENT: Commenter #4 recommends that a section be added between OAR 340-122-0240(2)(a) and (b) which states that indicator compounds approved by the Department can be used during the cleanup and monitoring phases of a project.

RESPONSE: The Department agrees with this approach and already provides for it in a number of places in the proposed rule package. Both OAR 340-122-218(1) and 340-122-240(1)(d) state that expedited site assessment techniques are allowed. Also, OAR 340-122-0250(4)(b) gives the responsible party the option of proposing monitoring or remedial action that "might not require sampling from all wells or monitoring for all contaminants detected during the investigation, provided" that certain conditions are met. This will also be covered in guidance and training. No change is being proposed as a result of this comment.

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**OAR 340-122-0242**

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COMMENT: Commenter #2 discusses the proposed removal of this rule and in particular the "fast-track" groundwater cleanup numbers that it contains. It is recommended that the Department be prepared to emphasize that these numbers are no longer available for use at UST sites (*e.g.*, no more five parts per billion benzene cleanup number).

RESPONSE: The Department agrees that this is a significant change. However, changes to ORS 465 due to HB 3352 (1995) require the Department to make decisions based on current and reasonably likely beneficial uses of groundwater. Therefore, it is no longer appropriate to require all groundwater contamination to be cleaned up to

drinking water standards. This will be covered in training and guidance. No change is being proposed as a result of this comment.

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**OAR 340-122-0243**

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COMMENT: Commenter #2 recommends that the Department retain the low-impact site (LIS) requirements in rule rather than convert them into a generic remedy. Commenter #3, however, believes that the Department should not only retain the rule, but also develop a generic remedy.

RESPONSE: Based on comments received and on earlier discussions with the Cleanup Advisory Committee, the Department feels that the best option is to keep the low-impact site requirements in rule. However, a sunset clause is being proposed which will allow the Department to develop a generic remedy to replace the LIS rule if needed to correct any problems that may arise during implementation.

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COMMENT: Commenters #1, #2 and #3 believe that limiting low-impact sites to those with no more than "sheen" in the tank pit is too restrictive of a requirement in OAR 340-122-0243(1)(c). Some other term like "minimal amounts of … product" might be better.

RESPONSE: The Department agrees that this wording is likely to be too restrictive. Alternative wording is being proposed.

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COMMENT: Commenters #1 and #2 said that 1000 ppm TPH for gasoline is too low of a limit in OAR 340-122-0243(1)(d), the low-impact site rules. TPH levels that low often contain little benzene. They suggested that 2000 ppm is a more reasonable TPH level for gasoline.

RESPONSE: The Department selected the 1000 ppm TPH level on the basis of petroleum product mobility, not on the basis of benzene content. To be a low-impact site the contamination remaining at the site must be immobile. The Department feels that gasoline at concentrations higher than 1000 ppm is still very likely to be mobile and therefore should not be allowed to remain at low-impact sites. It should be noted that 1000 ppm TPH gasoline often has very high levels of benzene, but that is addressed by a different part of the rule. No change is being proposed as a result of this comment.

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COMMENT: Commenters #1 and #2 think that the concept presented in OAR 340-122-0243(1)(g)(A) and (B) is OK, but that the existing volatilization numbers are too strict.

RESPONSE: The volatilization numbers mentioned in this comment are not part of the rule. However, the Department is currently reviewing all of these generic standards and will make adjustments where appropriate. No change is being proposed as a result of this comment.

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COMMENT: Commenter #1 recommends that the word "and" be replaced with "or" in OAR 340-122-0243(1)(g)(C) and (1)(h)(E)(iii). In both of these locations it would change the requirement to "monitor for and mitigate potential vapor problems" to "monitor for or mitigate potential vapor problems."

RESPONSE: It is not the Department's intention to always require both monitoring and mitigation under the conditions covered by this section of the rules. Rather, the responsible party would be required to monitor and, if a problem is discovered as a result of that monitoring, then take whatever actions are necessary to correct the problem. Changes are proposed to clarify the Department's intent.

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COMMENT: Commenters #1 and #2 believe that one-quarter mile is too strict of a distance requirement for upgradient wells from low-impact sites (OAR 340-122-0243(1)(h)(A)).

RESPONSE: This screening requirement does not distinguish between upgradient and downgradient wells since the Department wanted it to be easily applied even at sites where there are very limited hydrogeological data. Also, the presence of nearby water supply wells may indicate likely future use of groundwater in the area. Such areas are not appropriate for the streamlined approach and less stringent standards used in the low-impact site rule. Note, however, that this would only rule out sites with groundwater contamination. Soil-only sites could use the low-impact site option even if water supply wells are within one-quarter mile. No change is being proposed as a result of this comment.

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COMMENT: Commenters #2, #3 and #4 think that the term "well" in OAR 340-122-0243(1)(h)(A) is too broad or generic. Commenter #2 suggests that it be defined as "domestic or community water supply well." Commenter #4 suggests that "no wells" be replaced with "no beneficial-use wells" to exclude monitoring wells.

RESPONSE: The Department agrees that the wells covered by this section should not include monitoring wells. Alternative wording is being proposed.

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COMMENT: Commenter #1 feels that OAR 340-122-0243(5) which requires public comment for low-impact sites is OK, but suggests that "and the public" be deleted from 0260(2), the public participation section.

RESPONSE: Deleting "and the public" would limit the Department's public notice requirements to "affected property owners." This is a more limited notice than is required by statute, and would be counter to the Department's policy of keeping all interested parties informed. No change is being proposed as a result of this comment.

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COMMENT: Commenters #1 and #2 recommend that the Department's closure letter for low-impact sites be worded to assure potential buyers, lenders and/or landlords.

RESPONSE: This is not a comment on the rule since the wording of the letter is not specified in rule. However, the Department agrees that this is an important issue and is currently working with industry to develop a draft letter that will meet the concerns of both the Department and property owners. No change is being proposed as a result of this comment.

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COMMENT: Commenter #5 indicated that low-impact sites can have moderately high total petroleum hydrocarbon (TPH) levels and feels that the constituents can be considered mobile contaminants in certain soil conditions.

RESPONSE: The Department agrees that in some cases the TPH levels allowed in the low-impact site rule can have high levels of mobile contaminants. It is for this reason that a site investigation is required and a number of other conditions are included in the low-impact site rule. For example, if there is groundwater contamination at the site, data must confirm that the plume is not moving. Also, if there are potential vapor problems they must be controlled or in a location where they are not resulting in unacceptable risk. The higher TPH levels are only allowed if all of the other conditions in the rule are met. No change is being proposed as a result of this comment.

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**OAR 340-122-0244**

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COMMENT: Commenter #2 is optimistic about the implementation of the risk-based procedures in this rule. However, this commenter recommends that the generic standards developed as required in OAR 340-122-0244(2)(a) be developed with industry and other experts. There is particular concern that the volatilization pathway numbers are too strict. Commenter #3 also recommends that these screening levels be less restrictive.

RESPONSE: The Department will be developing the generic standards as part of a generic remedy. The volatilization pathway will be reviewed along with the other exposure pathways. The Department intends to provide opportunity for review and comment before finalizing these standards. No change is being proposed as a result of this comment.

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COMMENT: Commenter #4 suggests that the Department specify a date or schedule for development of the generic standards specified in OAR 340-122-0244(2)(b).

RESPONSE: The Department is already in the process of developing the generic risk-based standards specified in this rule. In the meantime, however, it has had interim risk-based standards in place since April 1996. Therefore, standards will be available at the time of rule adoption. No change is being proposed as a result of this comment.

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COMMENT: Commenter #4 recommends that the "threatened and endangered species" screening in OAR 340-122-0244(3) be clarified.

RESPONSE: The purpose of 0244(3) is to screen out those sites that are unlikely to have any ecological impact while still allowing the Department to step in if there are ecological concerns, including potential risk to threatened and endangered species. Since it is expected that very few UST sites will require additional ecological risk assessment and since guidance documents on ecological risk assessments are already available, the Department does not feel that providing additional details in rule is necessary. However, a minor wording change is proposed to clarify the requirement.

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**OAR 340-122-0250**

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COMMENT: Commenter #4 thinks that "For" should be replaced by "Current, or future potential" and "remediation levels avoiding such significant adverse effects," should be deleted from OAR 340-122-0250(2)(b).

RESPONSE: This proposed change would not alter the intent of the rule, but would simplify some awkward wording. Revisions are proposed to clarify the wording.

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COMMENT: Commenter #4 believes that requirements (A) and (C) in OAR 340-122-0250(4)(a) are contradictory. This commenter suggests that (A) be rewritten to say "perimeter compliance monitoring points should be established surrounding the contaminant source, outside of which remediation levels must be attained and maintained." It is further recommended that (C) state that "at least one compliance point must be established which reflects contaminant concentrations in the source area."

RESPONSE: The Department believes that (A) and (C) are not contradictory since they set the limits for the establishment of compliance points. On the one hand, compliance points must surround the source of contamination (as stated in A). On the other hand, they cannot be so far out from the source that they would not reasonably be expected to detect contamination (as stated in C). The Department agrees that at least one monitoring point should reflect concentrations in the source area, but does not think that this should necessarily be a compliance point. Some wording changes have been proposed to clarify these matters.

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**OAR 340-122-0252**

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COMMENT: Commenter #1 said that it is not possible to comment on the generic remedies proposal since no details are given. This commenter also expressed concern that generic remedies are not "locked in place."

RESPONSE: The generic remedy rule provides no details on how to perform cleanups because the purpose is to define the conditions under which the Department can develop additional *future remedies* outside of rule. Public involvement will be provided for generic remedies, including changes to any existing remedies, so the fact that they are not in rule (not "locked in place") does not mean that they will be changed arbitrarily or without appropriate input. This ability to provide additional remedies will allow the Department to respond more rapidly to changes in

technology, updated risk information, new petroleum additives and other factors that might require new remedies. Although no change to the proposed rules is suggested as a result of this comment, the Department does intend to keep the industry and the public informed and involved so that their concerns can be addressed when specific generic remedies are being developed.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment E**
**Detailed Changes to Original Rulemaking Proposal**
**Made in Response to Public Comment**

Listed below by rule number are recommended changes to the public comment draft.

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**OAR 340-122-0210(7)**

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Recommended — ""Certified Drinking Water Protection Area' is an area that has been delineated by the Oregon Health Division in accordance with OAR 333-061-0057 and certified by the Department in accordance with OAR 340-040-0180. Note: To obtain information about certified drinking water protection areas, contact the Oregon Health Division's Drinking Water Program (503-731-4010)."

Hearing Proposal — ""Certified Drinking Water Protection Area' is an area that has been delineated by the Oregon Health Division in accordance with OAR 333-061-0057 and certified by the Department in accordance with OAR 340-040-0180."

Reason — Since certified drinking water protection areas are relatively new, the Department agrees with the comment that it would be helpful to provide a reference in the rule so that interested parties can easily obtain additional information.

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**OAR 340-122-0218(1)**

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Recommended — It is recommended that the following additional language be inserted between sections 0218(1)(b) and (c) in the public comment draft: "Groundwater samples collected for the purpose of testing for lead must be filtered immediately upon collection using a 0.45 micron filter and analyzed for dissolved lead."

Hearing Proposal — This requirement was not included in the hearing proposal.

Reason — This is needed to clarify that the UST Cleanup Program requires testing groundwater samples for dissolved lead rather than total lead. This requirement is in the current UST cleanup rules but was inadvertently omitted from the public comment version when the analytical methods were consolidated into one section. One comment was received which recommended that the Department specify dissolved lead for groundwater samples.

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**OAR 340-122-0225(2)**

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Recommended — "Contaminated soil shall be managed in accordance with solid waste regulations."

Hearing Proposal — "Contaminated soil may not be stored on-site unless the Department approves on-site treatment or storage."

Reason — The wording in the hearing proposal may have resulted in responsible parties being out of compliance with the rules any time soil was excavated and placed on site without having obtained a permit ahead of time. The recommended wording avoids that problem while still making parties aware that solid waste regulations apply to soil piles. The same wording change is proposed for OAR 340-177-0110(3)(c) to ensure consistent handling of soils from residential heating oil tanks.

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**OAR 340-122-0243**

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Recommended — "If the Department develops a generic remedy for low-impact sites in accordance with OAR 340-122-0252, then the low-impact site requirements specified in this rule (OAR 340-122-0243) will no longer be in effect. Until such time as a low-impact site generic remedy is in effect, the steps for low-impact closure are described below."

Hearing Proposal — "The steps for low-impact closure are described below."

Reason — The Department considered the option of developing a generic remedy for low-impact sites instead of incorporating the requirements in rule. Given that the low-impact site classification is entirely new and there are still some questions about what specific conditions should be required, a generic remedy would allow the Department to provide such an alternative while

still having the flexibility to efficiently modify some of the requirements if improvements are needed. Some were concerned, however, that it might take the Department too long to develop a generic remedy and therefore preferred keeping the requirements in rule. The Department feels that by putting the requirements in rule with a sunset clause, it can incorporate the best features of the two options. Having the LIS requirements in rule ensures that this alternative will be available immediately upon adoption of the rules. The sunset clause will allow the Department to develop a generic remedy in the future if one is needed to make improvements to that alternative. (For additional discussion of the low-impact site option, please see Attachment H.)

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**OAR 340-122-0243(1)(c)**

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Recommended — "Other than minimal amounts of petroleum product in the tank pit at the time of tank removal, no measurable free product was found on the groundwater."

Hearing Proposal — "Other than a petroleum-derived sheen in the tank pit at the time of tank removal, no measurable free product was found on the groundwater."

Reason — The Department agrees with comments received that using the observation of a sheen as a screening level is too stringent of a requirement for low-impact sites.

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**OAR 340-122-0243(1)(g)(C)**

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Recommended — "Department-approved actions have been taken to mitigate potential vapor problems."

Hearing Proposal — "Department-approved actions have been taken to monitor for and mitigate potential vapor problems."

Reason — A comment was received suggesting that the Department change "and" to "or" in this part of the proposed rule. Upon consideration of this comment the Department concluded that the option to monitor for a vapor problem was already covered in the previous paragraph which states: "It is demonstrated that potential exposure from volatilization into buildings from this contamination does not exceed acceptable risk levels." Therefore, the condition to monitor was deleted from this paragraph.

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**OAR 340-122-0243(1)(h)(A)**

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Recommended — "There are no water supply wells located within one-quarter mile of the source of contamination;"

Hearing Proposal — "There are no wells located within one-quarter mile of the source of contamination;"

Reason — Without this additional qualification monitoring wells would be included in the restriction.

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**OAR 340-122-0243(1)(h)(E)(iii)**

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Recommended — "Department-approved actions have been taken to mitigate potential vapor problems."

Hearing Proposal — "Department-approved actions have been taken to monitor for and mitigate potential vapor problems."

Reason — This is the same change that is recommended and discussed above for OAR 340-122-0243(1)(g)(C).

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**OAR 340-122-0244(3)**

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Recommended — "Risk-based concentrations for protection of the environment must be developed if contamination poses a potential risk exceeding the acceptable risk levels for ecological receptors. Unless the Department determines that screening is required for threatened and endangered species, screening for potential ecological impact is not required if:"

Hearing Proposal — "Risk-based concentrations for protection of the environment must be developed if contamination poses a potential risk exceeding the acceptable risk levels for ecological receptors unless the Department determines that screening is required for threatened and endangered species. Screening for potential ecological impact is not required if:"

Reason — This change is proposed to make this requirement easier to understand.

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**OAR 340-122-0250(1) and (12)**

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Recommended

"(1) Subject to section (12) of this rule, a responsible person proposing to remediate a site to risk-based remediation levels must submit a corrective action plan for responding to contaminated soil and groundwater."

"(12) The requirement that a corrective action plan be used does not apply to low-impact site closures, or to generic remedies unless specified by the Department in generic remedy guidance. However, the Department may require that a corrective action plan be developed and implemented for sites being considered for remediation under the soil matrix cleanup options (OAR 340-122-0320), as low-impact sites (OAR 340-122-0243), or under generic remedies (OAR 340-122-0252) if, upon review of available information, the Department determines that conditions at the site are not appropriate for the initial proposed remedial option or the proposal does not provide adequate protection to human health, safety, and welfare and the environment."

Hearing Proposal

"(1) A responsible person proposing to remediate a site to risk-based remediation levels must submit a corrective action plan for responding to contaminated soil and groundwater."

"(12) The Department may require that a corrective action plan be developed and implemented for sites being considered for remediation under the soil matrix cleanup options (OAR 340-122-0320), as low-impact sites (OAR 340-122-0243), or under generic remedies (OAR 340-122-0252) if, upon review of available information, the Department determines that conditions at the site are not appropriate for the initial proposed remedial option or the proposal does not provide adequate protection to human health, safety, and welfare and the environment."

Reason

The Department wanted to clarify when corrective action plans are required. They are not required every time risk-based cleanup levels are applied, but are required when risk-based numbers are used outside of low-impact site closures or generic remedies.

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**OAR 340-122-0250(2)(b)**

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Recommended — "Current or future reasonably likely significant adverse effects to beneficial uses of groundwater or surface water not addressed by risk-based concentrations under subsection (a) of this section;"

Hearing Proposal — "For significant adverse effects to beneficial uses of groundwater or surface water not addressed by risk-based concentrations under subsection (a) of this section, remediation levels avoiding such significant adverse effects;"

Reason — This change is proposed to make this requirement easier to understand.

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**OAR 340-122-0250(4)(a)(C)**

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Recommended — "Compliance monitoring points must be located close enough to the source of contamination so that they reasonably detect contamination, if present;"

Hearing Proposal — "Compliance monitoring points must be located as close as practicable to the source of contamination so that they reasonably detect contamination, if present;"

Reason — This change is proposed to make this requirement easier to understand.

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**OAR 340-122-0250(4)**

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Recommended — It is recommended that the following be inserted between (4)(a) and (b): "At least one monitoring point must be included which reflects contaminant concentrations in the source area."

Hearing Proposal — This requirement was not included in the hearing proposal.

Reason — A comment was received on this matter and the Department agrees that in addition to the compliance points on the perimeter, the source of contamination should also be monitored.

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**OAR 340-122-0260(2)**

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Recommended

"For each confirmed release that requires a corrective action plan under OAR 340-122-0250, or that requires implementation of engineering or institutional controls for designation as a low-impact site under OAR 340-122-0243 or as part of a generic remedy under OAR 340-122-0252, the Department shall provide notice to affected property owners and the public. This notice may include but is not limited to public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff."

Hearing Proposal

"For each confirmed release that requires implementation of engineering or institutional controls as part of a low-impact site closure under OAR 340-122-0243, a corrective action plan under 340-122-0250, or a generic remedy under OAR 340-122-0252, the Department shall provide notice to affected property owners and the public. This notice may include but is not limited to public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff."

Reason

The Department did not want to limit public notice on corrective action plan sites to only those which require engineering or institutional controls. Corrective action plan sites typically include the more complex sites and the Department feels that all such sites should require public notice.

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**OAR 340-122-0260(3)**

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Recommended

"For each confirmed release, the Department, upon written request by ten or more persons or by a group having ten or more members, shall conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding proposed remedial activities, except for those activities conducted under OAR 340-122-0320 through 340-122-0360."

Hearing Proposal

"For remedial measures requiring public notice under subsection (2), the Department, upon written request by ten or more persons or by a group having ten or more members, shall conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding proposed remedial activities."

Reason — The Department did not want to limit the public's right to comment to only those sites for which formal public notice has been given. Therefore it is recommending that the existing rule language be retained.

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**OAR 340-177-0110(1)**

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Recommended — "Within 72-hours after a confirmed release from a residential heating oil tank is identified, the responsible person must take the following initial abatement actions for any release which has or may result in a sheen on surface water or groundwater, any below-ground release, any above-ground release in excess of 25 gallons, or any above-ground release of less than 25 gallons if the responsible person is unable to contain or clean up the release within 24 hours:"

Hearing Proposal — "Within 72-hours after a confirmed release from a residential heating oil tank is identified, the responsible person or service provider must take the following initial abatement actions for any release which has or may result in a sheen on surface water or groundwater, any below-ground release, any above-ground release in excess of 25 gallons, or any above-ground release of less than 25 gallons if the responsible person is unable to contain or clean up the release within 24 hours:"

Reason — The words "or service provider" were removed since a service provider is not legally responsible for carrying out the specified actions.

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**OAR 340-177-0110(3)(c)**

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Recommended — "Remedy any hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or remediation. If remediation includes treatment or disposal of contaminated soils, the responsible person and service provider must comply with all applicable state and local requirements. Excavated contaminated soil shall be managed in accordance with solid waste regulations."

Hearing Proposal — "Remedy any hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or remediation. If remediation includes treatment or disposal of contaminated soils, the responsible person and service provider must comply with all applicable state and local requirements. Excavated contaminated soil cannot

be stored on-site unless the Department approves on-site treatment or storage."

Reason — This is the same change that is recommended and discussed above for OAR 340-122-0225(2).

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**OAR 340-177-0120(1)**

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Recommended — "Depending on the extent of contamination and other relevant factors, the responsible person must determine which type of remediation option is best suited for the release, using the following:
(a) Soil Matrix, OAR 340-122-0320 through 340-122-0360;
(b) Risk-Based, OAR 340-122-0244 and Corrective Action Plan, 340-122-0250; or
(c) Generic Remedy, as approved by the Department pursuant to OAR 340-122-0252 and as applicable to residential heating oil tank releases."

Hearing Proposal — "Depending on the extent of contamination and other relevant factors, the responsible person must determine which type of remediation option is best suited for the release, using the following:
(a) Soil Matrix, OAR 340-122-0320 through 340-122-0360;
(b) Low Impact Site, OAR 340-122-0243;
(c) Risk-Based, OAR 340-122-0244 and Corrective Action Plan, 340-122-0250; or
(d) Generic Remedy, as approved by the Department pursuant to OAR 340-122-0247 and as applicable to residential heating oil tank releases."

Reason — The reference to the low-impact site rule was deleted since that is designed for operating stations or other similar industrial sites and is not meant for use at residential sites. Also, the citation for the generic remedy rule was incorrectly listed as OAR 340-122-0247 and was changed to 340-122-0252.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment F**
**Advisory Committee Membership**

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment G**
**Rule Implementation Plan**

Summary of the Proposed Rule

The proposed rules are revisions to the existing UST Cleanup Rules, OAR 340-122-0205 through 340-122-0360. Rule changes are necessary to ensure consistency with the Cleanup Law (HB 3352). This affects acceptable risk levels and the process for achieving risk-based remediation levels. New sections are added for Low Impact Sites and Generic Remedies. The revisions include reorganization of the rules for easier reference.

In addition, administrative requirements for releases from residential heating oil tanks are removed from Division 122 and placed in a new Division 177. This will simplify the process for homeowners and heating oil tank contractors. The development of a generic remedy for these type of releases is proposed for completion in early 1999.

Proposed Effective Date of the Rule

Rules become effective upon filing with the Secretary of State's Office, as soon as possible after the October 29-30, 1998 EQC meeting. This is expected to be approximately November 5, 1998.

Proposal for Notification of Affected Persons

Upon adoption of the proposed rules, the following notifications will be made:

a) Direct mailing to all licensed UST Matrix Cleanup Service providers (in conjunction with notices regarding changes to UST Compliance rules);
b) Publish articles in TANKLINE (UST Program bulletin) for first 1999 edition;
c) Notify organizations that have expressed interest in DEQ UST activities (e.g. Oregon Gasoline Dealers Association, Oregon Petroleum Marketers Association, etc.);
d) Mail information directly to persons on the "cleanup interested parties" list developed during the rule revision process, plus Cleanup Advisory Committee members, and Technical Work Group members;
e) Work with Public Affairs section to draft and distribute a news release; and
f) Place information on WMC UST Program web page, including copy of final rules.

Proposed Implementing Actions

Develop necessary guidance and/or policy documents for final distribution once rules are adopted. Some examples of areas where guidance are anticipated are: residential heating oil tank releases, low impact sites, generic remedies, deed restrictions, and public notice process. Internal UST staff will be polled during October Statewide Meeting to determine any additional areas where guidance or policy is needed. In addition, comments received during the public notice process will be used to help focus areas needing clarification with guidance/policy for external issues.

Staff are continuing to review draft rules for any additional implementation issues to be resolved, including internal data entry and site tracking for reporting purposes (to internal management, public, regulated community, and EPA).

Proposed Training/Assistance Actions

a) Initial rule review with all UST staff during semi-annual Statewide Meeting, tentatively scheduled for October 20-21, 1998;
b) Hold training sessions with staff (~2-4 hours each) on specific new issues, such as residential heating oil tank releases, generic remedies, and low impact sites. Sessions would be scheduled for January through March, 1999. This training is essential to insuring consistent application of the rules statewide. Other specific issues may be identified and training sessions held as necessary; and
c) As resources allow, develop a plan for and hold training sessions for the regulated community of UST owners and remediation consultants and contractors. Timing of training would be considered for maximum benefit to the regulated community, balanced by DEQ resources. It is anticipated that agency efforts expended for this training will result in less time spent by staff in report reviews, technical assistance, and rule interpretations.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Cleanup Rule Revisions

**Attachment H**
**Development of the Low-Impact Site Option**

The primary goal of the proposed changes to the underground storage tank (UST) cleanup rules is to provide more options for dealing with petroleum releases while maintaining adequate protection to public health, safety, and welfare and the environment. The advantage of providing options is that it allows you to deal with a petroleum-contaminated site not only on the basis of technical information like the magnitude and extent of soil and groundwater contamination, but also on the basis of business and land-use plans. For example, if you are getting ready to sell your property for use as something other than a gas station, you may want to complete a more active soil and groundwater cleanup in order to have a site that is protective without requiring engineering controls like a cap or institutional controls like a deed restriction. However, if you are planning to continue operating a gas station on your property for the foreseeable future, you may prefer a more limited cleanup combined with engineering or institutional controls and possible long-term monitoring to ensure adequate protection.

One of the options that the Department is proposing for the UST cleanup program is the creation of a category of sites known as "low-impact sites." This document describes low-impact sites, discusses their potential role in the UST program, and summarizes why the DEQ thinks that the proposed low-impact site (LIS) requirements are protective.

**What are low-impact sites?**

Although there is no simple definition, generally speaking, low-impact sites are those where:

- The release and lateral extent of contaminant plumes are relatively small;
- Contaminant migration has stopped (i.e., contaminant plumes are stable);
- The threat to human health and the environment is minimal;
- Actions have been taken to control future exposure (e.g., institutional controls); and
- Site use will not change while contamination remains and controls are in place.

*The basic premise behind these conditions is that if they are met we should be able to safely allow the time for natural attenuation to further reduce the levels of contamination.*

So, what we are saying is that although low-impact sites are contaminated, if that contamination is not causing a current problem, and if you can implement and maintain controls or continue

monitoring to make sure that future problems don't occur, then you can continue to use the site while allowing time for natural attenuation to continue the remediation.

**Where did the low-impact site idea come from?**

During the 1997 legislative session, representatives of the petroleum industry proposed a "low-risk site" concept that was intended to screen out "simple" sites so that resources could be focused on sites that created a more significant risk to human health and the environment. This idea was based on a draft policy prepared by the California State Water Resources Control Board. California's draft policy resulted from a study by Lawrence Livermore National Laboratory which found that plumes of contaminated groundwater caused by petroleum releases have a tendency to degrade or breakdown even without active cleanup efforts (natural attenuation). This led to the recommendation that if you remove the source of the contamination, and if what remains is not causing any immediate problems, allowing time for natural attenuation to occur may be a reasonable way to deal with the remaining contamination. A subsequent study for the Texas Natural Resource Conservation Commission carried out by the University of Texas resulted in similar findings and similar recommendations.

**If the impact is "low," why not just close the site using soil matrix or risk-based cleanup levels?**

At sites where the levels of contamination are quite low it may be better to seek a no further action (NFA) letter on the basis of soil matrix or risk-based standards. Low-impact sites, however, may have moderately high TPH or constituent concentrations that require some engineering or institutional controls. It's just that the current impact is low based on contaminant concentrations, contaminant location, site use, and other site-specific factors. In other words, it is understood that, due to the circumstances of the site, the risk is low. Therefore, it is not necessary to proceed with a more rigorous risk-based evaluation as long as the site use does not change.

**If contamination remains, won't it eventually have to be cleaned up?**

Possibly, but not necessarily. For example, if you plan to sell a low-impact site you may have to reevaluate the levels of contamination and decide if additional action is necessary at that time. Remember, however, that one of the factors on which the low-impact site idea is based is the known tendency for petroleum contamination to undergo natural attenuation. Reevaluation may show that contaminant concentrations have dropped due to natural attenuation. This may allow you to remove some or all of the restrictions that were placed on the site when it was designated as a low-impact site, and additional cleanup may not be necessary.

**How are low-impact sites different from risk-based corrective action sites?**

In many respects they are the same. Both have to be reported, both have to be investigated, both may require some cleanup, both may need institutional or engineering controls, and both have to be protective. However, there are a couple of very important differences.

- For risk-based corrective action you have to use site-specific data to demonstrate that what you are proposing to do meets acceptable risk levels. For low-impact sites you only have to demonstrate that they meet a set of predetermined conditions which are assumed to be adequately protective.

- For risk-based corrective action you have the flexibility of evaluating risk for a variety of potential future uses of the property. For low-impact sites you are limited to a predetermined site use.

In general, low-impact sites are just a clearly-defined subset of sites which, if handled in the prescribed manner, will meet the requirements for dealing with petroleum-contamination from leaking USTs.

**If a site meets the low-impact site requirements, will the owner receive a "No Further Action" (NFA) letter from the Department?**

The Department will be issuing letters to sites that meet all of the LIS requirements. Since the purpose of the low-impact site designation is to allow time to see if natural attenuation will reduce contaminant levels, low-impact site letters might have more conditions than standard NFA letters. LIS closure letters will describe the basis for the Department's determination, list all restrictions that must be maintained, and notify responsible parties that they are required to contact the Department if site use changes and reevaluate their sites at that time.

**Will restrictions be placed on all low-impact sites?**

Restrictions will probably be required on all LIS sites. This is because the LIS requirements are designed to take into account the current use of the site, including not only the land and water use, but in some cases the specific location of buildings relative to the contamination. Since these factors are taken into account when making the determination that the current risk is acceptable, maintaining such conditions will be necessary to ensure that future risk also remains acceptable.

**How can restrictions be removed from a site?**

Removing restrictions will require a reevaluation of the site. This would likely include collection of additional samples and, if a change in site use is being proposed, a reassessment of potential site exposures for the proposed site use. Depending on the results, additional cleanup may also

be necessary before some or all of the restrictions would be removed. For example, if a site is required to maintain a paved surface to prevent contact with contaminated soils, you would have to collect additional soil samples to demonstrate that degradation has reduced concentrations to the point where the risk from contact with the soil is no longer unacceptable. If concentrations were too high, additional soil treatment or removal would be needed.

**Will low-impact sites be protective?**

Although we have created a new category of sites, these sites must meet the acceptable risk levels (ARLs) required by Oregon statute. One of our goals in establishing the requirements for low-impact sites, therefore, was to develop a set of conditions which describe a site that meets acceptable risk levels. If a site can be shown to fit these conditions, then it can be assumed to meet the ARLs without the need to carry out a formal risk assessment. To accomplish this task we used the following hierarchy for the risk-based requirements:

1. *There is no exposure for a given pathway*

   If the nature or location of the contaminants make it very unlikely that anyone would be exposed to them by a particular pathway, then we assumed that there is no unacceptable risk by that pathway. For example, if there are contaminants in groundwater but the water has no current or reasonably likely future beneficial uses, then there is no unacceptable risk due to drinking or other contact with the groundwater.

2. *If there is exposure, then the contaminant concentration must be protective*

   If the nature or location of the contaminants makes current or potential future exposure likely, but contaminant levels are below screening levels for a particular pathway, then we assume there is no unacceptable risk by that pathway. For example, if there are contaminants in shallow soils with which workers or residents might come into contact, but the concentrations measured at the site are below screening levels for direct contact, then risk by that pathway is considered acceptable.

3. *If the concentration is not protective, then action must be taken*

   If the nature or location of the contaminants makes current or potential future exposure likely, and contaminant levels are above screening levels for a particular pathway, then exposure is assumed to exceed ARLs and action must be taken to either reduce the concentration to acceptable levels or prevent exposure to the contaminants. For example, if there are contaminants in shallow soils with which workers or residents might come into contact, and the concentrations measured at the site are above screening levels for direct contact, then it is assumed that the conditions at the site could produce an unacceptable level of risk. Some possible actions would be treating the soil to reduce

concentrations to acceptable levels, excavating and taking the soil off-site for disposal at an approved facility, or implementing engineering controls such as capping the site to prevent contact with the contaminated soil.

Because this is a rather simplistic and generic approach, it is not intended to be used at all UST sites. The low-impact site rules were developed specifically for sites where contamination is not excessive, the source has been removed and contaminant movement has stabilized, the site meets acceptable risk levels under its current use, and restrictions will be used to control potential future risks. Although the approach seems reasonable, there is still some debate over what conditions and concentrations to use to define what is acceptable. The Department is hopeful that the combination of the approach taken and the limitations on its use will ensure that low-impact sites are protective.

**Why does the LIS rule include a "sunset" provision?**

The Department considered developing a generic remedy for low-impact sites instead of incorporating the requirements in rule. The generic remedy would have been developed after rule adoption by applying the provisions included in OAR 340-122-0252 of the proposed rules. Given that the low-impact site classification is entirely new and there are still some questions about what specific conditions should be required, a generic remedy would allow the Department to provide such an alternative while still having the flexibility to efficiently modify some of the requirements if improvements are needed. Some were concerned, however, that it might take the Department too long to develop a generic remedy and therefore preferred keeping the requirements in rule. The Department feels that by putting the requirements in rule with a sunset clause, it can incorporate the best features of the two options. Having the LIS requirements in rule ensures that this alternative will be available immediately upon adoption of the rules. Adding a sunset clause will allow the Department to develop a generic remedy in the future if one is needed to make improvements to that alternative.

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

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**Date:** October 29, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh

**Subject:** Agenda Item E, UST Compliance Rule Revisions, October 30, 1998 EQC Meeting Addendum

**Additional Information**

ORS 466.815(6) states that "No rule requiring an [underground storage tank] owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the Commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives.] On July 29, 1998, staff appeared before the House Interim Committee on Natural Resources to present information about the proposed rulemaking that would include adoption of federal requirements for financial responsibility. Committee members had few questions and there was general concurrence with these requirements.

**Additional Changes to Rule Language**

The Department would propose additional wording changes to avoid potential confusion in certain parts of the rules that were not included in the version provided to the Commission. The specific changes are:

OAR 340-150-0160(2)(c) The proposed tank will hold a regulated substance as defined by 40 CFR 280.12. Regulated substances include petroleum and petroleum related substances and hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act; The underlined text would be deleted as redundant and potentially confusing, as this wording is slightly different from the definition. The same change would be made to OAR 340-150-0163(2)(c) and OAR 340-150-0166(2)(b), as these rules are worded exactly the same as OAR 340-150(0160(2)(c).

The following corrections are proposed to avoid appearance that federal rules have been changed.

OAR 340-150-0003(17) would read: "In addition to the provisions of 40 CFR 280.22, the following is added:"

OAR 340-150-0003(20) would read: "In addition to the provisions of 40 CFR 280.43, the following is added:"

OAR 340-150-0003(22) would be changed to: "The following language is in lieu of 40 CFR 280.60:"

OAR 340-150-0003(27) would read: "In addition to the provisions of 40 CFR 280.62, the following is added:"

OAR 340-150-0003(37) would read: "In addition to the provisions of 40 CFR 280.71, the following is added:"

OAR 340-150-0003(38) would read: "In addition to the provisions of 40 CFR 280.72, the following is added:"

OAR 340-150-0003(41) would read: "In addition to the provisions of 40 CFR 280.21, the following is added:"

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rule amendments regarding revisions to the Underground Storage Tank Compliance Rules (OAR 340-150-0001 through 340-150-0166) as presented in Attachment A of the Department Staff Report and this addendum.

# Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item E**
**October 29-30, 1998 Meeting**

**Title:**

Underground Storage Tank (UST) Compliance Rule Revisions

**Summary:**

The Waste Management and Cleanup Division has taken several proposed revisions of the UST Compliance Rules (OAR 340-150-0001 through 340-150-0166) to rulemaking hearings. Testimony was provided and the Department has evaluated the testimony and has made several revisions to the rules taken to hearing.

The rules contained in Attachment A of the staff report are proposed for adoption. The proposed rules would:

1. Adopt financial responsibility requirements for private tank owners with 1 to 100 tanks as well as local government tank owners.
2. Adopt general permits by rule for installing, operating and decommissioning by temporary and permanent closure or change-in-service of USTs; and
3. Incorporate miscellaneous housekeeping amendments involving;
   - o multi-chambered tanks, each chamber is considered a separate tank,
   - o payment of back fees on previously unregistered tanks'
   - o seek legal business names on general permit registration forms, and
   - o report releases above confirmed release levels.

Adoption of the financial responsibility requirements will increase operating costs for those not in compliance by approximately $325 -$1,000 per tank. The benefit will be to have the financial resources to quickly cleanup environmental contamination from tank releases. The permitted community who have upgraded or replaced USTs will only have to register for general permits. The general permit provision will however not be available to those who have not upgraded or replaced tanks. The Department will terminate all temporary permits on December 23, 1998. Owners without a valid general permit registration certificate are prohibited from accepting or delivering fuel or product to the UST.

**Department Recommendation:**

The Department recommends adoption of the rules as they appear in Attachment A of the staff report.

Richard P. Reiter | Mary Wahl, Administrator | Langdon Marsh, Director

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

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

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**Date:** October 15, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh

**Subject:** Agenda Item E, UST Compliance Rule Revisions, October 30, 1998 EQC Meeting

**Background**

On July 15, 1998, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed revisions to the Underground Storage Tank Compliance Rules (OAR 340-150-0001 through 340-150-0166).

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on August 3, 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 approximately 9,000 persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on July 16, 17, 20, and 21, 1998.

Public Hearings were held in Portland on August 18, Eugene on August 19, Medford on August 20, Ontario on August 25, and Bend on August 26, 1998. Laurie McCulloch served as Presiding Officer. Written comment was received through 5:00 pm on September 4, 1998. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearings and lists all the written comments received (a copy of the comments are available upon request).

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

The following sections summarize the issues 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.

**Issues this Proposed Rulemaking Action is Intended to Address**

This proposal would:

- adopt financial responsibility (i. e. environmental liability insurance) requirements, which are already in place at the federal level, for private tank owners with 1 to 100 tanks and local government tank owners;

- adopt general permits by rule for installing, operating and decommissioning by temporary and permanent closure or change-in-service of USTs; and

- incorporate miscellaneous housekeeping amendments involving:
    - multi-chambered tanks, each chamber is considered a separate tank
    - payment of back fees on previously unregistered tanks
    - seek legal business names on general permit registration forms
    - report releases above confirmed release levels

**Relationship to Federal and Adjacent State Rules**

The Department is proposing to adopt the federal rules for Financial Responsibility by reference so the state program will be equivalent. Washington has established a re-insurance program to cover environmental liability above $100,000. Idaho has established a primary insurance program. Both states rely on fees on petroleum product to fund their insurance programs.

UST permit requirements are a state only requirement. The permit is used to keep track of USTs in Oregon, is used to collect an annual compliance fee that is used to administer the program, provide technical assistance and conduct inspections and will be the mechanism to insure product deliveries only go to USTs that receive a general permit registration certificate to operate. Other tanks that are being installed or removed will not be authorized to receive product deliveries. A facility will not be issued an operating certificate unless the USTs meet technical standards.

Washington has also established a permit program, as well as a tank tagging program that provides the facility with a metal plate (similar to a license plate) to post on-site. Idaho has not established a permit program, rather relies on the federal tank registration form to acquire tank and facility information.

**Authority to Address the Issue**

The Commission has the statutory authority to address this issue under ORS 466.746. These rules implement ORS 466.706 through 446.835, 466.994 and 466.995.

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

An UST Compliance Rule Revision Workgroup of interested and affected parties was convened to review and discuss these issues with Department staff. The Department held five educational and informational meetings throughout the state in mid-July to specifically review these issues with existing tank owners and permittees prior to sending official rulemaking notification information. Five public rulemaking hearings were held throughout the state during the last two weeks in August.

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

These proposed rules principally affect existing and future owners of regulated USTs, persons designated as permittees who are responsible for the daily operation of USTs, and property owners where USTs are installed.

Financial responsibility has been required by federal regulations since 1994. For those entities not yet in compliance, adoption of financial responsibility will increase annual operating costs by approximately $325 to $1,000 per tank to purchase environmental insurance or equivalent financial protection. At the same time, by purchasing this protection the tank owner's or permittee's financial ability to clean up environmental contamination caused by releases of regulated substances such as petroleum or hazardous substances will be enhanced. The general public also benefits by tank owners and permittees being in a better financial position to quickly deal with regulated substance releases to the environment. The Department has proposed that these rules be effective December 23, 1998.

For those tank owners and permittees who have been able to upgrade or replace their USTs to new tank standards, the change from temporary permits to a general permit by rule to operate tanks will only involve the submission of a registration form. For tank owners and permittees not able to upgrade or replace their non-complying tanks by December 22, 1998 the change in permitting is more significant. The Department is proposing to terminate all temporary permits on December 23, 1998. At that point these tank owners and permittees will only qualify for a general decommissioning permit that allows temporary or permanent closure over the next twelve months.

Current regulations prohibit the acceptance of, or delivery of fuel or product to an UST that does not have a valid permit. The permit by rule for decommissioning requires that USTs be properly closed within twelve months, and prohibits fuel deliveries into these USTs. Petroleum retailers with USTs that have not been upgraded or replaced will not be able to sell fuel after December 23, 1998. For non-retailers it means some loss of convenience as they will have to purchase fuel at gas stations or card lock facilities. There are local, state and federal agencies that operate existing USTs with temporary permits that will also need to comply with the proposed changes.

**Summary of Significant Public Comment and Changes Proposed in Response**

Three commentators expressed concern over the short period of time between the effective date of the rules (around November 5, 1998) and when permittees must have a general permit registration certificate for operation in hand to continue to receive fuel (December 23, 1998). More specifically, there is also concern about getting signatures on the general permit registration form in time for the property owner, tank owner and permittee where all three parties are different.

As the Department evaluated this concern, and continued to study how to get timely general permit registration forms back from some 3,000 facilities in a limited period of time, a more efficient permit transition program was developed. The facilities most at risk from a general permit registration certificate processing delay are those that have upgraded or replaced their tanks and plan to continue to sell fuel. Without a certificate, these facilities will not be able to order fuel from their distributors.

On the other hand, persons decommissioning their tanks by temporary or permit closure or change-in-service, do not have a similar need for documentation from the Department because they won't be buying fuel after December 22, 1998. Therefore, the Department is amending its proposal by requiring a registration form only from those facilities seeking an operating certificate (about 1650 facilities). Those facilities decommissioning by temporary or permanent closure or change in service will be deemed to have a general permit and, after December 23, 1998, will receive a copy of the general permit conditions and requirements from the Department. With this revised approach, the Department can focus all its resources on processing operating certificate registration forms and issuing these time critical certificates prior to December 23, 1998.

Regarding the matter of signatures on the general permit registration form, there are a significant number of absentee and out-of-state property owners and requiring their signature may delay an existing tank owner and permittee from receiving a general permit operating certificate by December 23, 1998. Without the operating certificate, these facilities would not be able to arrange fuel deliveries from their distributors and their business would be adversely affected. Furthermore, the property owners signature is already on file from earlier registrations and permit filings or property ownership may be verified though County property deed records. Therefore, for those persons already permitted, the Department will not ask for the property owner's signature.

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

A general permit by rule registration form will be mailed to all existing UST temporary permit holders around November 5, 1998. The instructions with the form will make clear that the only persons needing to return the form are those persons who will operate tanks after December 23, 1998 and will continue to deposit regulated substances into the tanks. For those proposing to operate, a check will be made of the compliance status in the UST Compliance database. For the last 18 months, the Department has been gathering data from permittees and regional UST inspectors have verified UST facilities for compliance with the 1998 technical standards. If all information appears correct, a general permit registration certificate will be mailed. Where there is some question, regional inspectors will verify facility compliance as quickly as possible. If we run out of time, the benefit of the doubt will be given to the registrant and compliance will be confirmed after December 23, 1998. Appropriate enforcement action will be taken, if required.

All existing temporary UST permits are proposed to be terminated by rule on December 23, 1998. For those persons who did not register to operate under the general permit for operation, a decommissioning packet will be mailed out during January, 1999. Persons decommissioning will have until December 22, 1999 to permanently close, complete a change-in-service or upgrade to new tank standards and bring the facility back into operation.

Financial responsibility is required for each facility effective December 23, 1998.

Monitoring and inspections of temporary or permanent closures of USTs will occur during calendar year 1999 for those tanks not upgraded or replaced by December 23, 1998. It is estimated as many as 2,700 tanks may be decommissioned by closure during 1999.

Emphasis on inspecting for compliance with financial responsibility requirements and all other operating requirements will be scheduled for calendar year 2000 and beyond. By then most inactive tanks will have been closed and the remaining active tank universe is estimated at 1,650 facilities.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rule amendments regarding revisions to the Underground Storage Tank Compliance Rules (OAR 340-150-0001 through 340-150-0166) as presented in Attachment A of the Department Staff Report.

**Attachments**

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Advisory Committee Membership
G. Rule Implementation Plan

**Reference Documents**

Written Comments Received (listed in Attachment C) are available upon request.

Approved:

Section: _____
Michael H. Kortenhof, Manager

Division: _____
Mary Wahl, Administrator

Report Prepared By: Richard P. Reiter and
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Phone: (503) 229-5769

Date Prepared: October 15, 1998

LJM:ljm

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment A
# Rule Amendments Proposed for Adoption

## ~~DIVISION~~ DIVISION 150

## UNDERGROUND STORAGE TANK RULES

**340-150-0001**
**Purpose and Scope**

(1) These rules are promulgated in accordance with and under the authority of ORS 466.706 through 466.835, ~~and~~ 466.994 ~~895~~ and ~~through~~ 466.995.

(2) The purpose of these rules is:

(a) To provide for the regulation of underground storage tanks to protect the public health, safety, welfare and the environment from the potential harmful effects of spills and releases from underground tanks used to store regulated substances; and

(b) To establish requirements for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks.

(3) A secondary purpose is to obtain state program approval to manage underground storage tanks in Oregon in lieu of the federal program.

(4) Scope:

(a) OAR 340-150-0002 incorporates, by reference, underground storage tank technical and financial responsibility regulations of the federal program, included in **40 CFR 280, Subparts A, B, C, D, E, F, G and H**. Persons must consult these Subparts of **40 CFR 280** to determine applicable underground storage tank requirements. Additionally, persons must consult OAR Chapter 340, Division 122 for the applicable release reporting and corrective action requirements for underground storage tanks containing petroleum;

(b) OAR 340-150-0003 ~~through 340-150-0004~~ incorporates new language to be used in lieu of the underground storage tank technical and financial responsibility regulations of the federal program, included in **40 CFR 280, Subparts A, B, C, D, E, F, G and H**;

(c) OAR 340-150-0010 through 340-150-0166 ~~0150~~ establishes requirements for underground storage tank general permits, notification requirements for persons who sell underground storage tanks, and persons who deposit or cause to have deposited a regulated substance into an underground storage tank.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Environmental Quality.]
Stat. Auth.: ORS 465.200 - 465.455 ~~320~~ & 466.706 - 466.995
Stats. Implemented: ORS 465.205, 465.400, 466.715, 466.720 & 466.746
Hist.: DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 26-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

**340-150-0002**
**Adoption of United States Environmental Protection Agency Underground Storage Tank Regulations**

Except as otherwise modified or specified by these rules, the rules and regulations governing the technical standards, corrective action, and financial responsibility requirements for owners and operators of underground storage tanks, prescribed by the United States Environmental Protection Agency in **Title 40 CFR, Part 280**, Subparts A, B, C, D, E, F, G and H, amendments thereto promulgated prior to October 30, 1998 ~~July 1, 1991,~~ and Oregon rules listed in OAR 340-150-0003 ~~and 340-150-0004~~ are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.706 through 466.835, ~~and~~ 466.994 ~~895~~ and ~~through~~ 466.995.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Environmental Quality.]
Stat. Auth.: ORS 465.200 - 465.455 ~~320~~ & 466.706 - 466.995
Stats. Implemented: ORS 465.400, 466.720 & 466.746
Hist.: DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 26-1990, f. & cert. ef. 7-6-90;DEQ 15-1991, f. & cert. ef. 8-14-91

**340-150-0003**
**Federal Underground Storage Tank Technical Standards**

In addition to the regulations and amendments promulgated prior to October 30, 1998~~July 1, 1991~~, as described in OAR 340-150-0002, the following rules substituting new language in lieu of **Title 40 CFR Part 280, Subparts A, B, C, D, E, F, ~~and~~ G** and H are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.706 through 466.835, ~~and~~ 466.994 ~~985~~ and ~~through~~ 466.995 with the following exceptions:

(1) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.10(a)**:

**(a) The requirements of this Part apply to all owners and operators of an UST system as defined in 280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of 280.11. Any UST system listed in paragraph (c)(5) of this section must meet the requirements of 280.22.**

(2) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.11(b)**:

**(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert and the implementing agency not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must**

**maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.**

(3) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.12** "Cathodic protection tester":

**"Cathodic protection tester" means a person licensed as an Underground Storage Tank Supervisor of Cathodic Protection System Testing through meeting the requirements of OAR Chapter 340, Division 160.**

(4) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.12** "Implementing agency":

**"Implementing agency" means the Oregon Department of Environmental Quality.**

(5) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.12** "Operator":

**"Operator" means permittee as defined in OAR 340-150-0010 (16) ~~any person in control of, or having responsibility for, the daily operation of the UST system, including the permittee under a permit issued pursuant to OAR Chapter 340, Division 150~~.**

(6) The definition of "Owner" in OAR340-150-0010(11) ~~shall be~~is used in lieu of the definition of "Owner" in **40 CFR 280.12**.

(7) The definition of "Release" in OAR340-150-0010(13) ~~shall be~~is used in lieu of the definition of "Release" in **40 CFR 280.12**.

(8) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.12** "Residential tank":

**"Residential tank" is a tank located on property used primarily for single family dwelling purposes.**

(9) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(a)(2)**:

**(2) The tank is constructed of steel and cathodically protected in the following manner:**

**(i) The tank is coated with a suitable dielectric material;**

**(ii) A permanent cathodic protection test station is installed.**

**NOTE: The test station can be separate or combined with an existing box and ~~shall~~must be located near the protected structure and away from an anode. The test station ~~shall~~must provide, as a minimum, an electrical connection to the structure and access for placing a reference cell in contact with the soil or backfill. When located below the surface of the ground, the test station design ~~shall~~must prevent run off of surface water into the soil.**

**(iii) Field-installed cathodic protection systems are designed by a corrosion expert;**

**(iv) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and**

**(v) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or**

(10) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(a)(4)(i)**:

**(i) The tank is installed at a site that is determined by a corrosion expert and the implementing agency not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and**

**NOTE: For the purpose of complying with Paragraph 280.20(a)(4)(i), approval by the Department ~~shall~~will be given after reviewing the data and information submitted by the corrosion expert and a finding that the corrosion expert's determination is justified.**

11) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(a)(5)**:

**(5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.**

**NOTE: For the purpose of complying with Paragraph 280.20(a)(5), approval by the Department ~~shall~~will be given after reviewing the data and information submitted by a corrosion expert and a finding that the corrosion expert's determination is justified.**

(12) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(b)(3)(i)**:

**(i) The piping is installed at a site that is determined by a corrosion expert and the implementing agency to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and**

**NOTE: For the purpose of complying with Paragraph 280.20(b)(3)(i), approval by the Department ~~shall~~will be given after reviewing the data and information submitted by the corrosion expert and a finding that the corrosion expert's determination is justified.**

(13) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(b)(4):**

**(4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.**

**NOTE: For the purpose of complying with Paragraph 280.20(b)(4), approval by the Department ~~shall~~will be given after reviewing the data and information submitted by a corrosion expert and a finding that the corrosion expert's determination is justified.**

(14) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.20(e)**:

**(e) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.**

**(1) The installer has been licensed by the implementing agency; or**

**(2) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or**

**(3) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.**

(15) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.22(a)**:

**(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must, 30 days prior to installing, closing, using, or bringing such tank into use, submit, in the form prescribed in Sections I through VI of Appendix I of this Part (or appropriate state form), a notice of existence of such tank system to the Implementing Agency.**

(16) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.22(d)**:

**(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in Sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must, within 30 days after bringing such tank into use, also provide all of the information in Section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.**

(17) The following language ~~shall be~~is added to **40 CFR 280.22** by adding a new paragraph (h):

**(h) Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning work to install, replace, decommission or upgrade an UST, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the work will begin to allow observation of the work by the implementing agency.**

(18) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.41(a)**:

**(a) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43(d), (g) and (h) or must be monitored daily for releases using one of the methods listed in § 280.43 (e) and (f) except that:**

(19) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.41(b)(1)(ii)**:

**(ii) Have an annual line tightness test conducted in accordance with § 280.44(b) or have daily monitoring conducted in accordance with § 280.44(c).**

(20) The following language ~~shall be~~is added to **40 CFR 280.43** by adding a new paragraph (f)(9):

**(9) The ground water monitoring system is determined by the implementing agency to be designed so that the risk to human health and the environment is not increased.**

**NOTE: For the purpose of complying with the requirements of this section, approval by the implementing agency ~~shall~~will be given after reviewing the data and design information submitted by a registered professional engineer or a registered geologist who is especially qualified by education and experience to design release detection systems and a finding that the leak detection system is designed so that the risk to human health and the environment is not increased.**

(21) The following language ~~shall be~~is substituted in lieu of **40 CFR 280 Subpart F**:

**Subpart F — Release Response and Corrective Action for UST Systems Containing Hazardous Substances.**

(22) **40 CFR 280.60** shall read, as follows:

**§ 280.60 General.**

**Owners and operators or responsible persons of hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b), where UST systems contain petroleum, and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.**

**NOTE: Release Response and Corrective Action for UST Systems Containing Petroleum must meet the requirements of OAR ~~Chapter~~ 340-122-0205 through 340-122-0360 ~~Division 122~~.**

(23) The following language ~~shall be~~is substituted in lieu of **40 CFR 280. 61(a)**:

**(a) Report the release to the implementing agency (e.g., by telephone or electronic mail);**

**(1) All below-ground releases from the UST system in any quantity;**

**(2) All above-ground releases to land from the UST system in excess of reportable quantities as defined in OAR Chapter 340, Division 108, if the owner and operator or responsible person is unable to contain or clean up the release within 24 hours; and**

**(3) All above-ground releases to the waters of the state.**

(24) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.62(a)** :

**(a) Unless directed to do otherwise by the implementing agency, owners and operators or responsible persons must perform the following abatement measures.**

(25) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.62(a)(4)**:

**(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator or responsible person must comply with applicable state and local requirements.**

(26) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.62(b)**:

**(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators or responsible persons must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.**

(27) The following language ~~shall be~~is added to **40 CFR 280.62** by adding a new paragraph (c):

**(c) The owner and operator, or responsible person ~~shall~~must provide any additional information beyond that required under paragraph (b) of this section, as requested by the implementing agency.**

(28) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.63(a)(4)**:

**(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators or responsible persons to determine whether free product must be recovered under § 280.64.**

(29) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.64** Free Product Removal:

**§ 280.64 Free product removal.**

**At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators or responsible persons must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators or responsible persons must:**

(30) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.64(d)**:

**(d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:**

**(1) The name of the person(s) responsible for implementing the free product removal measures;**

**(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;**

**(3) The type of free product recovery system used;**

**(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;**

**(5) The type of treatment applied to, and the effluent quality expected from, any discharge;**

**(6) The steps that have been or are being taken to obtain necessary permits for any discharge;**

**(7) The disposition of the recovered free product; and**

**(8) Other matters deemed appropriate by the implementing agency.**

(31) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.65**:

**§ 280.65 Corrective Action.**

**(a) Corrective action for cleanup of releases from underground storage tanks containing regulated substances other than petroleum ~~shall~~must meet the requirements of OAR 340-122-0010 through 340-122-0110.**

(32) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.66**:

**NOTE: OAR 340-122-0010 through 340-122-0110 contains equivalent requirements.**

(33) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.67**:

**NOTE: OAR 340-122-010 through 340-122-0110 contains equivalent requirements.**

(34) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.71(a)**:

**(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency, on a form provided by the implementing agency, of their intent to permanently close or make the change-in-service, UNLESS such action is in response to corrective action. Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning this permanent**

**closure, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the closure will begin to allow observation of the closure by the implementing agency. The required assessment of the excavation zone under § 280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.**

(35) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.71(b)**:

**(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. Dispose of all liquids and accumulated sludges by recycling or dispose. The disposal method must be approved by the implementing agency prior to disposal. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material. Tanks removed from the ground must be disposed of in a manner approved by the implementing agency. The owner and operator ~~shall~~must document the name of the disposal firm, the disposal method and disposal location for all liquids, sludges and UST system components including tanks, piping and equipment. The owner and operator or licensed service provider ~~shall~~must provide a completed decommissioning checklist and change-in-service report to the implementing agency within 30 days after tank closure.**

**NOTE: Liquids, sludges and UST system components may require management as a hazardous waste if contaminated with hazardous materials. Contact the implementing agency prior to disposal of these items to insure these wastes are correctly managed.**

(36) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.71(c)**:

**(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with § 280.72.**

(37) The following language ~~shall be~~is added to **40 CFR 280.71** by adding a new subpart (d):

**(d) The following cleaning and closure procedures shall be used to comply with this section unless the implementing agency has approved alternate procedures and determined these alternate procedures are designed to be no less protective of human health, human safety and the environment:**

**(1) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";**

**(2) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";**

**(3) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and**

**(4) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard . . . Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.**

(38) The following language ~~shall be~~is added to **40 CFR 280.72** by adding a new subpart (c):

**(c) The owner and operator must notify the implementing agency and meet the requirement of Subparts E and F if contaminated soil, contaminated ground water, or free product as a liquid or vapor is discovered during the measurement for the presence of a release.**

(39) The following language ~~shall be~~is substituted in lieu of **40 CFR 280.72(a)**:

**(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. For USTs containing petroleum, the owner and operator ~~shall~~must measure for the presence of a release by following the sampling and analytical procedures specified in OAR ~~Chapter~~ 340-122-0205 through 340-122-0360 ~~Division 122~~. A minimum of two samples must be taken below the bottom of the tank. Samples must be taken below any piping where there is evidence of contamination. A petroleum release ~~shall be~~is considered to have occurred if the contaminant levels are found to exceed the confirmed release levels specified in OAR ~~Chapter~~ 340-122-0205 through 340-122-0360 ~~Division 122~~. For USTs containing regulated substances other than petroleum and for USTs to be closed in-place, the owner and operator ~~shall~~must submit a sampling plan to the implementing agency for its approval prior to beginning closure.**

(40) The following language ~~shall be~~is substituted in lieu of **40 CFR 280 Appendix II**:

## APPENDIX II — LIST OF AGENCIES DESIGNATED TO RECEIVE NOTIFICATIONS

**Oregon (State Form)**
**Underground Storage Tank Program**
**Waste Management and Cleanup ~~Hazardous and Solid Waste~~ Division**

**Department of Environmental Quality**
**811 S.W. Sixth Avenue**
**Portland, OR 97204 ~~98204~~**
**503/229-6652 ~~5788~~**

**Report Releases to the Oregon Emergency Response System: 1-800-452-0311 or 1-800-452-4011**

(41) The following language ~~shall be~~is added to **40 CFR 280.21** by adding a new subparagraph (e):

**(e) At least 30 days before beginning the upgrading of an existing UST system under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency, on a form provided by the implementing agency, of their intent to upgrade an existing underground storage tank system. Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning the upgrade, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the upgrade will begin to allow observation by the implementing agency. The owner and operator or licensed service provider ~~shall~~must provide a completed installation check list within 30 days after completion of work.**

(42) The following language ~~shall be~~is used in lieu of **40 CFR 280.34(a)**:

**(a) Reporting. Owners and operators must submit the following information to the implementing agency:**

**(1) Notification for all UST systems (§ 280.22), which includes certification of installation for all new UST systems (§ 280.292(e));**

**(2) Reports of all releases that are required to be reported including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);**

**(3) Correction actions planned or taken including initial abatement measures (§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and correction action plan (§ 280.66);**

**(4) A notification before permanent closure or change-in-service (§ 280.71); and**

**(5) A notification before upgrading an existing UST system (§ 280.21).**

(43) The following language ~~shall be used~~ is used in lieu of **40 CFR 280.41(a)(3)**:

**(3) Tanks with capacity of 1,000 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).**

(44) The following language ~~shall be~~is used in lieu of **40 CFR 280.42(a)**:

**(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.**

(45) The following language ~~shall be~~is used in lieu of **40 CFR 280.43(b)(5)**:

**(3) Only tanks of 1,000 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 1,001 to 2,000 gallons may use the method in place of manual inventory control in § 280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.**

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

Stat. Auth.: ORS 465.200 - 465.455 ~~320~~ & 466.706 - 466.995

Stats. Implemented: ORS 465.400 & 466.746

Hist.: DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 26-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91

**~~340-150-0004~~**

~~**Federal Underground Storage Tank Financial Responsibility Regulations**~~

~~In addition to the regulations and amendments promulgated prior to July 1, 1991, as described in OAR 340-150-0002 of these rules, the following rules substituting new language in lieu of **Title 40 Code of Federal Regulations, Part 280, Subpart H** are adopted and prescribed by the Commission to be observed by all persons subject to ORS466.705 through 466.835 and 466.985 through 466.995 with the following exceptions. The following language shall be substituted in lieu of **40 CFR280.91**:~~

~~**Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:**~~

~~**(a)All petroleum marketing firms owning 1,000 or more USTs and all other USTowners that report a tangible net work of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration:January 24, 1989, except that compliance with § 280.94(b) is required by:July 24, 1989;**~~

~~**(b) All petroleum marketing firms owning 100-999 USTs: October 26, 1989.**~~

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

~~Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995~~

~~Stats. Implemented: ORS 466.746 & 466.815~~

~~Hist.: DEQ 26-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91~~

**340-150-0010**
**Definitions**

(1) The definitions of terms contained in this rule modify, or are in addition to, the definitions contained in **40 CFR280.12** and **40 CFR 280.92.**

(2) "Bringing into operation" has the same meaning as operate or operation.

(3 ~~2~~) "Cleanup" or "cleanup activity" has the same meaning as "corrective action" as defined in ORS466.706 or "remedial action" as defined in ORS 465.200.

(4 ~~3~~) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(5 4) "Decommission" means temporary or permanent closure, ~~to remove from operation an underground storage tank,~~ including temporary or permanent removal from operation, filling ~~abandonment~~ in place, ~~or~~ removal from the ground or change-in-service to a non-regulated status.

(6 ~~5~~) "Department" means the Oregon Department of Environmental Quality.

(7 ~~6~~) "Director" means the Director of the Oregon Department of Environmental Quality or the Director's authorized representative.

(8 ~~7~~) "Fee" means a fixed charge or service charge.

(9) "Install" or "installation" means the physical construction of an underground storage tank system, including but not limited to, activities such as excavating; backfilling; testing; proper placement of the tank, piping, leak detection devices, corrosion protection systems, spill and overfill devices and associated administrative activities such as notifications, recordkeeping and record submissions.

(10 ~~8~~) "Investigation" means monitoring, surveying, testing or other information gathering.

(11) "Multi-Chamber" or Multi-Compartment" means an underground storage tank that contains two or more chambers or compartments created by the presence of interior baffles so that two or more regulated substances can be stored at the same time within a single tank shell. Even if the same regulated substance is stored in all chambers or compartments, the tank is a multi-chambered or multi-compartmented tank for the purpose of these rules.

(12 ~~9~~) "OAR" means Oregon Administrative Rule.

(13) "Operate" or "Operation" means depositing a regulated substance into; storing a regulated substance in or dispensing a regulated substance from an underground storage tank; and such other activities, including but not limited to performing leak detection, maintaining corrosion protection, preventing spills and overfills, investigating and confirming suspected releases, conducting repairs, maintaining financial assurance and keeping and submitting records on the tank and piping's performance.

(14 ~~10~~) "ORS" means Oregon Revised Statute.

(15 ~~11~~) "Owner" means the owner of an underground storage tank.

(16 ~~12~~) "Permittee" means the ~~owner or a~~ person designated on a general permit registration form ~~by the owner~~ who is in control of or has responsibility for the daily operation or daily maintenance of an underground storage tank in accordance with the conditions and requirements of ~~under~~ a general permit ~~issued~~ pursuant to OAR 340-150-0160 through 340-150-0166 ~~these rules~~.

(17) "Registration Certificate" means a document issued by the Department that authorizes a person to install, operate or decommission an underground storage tank under a general permit pursuant to OAR 340-150-0019 and OAR 340-150-0160 through 340-150-0166.

(18 ~~13~~) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(19 ~~14~~) "Responsible person" means any person ordered or authorized to undertake remedial actions or related activities under ORS 465.200 through 465.455 ~~380~~.

(20 ~~15~~) "Underground storage tank" or "UST" means "Under-ground storage tank", as defined in **40 CFR 280.12**.

(21 ~~16~~) "Seller" or "Distributor" means person who is engaged in the business of selling regulated substances to the owner or permittee of an underground storage tank.

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

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 465.200, 465.400, 466.706 & 466.746

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 21-1989(Temp), f. & cert. ef. 9-18-89; DEQ 10-1990, f. & cert. ef. 3-13-90; DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0015**
**Exempted Tanks**

The following regulated underground storage tanks are exempt from the requirements of these rules. The exempt underground storage tanks are the underground storage tanks defined by **40 CFR 280.10**.

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

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.706 & 466.710

Hist.: DEQ 10-1990, f. &cert. ef. 3-13-90; DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0016**
**Multi-Chamber or Multi-Compartment Tanks, Conditions and Requirements**

For the purposes of the underground storage tank general permit program established by OAR 340-150-0019 through 340-150-0166, each chamber or compartment of a multi-chambered or multi-compartmented tank is considered a separate tank and must be registered as such.

Stat. Auth.: ORS 466.706 - 466.995

Stats. Implemented: ORS 466.746, 466.750 & 466.760

Hist.: New

**340-150-0019**
**Compliance With Underground Storage Tank General Permit Required**

Effective December 23, 1998, any person who installs, operates or decommissions an underground storage tank intended to hold, is holding, or that held a regulated substance must comply with the conditions and requirements of a general permit pursuant to OAR 340-150-0160 through 340-150-0166.

Stat. Auth.: ORS 466.706 - 466.995

Stats. Implemented: ORS 466.746, 466.750 & 466.760

Hist.: New

**340-150-0020**
**Underground Storage Tank General Permit Registration Certificate Required**

(1) After December 22, 1998 ~~February 1, 1989,~~ ~~no~~ any person who ~~shall~~ installs, ~~bring into operation,~~ operates or decommissions an underground storage tank must ~~without~~ first obtain~~ing~~ an underground storage tank general permit registration certificate as defined in OAR 340-150-0010 (17) from the ~~department~~Department, except as otherwise provided in OAR 340-150-0021 (3) for persons who must decommission temporarily permitted tanks on or after December 23, 1998.

~~(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.~~

(2 ~~3~~) After December 22, 1998, any person wanting to obtain a modification of a~~A new~~ general permit registration form ~~application~~ must file ~~be filed with the department to obtain modification of~~ a new ~~-~~general permit registration certificate ~~permit~~ pursuant to subsections 3 (a) and (b) of this section..

(3 ~~4~~) After December 22, 1998 ~~February 1, 1989~~, general permit ~~permits~~ registration certificates are issued to the person designated as the permittee for the activities and operations of record and ~~shall be automatically~~ terminated~~d~~:

(a) ~~Within~~ 120 days after any change of ownership of property in which the tank is located, ownership of tank or permittee ~~unless a new underground storage tank permit application is submitted in accordance with these rules~~;

(b) ~~Within~~ 120 days after a change in the nature of activities and operations from those of record in the last registration ~~application unless a new underground storage tank permit application is submitted in accordance with these rules~~; or

(c) Upon issuance of a new or modified general permit registration certificate for the same operation.

~~(5) The department may issue a temporary permit pending adoption of additional Federal underground storage tank technical standards.~~

(4 ~~6~~) ~~The~~ General permit conditions and requirements may be modified upon ~~when the Commission~~ adopts~~ion of~~ new or revised rules~~.~~by the Commission.

~~(7) The department may issue a temporary permit addendum to define special management conditions during tank operation, installation, upgrade, retrofit, or decommissioning, including but not limited to management of contaminated solid waste, hazardous waste, contaminated water, or discharge of air contaminates.~~

Stat. Auth.: ORS 465.200 - 465.455 ~~320~~ & 466.705 - 466.995
Stats. Implemented: ORS 466.746 & 466.760
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 15-1991, f. & cert. ef. 8-14-91

**340-150-0021**
**Termination of Existing Temporary Permits**

(1) On December 23, 1998, all existing temporary permits issued pursuant to OAR 340-150-0020(5) or OAR 340-150-0040(5) terminate.

(2) All persons holding a temporary permit on or before December 22, 1998 and operating underground storage tanks, including depositing regulated substances into said tanks, on or after December 23, 1998 must have a general permit registration certificate for operation pursuant to OAR 340-150-0020 and must provide the general permit registration certificate number to their distributor pursuant to OAR 340-150-0150 (2). To obtain a general permit registration certificate, such persons must submit a general permit registration form pursuant to OAR 340-150-0040.

(3) All persons holding a temporary permit on or before December 22, 1998 who have not obtained a general permit registration certificate for operation of USTs by December 23, 1998 must decommission the USTs in accordance with the conditions and requirements of the general permit for decommissioning an UST by temporary or permanent closure or change-in-service pursuant to OAR 340-150-0166 on or after December 23, 1998. Such persons are not permitted to operate the USTs or deposit a regulated substance into the USTs on or after December 23, 1998.

NOTE: Persons decommissioning under subsection (3) of this section are not required to submit a general permit registration form. The Department will provide a copy of the general permit requirements for decommissioning an UST by temporary or permanent closure or change-in-service after December 23, 1998.

Stat. Auth.: ORS 466.706 - 466.995

Stats. Implemented: ORS 466.746, 466.750 & 466.760

Hist.: New

**340-150-0030**

**Underground Storage Tank Permit Application Required**

(1) On or before May 1, 1988 the following persons ~~shall~~must apply for an underground storage tank permit from the ~~department~~Department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and May 1, 1988 and not permanently decommissioned in accordance with OAR 340-150-0130; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

(2) After May 1, 1988 the owner of an underground storage tank ~~shall~~must apply for an underground storage tank permit from the ~~department~~Department prior to installation of the tank and placing an existing underground storage tank in operation or modifying an existing permit.

NOTE: After December 22, 1998 all persons must comply with the general permit program established by OAR 340-150-0019, 340-150-0020 and OAR 340-150-0160 through 340-150-0166 in lieu of compliance with this rule.

Stat. Auth.: ORS 465.200 - 465.455 ~~320~~ & 466.706 - 466.995

Stats. Implemented: ORS 466.746, 466.750 & 466.760

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 15-1991, f. & cert. ef. 8-14-91

**340-150-0040**

**Underground Storage Tank General Permit Registration Form ~~Application~~**

(1) Any person required ~~wishing~~ to obtain a ~~new, modified, or renewal~~ general permit registration certificate ~~from the department~~ pursuant to OAR 340-150-0020 ~~shall~~must submit ~~submit~~ a ~~written~~ general permit registration ~~application on a~~ form provided by the ~~department~~Department. General permit registration forms ~~Applications~~ must be submitted at least 30 days before installing, operating or decommissioning an underground storage tank under a general permit ~~is need~~. All general permit registration

~~application~~ forms must be completed in full, ~~and accompanied by the specified number of copies of~~including all required exhibits and information as specified by OAR 340-150-0050.

(2) General permit registration forms ~~Applications which~~that are obviously incomplete, unsigned, or ~~which~~ do not contain the required exhibits (clearly identified) will ~~not be accepted by the department for filing and will~~ be returned to the applicant for completion. The general permit registration form will not be considered complete for processing until the required information is received. The general permit registration form will be considered to be withdrawn if the applicant fails to submit the required information within 90 days of the date the form was returned.

(3) ~~Applications~~General permit registration forms that ~~which~~ appear complete will be accepted by the ~~department~~Department for processing ~~filing~~.and a numbered underground storage tank general permit registration certificate will be issued.

~~(4) Within 30 days after filing, the department will review the application to determine the completeness of the application:~~

~~(a) If the application is complete for processing, and underground storage tank permit will be issued;~~

~~(b) If the department determines that the application is not complete, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request.~~

~~(5) In the event the department is unable to complete action on an application within 30 days after the application is accepted by the department for filing, the applicant shall be deemed to have received a temporary or conditional permit, such permit to expire upon final action by the department to grant an underground storage tank permit. Such temporary or conditional permit does not authorize any construction, activity, operation, or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Department of Environmental Quality.~~

(6) If, ~~upon review of an application~~, the ~~department~~Department determines that compliance with a general permit is not required, the ~~department~~Department ~~shall~~ will notify the registrant ~~applicant~~ in writing of this determination. Such notification ~~shall~~ constitutes final action by the ~~department~~Department on the general permit registration form ~~application~~.

(7) Any person applying for a general permit registration certificate for an existing UST system not previously reported as required by OAR 340-150-0030 must complete and submit a general permit registration form as specified in this section. Payment for required permit and annual compliance fees must accompany this form.

(a) Applicable general permit registration fee as required by OAR 340-150-0070; and

(b) Any outstanding annual compliance fees which should have been paid for earlier calendar years as required by OAR 340-150-0110.

~~(7) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with~~

~~the provisions of applicable statutes, rules and regulations of the State of Oregon and the Department of Environmental Quality.~~

~~(8) If the applicant is dissatisfied with the conditions or limitations of any permit issued by the department, the applicant may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the regulations of the department.~~

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995
Stats. Implemented: ORS 466.746 & 466.760
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

**340-150-0050**
**Information Required on the General Permit Registration Form ~~Application~~**

(1) The following information on the ~~–~~underground storage tank general permit registration form ~~application shall include~~ is required:

(~~1~~a) The legal name and mailing address of the owner of the underground storage tank~~.~~;

(~~2~~b) The legal name and mailing address of the owner of the real property in which the underground storage tank is located~~.~~;

(~~3~~c) The legal name and mailing address of the proposed permittee of the underground storage tank~~.~~;

(4d) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee, except as otherwise provided in subsection (4) of this section~~.~~;

(~~5~~e) The facility name and location address~~.~~;

(~~6~~f) The substances currently stored, to be stored or last stored~~.~~;

(~~7~~g) The operating status of the tank~~.~~;

(~~8~~h) The estimated age of the tank~~.~~;

(~~9~~i) A d~~D~~escription of the tank, including tank design and construction materials used~~.~~;

(~~10~~j) A d~~D~~escription of piping, including piping design and construction materials used~~.~~;

(~~11~~k) A complete h~~H~~istory of tank system repairs, including repair date(s)~~.~~;

(~~12~~l) A description of the t~~T~~ype of leak detection and overfill protection for the tank~~.~~; and

~~(13) Any other information that may be necessary to protect public health, safety, or the environment.~~

(~~14~~m) The federal notification form, **Sections I through VI** of **Appendix I** of **40 CFR 280** (or appropriate state form)~~.~~

(2) For multi-chambered or multi-compartmented tanks, information required by subsections (f) through (m) of this section must be provided for each chamber or compartment.

(3) The registrant must specify which general permit or permits (installation, operation or decommission) the registrant is applying for.

(4) The property owner's signature is not required on general permit registration forms submitted by persons currently holding a temporary permit issued on or before December 22, 1998.

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

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.746 & 466.760

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0060**

**Authorized Signatures, General Permit Registration Form ~~Application~~**

The following persons must sign ~~an application for~~ a general permit registration form submitted to the ~~department~~Department.

(1) The owner of an underground storage tank storing a regulated substance.

(2) The owner of the real property in which an underground storage tank is located.

(3) The proposed permittee~~, if a person other than the owner of the underground storage tank or the owner of the real property~~.

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995

Stats. Implemented: ORS 466.746 & 466.760

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

**340-150-0070**

**Underground Storage Tank General Permit Registration Form ~~Application~~ Fee**

(1) A general permit registration ~~application~~ fee of $35 ~~25~~ per tank ~~shall~~must accompany each underground storage tank general permit registration form. ~~application~~. For registration forms ~~applications~~ received after December 22, 1998 ~~February 1, 1989~~, the per tank general permit registration form ~~application~~ fee will also be considered the first per tank compliance fee required by OAR 340-150-0110.

(2) For multi-chambered or multi-compartmented tanks, the per tank general permit registration fee must be paid on each chamber or compartment.

(3 ~~2~~) No general permit registration form~~application~~ fee is required if the registration ~~application~~ is solely for the purpose of recording a change in ownership of the underground storage tank, ownership of the real property, of the permittee, or a change in operation of the underground storage tank.

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995

Stats. Implemented: ORS 466.785

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

**340-150-0080**

**Denial of Underground Storage Tank General Permit Registration Certificate**

~~(1)~~ An underground storage tank general permit registration certificate for installation or operation ~~application~~ may be denied if the underground storage tank installation or operation is not in conformance with these underground storage tank rules, general permit

conditions and requirements pursuant to OAR 340-150-0160 or 340-150-0163 or ORS 466.706 through 466.835, ~~and~~ ORS 466.994 ~~895~~ and ~~through~~ 466.995.

~~(2) An underground storage tank permit may be denied if the underground storage tank permit application is not complete or is determined to be inaccurate.~~

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.775

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0090**

**Revocation of Underground Storage Tank General Permit Registration Certificate**

An underground storage tank general permit registration certificate may be revoked if there was a material misrepresentation or false statement in the general permit registration form, the underground storage tank installation or operation is not in conformance with the underground storage tank general permit conditions and requirements pursuant to OAR 340-150-0160 or 340-150-0163 , or these underground tank rules or there is a violation of ORS 466.706 through 466.835, ~~and~~ ORS 466.994 ~~895~~ and ~~through~~ 466.995.

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.775

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0100**

**~~Permit~~ Procedures for Denial and Revocation of General Permit Registration Certificates**

The ~~permit procedures~~ provisions of ORS 183.310 to 183.550 for a contested case proceeding apply to the denial ~~and suspension~~ or revocation ~~(OAR 340-014-0035 and 340-014-0045) shall apply to~~ of general permit ~~permits~~ registration certificates ~~issued under this section~~.

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995

Stats. Implemented: ORS 466.775

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

**340-150-0110**

**Underground Storage Tank General Permit Compliance Fee**

(1) Beginning March 1, 1989, ~~and annually thereafter,~~ the permittee ~~shall~~must pay an annual underground storage tank general permit compliance fee of $25 per tank per year. For calendar year 1994 and every year thereafter the permittee ~~shall~~must pay an annual underground storage tank compliance fee of $35 per tank per year, except that for calendar year 1998, permittees of tanks not in compliance with the 1998 technical standards must pay a permit fee of $60 per tank.

(2) Effective December 23, 1998 the permittee must pay an annual underground storage tank general permit compliance fee of $35 per tank per year, except that for calendar year 1999, permittees of tanks not in compliance with the 1998 technical standards must pay a general permit compliance fee of $60 per tank.

(3) For multi-chambered or multi-compartmented tanks, the annual per tank general permit compliance fee must be paid for each chamber or compartment.

(4 ~~2~~) The underground storage tank general permit compliance fee ~~shall~~ must be paid for each calendar year (January 1 through December 30) or part of a calendar year that an underground storage tank is not permanently closed in accordance with **40 CFR 280.71**.

(5 ~~3~~) The general permit compliance fee ~~shall~~must be made payable to the Department of Environmental Quality.

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

Stat. Auth.: ORS 466.706 - 466.995 & Ch. 767 ~~525~~, OL 1997 ~~1993~~

Stats. Implemented: ORS 466.785

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1989(Temp), f. & cert ef. 8-1-89 (and corrected 8-3-89); DEQ 34-1989, f. & cert. ef. 12-14-89; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 7-1994, f. & cert. ef. 3-22-94

**340-150-0112**

**UST Fee Waiver**

(1) The UST general permit registration ~~application~~ fee required by OAR 340-150-0070 may be waived by the Director.

(2) An annual UST general permit compliance fee required by OAR 340-150-0110 may be waived by the Director.

Stat. Auth.: ORS ~~465.200 - 465.320 &~~ 466.706 - 466.995

Stats. Implemented: ORS 466.785

Hist.: DEQ 15-1991, f. & cert. ef. 8-14-91

**340-150-0115**

**Delegation of Program Administration**

(1) Any agency of this state or a local unit of government wishing to administer all or part of the underground storage tank program covered by these rules ~~shall~~must submit a written application describing the portions of the Department's underground storage tank program they wish to administer. The application shall contain the following:

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program;

(b) A description, including organization charts, of the organization and structure of applicant, including:

(A) The number of employees, occupation and general duties of each employee who will carry out the activities of the program;

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in paragraph (A)of this subsection and administrative and technical support;

(C)An itemization of the source and amount of funding available to meet the costs listed in paragraph (B) of this subsection, including any restrictions or limitations upon this funding;

(D)A description of applicable procedures, including permit procedures;

(E)Copies of the permit form, application form and reporting form that will be used in the program;

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program;

(G)A description of the procedures to be used to coordinate information with the Department, including the frequency of reporting and report content; and

(H)A description of the procedures the applicant will use to comply with trade secret laws under ORS 192.500 and 468.910.

(2) Within 30 days after receiving the application, the Department will review the application for completeness and request any additional information needed in order for the application to be complete. The Department will notify the applicant in writing when the application is complete.

(3) Within 120 days after the application is complete, the Department will:

(a)Prepare and mail a written and signed agreement or contract, outlining the terms and conditions under which the Department will delegate a portion or all of the underground storage tank program described by these rules, to the applicant; or

(b) Deny the application where the Department finds the program described by the application is not equivalent to the Department's underground storage tank program.

(4) The agreement or contract may be terminated by either party by providing 30 days prior notice in writing.

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.730

Hist.: DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0125**

**Approval of More Stringent Performance Standards**

(1)Any local unit of government supplying water for municipal purposes from an underground source that could be jeopardized by releases from UST_systems may petition the Department for more stringent UST performance standards for UST_systems in the vicinity of the underground water source. Administrative rules on more stringent performance standards may be adopted where the Commission determines through facts and findings that it is necessary to protect the underground water supply through more stringent UST performance standards.

(2) The petition ~~shall~~must be made to the Department in writing and shall include the following information:

(a) A description of the underground water resource including, but not limited to:

(A) The geographical limits of the area where more stringent UST_performance standards are required;

(B) The geographical limits of the groundwater recharge zone;

(C) The geographical limits of the underground water resource;

(D)The geology within both the recharge zone and the underground water resource;

(E) Location, size and present use of wells within the limits of the underground water resource;

(F) Estimated capacity of the underground water resource.

(b) A description of the existing threats to the groundwater resource including, but not limited to:

(A) Location, type and number of underground storage tanks;

(B) Agricultural effluent and rainwater runoff;

(C) Industrial effluent and rainwater runoff; and

(D) Rainwater runoff from roads and parking lots.

(c) A description of the underground storage tank performance standards required, including UST technical standards, operating standards, and administrative procedures;

(d) A description of the emergency conditions, where the petitioner requests adoption of emergency rules.

(3) Within 30 days after receiving the petition, the Department will review the petition for completeness and request any additional information needed in order for the petition to be complete. The Department will notify the petitioner in writing when the petition is complete.

(4) Within 120 days after the petition is complete, the Department ~~shall~~will:

(a) Initiate rulemaking; or

(b) Recommend denial of the petition where the Department finds that more stringent UST performance standards are not necessary to protect the underground water supply.

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.746

Hist.: DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0130**

**Permanent Decommissioning of an Underground Storage Tank**

The permanent decommissioning requirements for underground storage tanks are described in **40 CFR 280.70 through 280.74, Subpart G — Out of Service UST Systems and Closure**.

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

Stat. Auth.: ORS 466.706 - ~~466.895 &~~ 466.995

Stats. Implemented: ORS 466.746

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 20-1990, f. & cert. ef. 6-7-90

**340-150-0140**

**Requirement to Notify the Underground Storage Tank Owner and Operator**

~~(1) Between February 1, 1989 and February 1, 1990 any person who deposits a regulated substance into an underground storage tank shall notify the owner or operator of the tank in writing of the requirements for obtaining an underground storage tank permit.~~

~~(2)~~ After December 22, 1998 ~~February 1, 1989~~ any person who sells an under-ground storage tank ~~shall~~must notify the new owner or permittee ~~operator~~ of the tank in writing of the requirements for obtaining an underground storage tank general permit registration certificate.

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995

Stats. Implemented: ORS 466.746

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88

**340-150-0150**
**Depositing Regulated Substances in Underground Storage Tanks**

(1) After December 22, 1998, ~~February 1, 1989 no~~any person ~~owning an underground storage tank shall~~who deposits or causes to be deposited a regulated substance into ~~that~~ an underground storage tank that has not been issued ~~without first having applied for and received a and operating~~ general permit registration certificate for operation ~~issued~~ by the ~~department~~Department is in violation of these rules.

(2)(a) After December 22, 1998, ~~June 1, 1989, the tank owner or permittee shall, prior to~~ before ~~arranging~~ future deliveries ~~accepting delivery~~ of a regulated substance, the permittee must provide the underground storage tank general permit registration certificate number to any person depositing a regulated substance into the tank; and

(b) If~~, for any reason,~~ a general permit registration certificate is revoked or terminated~~becomes invalid~~, the ~~tank owner or~~ permittee ~~shall~~must provide written notice of the change in general permit registration certificate status to any person previously notified under subsection (2)(a) of this rule.

(3) After December 22, 1998, ~~August 1, 1989~~ no person ~~shall~~may deposit or cause to have deposited a regulated substance into an underground storage tank unless the tank has been issued ~~is operating under~~ a general permit registration certificate ~~issued~~ by the ~~department~~Department for the operation of the tank.

(4)(a) After December 22, 1998 ~~August 1, 1989~~, sellers and distributors ~~shall~~must maintain a written record of the general permit registration certificate number for each underground storage tank into which they deposit a regulated substance; and

(b) If requested by the Department, a seller or distributor ~~shall~~must provide a written record, ~~by~~including the ~~general~~ permit registration certificate number, for tanks into which they have deposited a regulated substances during the last three years of record.

Stat. Auth.: ORS ~~Ch.~~ 466.706 - 466.995
Stats. Implemented: ORS 466.746
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 3-1989, f. & cert. ef. 3-10-89

**340-150-0160**
**General Permit for an UST Installation, Conditions and Requirements**

(1) There shall be a general permit for the installation of an underground storage tank that is intended to hold a regulated substance in accordance with ORS 466.706 through 466.995 and OAR 340 - Division 150.

(2) The general conditions and requirements applicable to the installation of an UST intended to hold a regulated substance are:

(a) The definitions found in OAR 340-150-0010 and 40 CFR 280.12 as modified by OAR 340-150-0003 (3 through 8) are applicable;

(b) The proposed installation is for an UST as defined by OAR 340-150-0010 (20) and does not include exempt tanks as listed in OAR 340-150-0015.;

c) The proposed tank will hold a regulated substance as defined by 40 CFR 280.12. Regulated substances include petroleum and petroleum related substances and hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act;

(d) No person other than the tank owner, property owner, permittee or a Service Provider and Supervisor licensed in accordance with OAR 340 - Division 160 may perform tank installation work.

(e) A general permit registration and annual compliance fee must be paid in accordance with ORS 466.785 and OAR 340-150-0070 and OAR 340-150-0110;

(f) After December 23, 1998, no regulated substance may be deposited into an UST until a general permit registration certificate for operating an UST has been issued and the seller or distributor has been informed of the general permit registration certificate number as required by OAR 340-150-0150(2);

(g) No permittee may install an UST that does not meet the conditions and requirements of this general permit and all other applicable rules and laws. The permittee has the duty to immediately take such actions as are necessary to bring the UST installation into compliance with the conditions and requirements of this general permit and all applicable rules and laws;

(h) For purposes of determining compliance with the general permit for installation conditions and requirements and applicable Oregon Revised Statutes and Oregon Administrative Rules, any employee or authorized representative of the Department may enter the site at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records pursuant to ORS 466.805; and

(i) A general permit registration certificate for installation may be revoked in accordance with ORS 466.775 and OAR 340-150-0090 if the Department finds:

(i) A material misrepresentation or false statement in the registration for a permit;
(ii) Failure to comply with the general permit conditions and requirements for installation, or
(iii) Violation of any applicable statute, rule or order.

(3) The notification conditions and requirements applicable to the installation of an UST holding a regulated substance are:

(a) A notice of intent to install must be submitted at least 30 days before installing an UST as required by 40 CFR 280.22 (a) as modified by OAR 340-150-0003 (15); and

(b) At least 3 working days before beginning installation, a notice of the confirmed date and time the installation will begin must be provided as required by 40 CFR 280.22 (h) as modified by OAR 340-150-0003 (17), unless otherwise waived by the Department.

(4) The technical conditions and requirements applicable to the installation of an UST holding a regulated substance are:

(a) To prevent releases due to structural failure or corrosion, the tank must meet the corrosion control performance standards in 40 CFR 280.20 (a) as modified by OAR 340-150-0003 (9, 10 and 11);

(b) The piping that routinely contains regulated substances and is in contact with the ground must meet the corrosion control performance standards in 40 CFR 280.20 (b) as modified by OAR 340-150-0003 (12 and 13);

(c) To prevent spilling and overfilling associated with product transfers to the UST systems, the system must meet the spill and overfill performance standards in 40 CFR 280.20 (c);

(d) To detect a release from any portion of the tank and the connected underground piping that routinely contains a regulated substance, the system must meet the release detection performance standards in 40 CFR 280.40 through 280.44 as modified by OAR 340-150-0003 (18, 19, 20, 43, 44 and 45); and

(e) All tanks and piping must be installed according to the installation performance standards in 40 CFR 280.20 (d).

(5) The financial responsibility conditions and requirements applicable to the installation of an UST holding a regulated substance is that either the tank owner or permittee must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury or property damage by complying with the per occurrence and annual aggregate financial responsibility amounts found in 40 CFR 280.93 by using one, or a combination of mechanisms found in 40 CFR 280.94 through 280.107 before operating an UST.

(6) The recordkeeping and reporting conditions and requirements applicable to the installation of an UST holding a regulated substance are:

(a) The installation must be certified by submitting the documentation required by 40 CFR 280.20 (e) as modified by OAR 340-150-0003 (14) and 40 CFR 280.22 (e); and

(b) The tank owner or permittee must certify compliance with the financial responsibility requirements by submitting to the Department the documentation required by 40 CFR 280.110 (b);

Note: Tank Owners, permittees and service providers can satisfy the reporting requirements of section (6) (a & b) of this section by submitting the Tank Installation Checklist, as built drawings, and completing and submitting Section VII of the general permit registration form. Copies of the checklist and Section VII of the registration form are available from the Department.

(7) Any person who fails to comply with general permit conditions and requirements for installing an UST are subject to enforcement action pursuant to ORS 466.810, 466.835, 466.994 and 466.995 and OAR 340 - Division 12.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Environmental Quality]
Stat. Auth.: ORS 466.706 - 466.995
Stats Implemented: ORS 466.706, 466.710, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.785, 466.800, 466.805, 466.810 and 466.815
Hist.: New

**340-150-0163**
**General Permit for Operating an UST, Conditions and Requirements**

(1) There shall be a general permit for the operation of an UST that holds a regulated substance in accordance with ORS 466.706 through 466.995 and OAR 340 - Division 150 and ORS 465.200 through 465.455 and OAR 340-122-0010 through 340-122-0360.

(2) The general conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) The definitions found in OAR 340-150-0010 and 40 CFR 280.12 as modified by OAR 340-150-0003 (3 through 8) are applicable;

(b) This general permit applies to the operation of an UST as defined by OAR 340-150-0010 (20) and does not include exempt tanks as listed in OAR 340-150-0015;

(c) This general permit applies to the operation of an UST that holds a regulated substance as defined by 40 CFR 280.12. Regulated substances include petroleum and petroleum related substances and hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act;

(d) No person other than the tank owner, property owner, permittee or a Service Provider and Supervisor licensed in accordance with OAR 340 - Division 160 may perform UST repair or upgrade work. If there is a release of petroleum, no person other than the tank owner, property owner, permittee or a Service Provider and Supervisor licensed in accordance with OAR 340 - Division 162 may perform soil matrix corrective action work;

(e) An annual general permit compliance fee must be paid in accordance with ORS 466.785 and OAR 340-150-0110;

(f) No permittee or other person may deposit a regulated substance into an UST that has not been issued a general permit registration certificate for operating an UST and for which the fuel seller or distributor has not been informed of the general permit registration certificate number as required by OAR 340-150-0150;

(g) The general permit registration certificate for an UST will terminate within 120 days if there is a change of ownership of the property, ownership of the tank, permittee or change in the nature of the activities and operations from those of record pursuant to OAR 340-150-0020 (3);

(h) No permittee may operate an UST that does not meet the conditions and requirements of this general permit and all other applicable rules and laws. The permittee has the duty to:

(i) immediately take such actions as are necessary to bring the UST into compliance with the conditions and requirements of this general permit and all applicable rules and laws, or

(ii) apply for a decommissioning general permit and immediately begin to manage the UST in compliance with conditions and requirements of the general permit for decommissioning in accordance with OAR 340-150-0166.

(i) For purposes of determining compliance with the general permit for operation conditions and requirements and applicable Oregon Revised Statutes and Oregon Administrative Rules, any employee or authorized representative of the Department may enter the site at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records pursuant to ORS 466.805; and

(j) The general permit registration certificate for operation may be revoked as provided in ORS 466.775 and OAR 340-150-0090 if the Department finds:

(i) a material misrepresentation or false statement in the registration for a general permit for operation;

(ii) failure to comply with the general permit conditions and requirements for operation; or

(iii) violation of any applicable statute, rule or order.

(3) The notification and reporting conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) A notice of intent must be submitted at least 30 days prior to operating an UST as required by 40 CFR 280.22 (a) as modified by OAR 340-150-0003 (15);

(b) A notice of intent to upgrade an existing UST system must be submitted at least 30 days prior to upgrading an UST as required by 40 CFR 280.21 (e) as modified by OAR 340-150-0003 (41) and 280.34 (5) as modified by OAR 340-150-0003 (42);

(c) At least 3 working days before beginning an upgrade of an UST, a notice of the confirmed date and time the upgrade will begin must be submitted as required by 40 CFR 280.22 (h) as modified by OAR 340-150-0003 (17), unless otherwise waived by the Department;

(d) Any spills and overfills must be reported as required by 40 CFR 280.30 (b), 280.34 (a) (2) and 280.53 and OAR 340-122-0010 through 340-122-0360;

(e) Suspected releases of regulated substances from UST systems must be reported as required by 40 CFR 280.50. Suspected releases of petroleum must also be reported in accordance with OAR 340-122-0205 through 340-122-0360;

(f) Confirmed releases of regulated substances from UST systems must be reported as required by 40 CFR 280.61 as amended by OAR 340-150-0003 (23). Confirmed releases of petroleum must also be reported in accordance with OAR 340-122-0205 through 340-122-0360; and

(g) Within 10 days after commencement of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code or other incapacity of the owner, permittee or financial assurance provider, the Department must be notified as required by 40 CFR 280.114.

(4) The technical conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) The UST system must be made of, or must be lined with, materials that are compatible with the regulated substance stored in the UST system as required by 40 CFR 280.32;

(b) Releases due to corrosion must be prevented for as long as a steel UST system with corrosion protection is used to store regulated substances as required by 40 CFR 280.31;

(c) Procedures must be in place that provide, calibrate, operate and maintain a method, or combination of methods, of leak detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains a regulated substance as required by 40 CFR 280.40 through 280.44 as modified by OAR 340-150-0003 (18, 19, 20, 43, 44 and 45);

(d) Spilling and overfilling must be prevented as required by 40 CFR 280.30 (a);

(e) Any spills and overfills must be investigated and cleaned up as required by 40 CFR 280.30 (b) and 280.53 and OAR 340-122-0010 through 340-122-0360; and

(f) Repairs must prevent releases due to structural failure and corrosion for as long as the UST system is used to store regulated substances as required by 40 CFR 280.33.

(5) The recordkeeping and report submission conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) Records must be maintained to demonstrate compliance with the corrosion protection requirements of section (4) (b) of this rule as required by 40 CFR 280.31 (d) and 280.34 (b) (2);

(b) Records must be maintained to demonstrate compliance with the release detection requirements of section (4) (c) of this rule as required by 40 CFR 280.34 (b) (4) and 280.45;

(c) Records of each repair must be maintained as required by 40 CFR 280.33 (f) and 280.34 (b) (3);

(d) A copy of corrective action reports prepared under OAR 340-122-0205 through 340-122-0360 must be maintained for 10 years after the first transfer of property as required by OAR 340-122-0360 (2);

(e) Evidence must be maintained of all financial assurance mechanisms used to document compliance with financial responsibility as required by 40 CFR 280.111;

(f) In the case of a release, failure to obtain alternate coverage, commencement of voluntary or involuntary bankruptcy, suspension or revocation of the authority of a financial assurance provider, failure of a guarantor, other incapacity of a financial assurance provider, failure to meet the self-insurance test or cancellation or non-renewal by a financial assurance provider, the tank owner or permittee must submit current evidence of financial responsibility to the Department as required by 40 CFR 280.110 (a); and

(g) The records required by subsections (5) (a, b, c, d, e and f) of this section must be kept and made available, upon request, as required by 40 CFR 280.34 (c) and 40 CFR 280.110 and 280.111.

(6) The release response and corrective action conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) Unless corrective action for a release of regulated substances is undertaken pursuant to ORS 465.200 to 465.455 and OAR 340-122-0010 through 340-122-0360 as required by 40 CFR 280.60 as modified by OAR 340-150-0003 (21 and 22), investigation of suspected releases and off-site impacts must begin immediately as required by 40 CFR 280.51 and 280.52;

(b) Release response and corrective action for petroleum releases must be undertaken in accordance with ORS 465.200 to 465.455 and OAR 340-122-0205 through 340-122-0360 as required by 40 CFR 280.60 as modified by OAR 340-150-0003 (21 and 22); and

(c) Release response and corrective action for hazardous substance releases must be undertaken in accordance with 40 CFR Part 280 - Subpart F as modified by OAR 340-150-0003 (21 through 33) and ORS 465.200 to 465.455 and OAR 340-122-0010 through 340-122-0110.

(7) The financial responsibility conditions and requirements applicable to operating an UST holding a regulated substance are:

(a) Either the tank owner or permittee must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury or property damage by complying with the per occurrence and annual aggregate financial responsibility amounts found in 40 CFR 280.93 by using one, or a combination of mechanisms found in 40 CFR 280.94 through 280.107; and

(b) If at any time after a standby trust is funded, the full amount in the standby trust is reduced below the full amount of coverage required, the tank owner or permittee must replenish the standby trust or acquire another financial assurance mechanism as required by 40 CFR 280.115.

(8) Any person who fails to comply with general permit conditions and requirements for operating an UST is subject to enforcement action pursuant to ORS 465.900 and ORS 466.810, 466.820, 466.830, 466.835, 466.994 and 466.995 and OAR 340 - Division 12.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Environmental Quality]
Stat. Auth.: ORS 466.706 - 466.995 and 465.200 - 465.990
Stats Implemented: ORS 465.200, 465.210, 465.255, 465.260, 466.706, 466.710, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.785, 466.800, 466.805, 466.810 and 466.815
Hist.: New

**340-150-0166**

**General Permit for Decommissioning of an UST by Temporary or Permanent Closure or Change-in-Service, Conditions and Requirements**

(1) There shall be a general permit for decommissioning an UST that is holding, or held, a regulated substance in accordance with ORS 466.706 through 466.995 and OAR 340 - Division 150 and ORS 465.200 through 465.455 and OAR 340 - Division 122.

(2) The general conditions and requirements applicable to the decommissioning of an UST that is holding, or held , a regulated substance are:

(a) This general permit applies to the decommissioning of an UST as defined by OAR 340-150-0010 (20) and does not include exempt tanks as listed in OAR 340-150-0015;

(b) This general permit applies to the decommissioning of an UST that is holding, or held, a regulated substance as defined by 40 CFR 280.12. Regulated substances include petroleum and petroleum related substances and hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act;

(c) No person may deposit a regulated substance into an UST being managed under a general permit for decommissioning;

(d) No person other than the tank owner, property owner, permittee, or a Service Provider and Supervisor licensed pursuant to OAR 340 - Division 160 may perform UST decommissioning work. If there is a release of petroleum, no person other than the tank owner, property owner, permittee or a Service Provider and Supervisor licensed pursuant to OAR 340 - Division 162 may perform soil matrix corrective action work;

(e) Annual compliance fees must be paid in accordance with ORS 466.785 and OAR 340-150-0110;

(f) This general permit for decommissioning terminates within 120 days if there is a change of ownership of the property, ownership of the tank, permittee or change in the nature of the activities and operations from those of record as required by OAR 340-150-0020 (3);

(g) No permittee may perform a decommissioning of an UST unless such decommissioning meets the conditions and requirements of this general permit and all other applicable rules and laws. The permittee has the duty to immediately take such actions as are necessary to bring the UST decommissioning into compliance with the conditions and requirements of this general permit and all applicable rules and laws; and

(h) For purposes of determining compliance with the general permit for decommissioning conditions and requirements and applicable Oregon Revised Statutes and Oregon Administrative Rules, any employee or authorized representative of the Department may enter the site at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation, or review and copy records pursuant to ORS 466.805.

(3) The notification and reporting conditions and requirements applicable to the decommissioning of an UST that is holding, or held , a regulated substance are:

(a) At least 30 days before beginning permanent closure, the Department must be notified of the intent to permanently close as required by 40 CFR 280.71 (a) as modified by OAR 340-150-0003 (34);

(b) At least 3 working days before beginning permanent closure, notice of the confirmed date and time the permanent closure will begin must be provided as required by 40 CFR 280.71 (a) as modified by OAR 340-150-0003 (34), unless otherwise waived by the Department;

(c) If contaminated soils or water or free product are discovered during permanent closure or change-in-service, the release of regulated substances from UST systems must be reported as required by 40 CFR 280.72 ( b and c) as modified by OAR 340-150-0003 (38);

(d) At least 30 days before beginning a change-in-service, the Department must be notified of the intent to make the change-in-service as required by 40 CFR 280.71 (a) as modified by OAR 340-150-0003 (34); and

(e) Within 10 days after commencement of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code or other incapacity of the owner, permittee or financial assurance provider, the tank owner or permittee must notify the Department as required by 40 CFR 280.114.

(4) The technical conditions and requirements applicable to the decommissioning of an UST that is holding, or held ,a regulated substance are:

(a) When an UST system is temporarily closed for 3 months or less, operation and maintenance of corrosion protection for steel tanks must continue, release detection must be performed if the tank is not empty and compliance with release reporting and corrective action must occur, if a release is detected, as required by 40 CFR 280.70 (a);

(b) When an UST system is temporarily closed for 3 months or more but less than 12 months, in addition to complying with section (4) (a) of this general permit, all lines, pumps, manways and ancillary equipment, except the vent lines, must be capped and secured as required by 40 CFR 280.70 (b);

(c) Except as provided in section (4) (d) of this general permit, the UST system must be permanently closed before the 12 month period expires if it does not meet either the new performance standards in 40 CFR 280.20 as modified by OAR 340-150-0003 (9 through 14) or the upgrading requirements in 40 CFR 280. 21 as modified by OAR 340-150-0003 (41) as required by 40 CFR 280.70 (c);

(d) In order to manage an UST system in temporary closure for more than 12 months, a site assessment must be conducted in accordance with 40 CFR 280.72 as modified by OAR 340-150-0003 (38 and 39) and prior approval must be received from the Department as required by 40 CFR 280.70 (c);

(e) Permanent closure performance standards for the tank and tank residues must be met as required by 40 CFR 280.71 (b and d) as modified by OAR 340-150-0003 (35 and 37); and

(f) Before permanent closure is completed, the presence of a release must be measured for as required by 40 CFR 280.72 (a) as modified by OAR 340-150-0003 (39) and OAR 340-122-0205 through 340-122-0360.

(5) The recordkeeping and report submission conditions and requirements applicable to the decommissioning of an UST that is holding, or held, a regulated substance are:

(a) A completed decommissioning checklist and change-in-service report must be submitted to the Department within 30 days after tank closure as required by 40 CFR 280.71 (b) as modified by OAR 340-150-0003 (35);

(b) Records of temporary or permanent closure and change-in-service, including records of the site assessment, must be maintained as required by 40 CFR 280.74 and 280.34 (b)(5);

(c) A copy of corrective action reports prepared under OAR 340-122-0205 through 340-122-0360 must be maintained for 10 years after the first transfer of property as required by OAR 340-122-0360 (2);

(d) Evidence of all financial assurance mechanisms used to document compliance with financial responsibility must be maintained as required by 40 CFR 280.111;

(e) In the case of a release, failure to obtain alternate coverage, commencement of voluntary or involuntary bankruptcy, suspension or revocation of the authority of a financial assurance provider, failure of a guarantor, other incapacity of a financial assurance provider, failure to meet the self-insurance test or cancellation or non-renewal by a financial assurance provider, the tank owner or permittee must submit current evidence of financial responsibility as required by 40 CFR 280.110; and

(f) The records required by subsections (5) (a, b, c, d and e) of this section must be kept, and made available upon request, as required by 40 CFR 280.34 (c), 40 CFR 280.110 and 280.111 and OAR 340-122-0360.

(6) The change-in-service conditions and requirements applicable to an UST that is holding, or held ,a regulated substance are:

(a) In lieu of permanent closure, or bringing a temporarily closed tank back into service by meeting the new tank performance standards, an UST system may continue to be used to store a non-regulated substance if the change-in-service requirements are met pursuant to 40 CFR 280.71 (c) as modified by OAR 340-150-0003 (36); and

(b) Before a change-in-service is completed, the presence of a release must be measured for as required by 40 CFR 280.71 as modified by OAR 340-150-0003 (36) and 40 CFR 280.72 (a) as modified by OAR 340-150-0003 (39) and OAR 340-122-0010 through 340-122-0360.

(7) The release response and corrective action conditions and requirements applicable to an UST that is holding, or held, a regulated substance are:

(a) Release response and corrective action for petroleum releases discovered during permanent closure or a change-in-service must be undertaken pursuant to ORS 465.200 to 465.455 and OAR 340-122-0205 through 340-122-0360 as required by 40 CFR 280.60 as modified by OAR 340-15-0003 (21 and 22); and

(b) Release response and corrective action for hazardous substance releases discovered during permanent closure or change-in-service must be undertaken as required by 40 CFR Part 280 - Subpart F as modified by OAR 340-150-0003 (21 through 33) and ORS 465.200 to 465.455 and OAR 340-122-0010 through 340-122-0110.

(8) The financial responsibility conditions and requirements applicable to decommissioning an UST that is holding, or held , a regulated substance are:

(a) Until an UST system is permanently closed, or if corrective action is required, after the corrective action is completed, the tank owner or permittee must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury or property damage by complying with the per occurrence and annual aggregate financial responsibility amounts found in 40 CFR 280.93 by using one, or a combination of, mechanisms found in 40 CFR 280.94 through 280.107 as required by 40 CFR 280.113; and

(b) If at any time after a standby trust is funded, the full amount in the standby trust is reduced below the full amount of coverage required, the tank owner or permittee

must replenish the standby trust or acquire another financial assurance mechanism as required by 40 CFR 280.115.

(9) Any person who fails to comply with general permit conditions and requirements for decommissioning an UST is subject the permittee to enforcement action pursuant to ORS 465.900 and ORS 466.810, 466.820, 466.830, 466.835, 466.994 and 466.995 and OAR 340 - Division 12.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Environmental Quality]
Stat. Auth.: ORS 466.706 - 466.995 & 465.200 - 465.990
Stats Implemented: ORS 465.200, 465.210, 465.255, 465.260, 466.706, 466.710, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.785, 466.800, 466.805, 466.810 and 466.815
Hist.: New

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment B-1
Legal Notice of Hearing

Secretary of State
**NOTICE OF PROPOSED RULEMAKING HEARING**
A Statement of Need and Fiscal Impact accompanies this form.

| | |
|---|---|
| DEQ - Waste Management and Cleanup<br>Agency and Division | Chapter 340<br>Administrative Rules Chapter Number |
| Susan M. Greco<br>Rules Coordinator | (503) 229-5213<br>Telephone |
| 811 S.W. 6th Avenue, Portland, OR 97213<br>Address | |

| | | | |
|---|---|---|---|
| August 18, 1998 | 10:30 am | Portland | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 19, 1998 | 1:30 pm | Eugene | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 20, 1998 | 11:00 am | Medford | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 25, 1998 | 11:00 am | Ontario | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |
| August 26, 1998 | 11:00 am | Bend | Laurie McCulloch |
| Hearing Date | Time | Location | Hearings Officer |

Are auxiliary aids for persons with disabilities available upon advance request?
✓ Yes ☐ No

## RULEMAKING ACTION

**ADOPT:**
Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

340-150-0021, 340-150-0160, 340-150-0163 and 340-150-0166

**AMEND:**

340-150-0001, 340-150-0002, 340-150-0003, 340-150-0010, 340-150-0020, 340-150-0030, 340-150-0040, 340-150-0050, 340-150-0060, 340-150-0090, 340-150-0100, 340-150-0110 and 340-150-0150.

**REPEAL:**

340-150-0004

**RENUMBER:**

None

**AMEND AND RENUMBER:**

None

Stat. Auth.: ORS 466.706 Through 466.835, 466.994 and 466.995
Stats. Implemented: ORS 466.746, 466.760, 466.765, 466.775, 466.785, 466.805 and 466.815

**RULE SUMMARY**

Adopt by reference federal financial assurance mechanisms for local government.

Apply financial responsibility rules to private tank owners and permittees that own 1 to 100 tanks and to local governments that own tanks.

Adopt general permits by rule to install, bring into operation or operate and decommission by temporary or permanent closure an underground storage tank that holds a regulated substance. Amend current permit issuance procedures. Require submission of a general permit by rule registration form.

General housekeeping changes to clarify existing requirements.

| | |
|---|---|
| September 4, 1998 | Susan Greco July 15, 1998 |
| Last Day for Public Comment | Authorized Signer and Date |

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment B-2
# Fiscal and Economic Impact Statement

## Introduction

The proposed adoption of UST financial responsibility rules, most commonly met by buying an annual insurance policy, will not create any new financial impact on UST tank owners and permittees in that the department is adopting by reference an existing federal rule that has been in effect in Oregon since February 18, 1994. The federal rule currently requires private tank owners and operators owning 1 to 100 USTs and local governments owning USTs to demonstrate financial responsibility.

Similarly, the proposed general permits by rule for installing, bringing into operation and operating and decommissioning by temporary or permanent closure an UST are intended to substitute for an existing permit program that issues individual, site-specific permits.

The miscellaneous housekeeping items to clarify existing regulations will not have any financial impact.

## General Public

There is no direct economic impact on the general public as a result of the proposed amendments. Indirectly, as a result of the federal rules implemented in 1994, the general public may be paying less than a penny a gallon more for motor fuels in order for some gasoline retailers, particularly small retailers, to pay annual insurance premiums.

## Small Business

There is no additional economic impact on small business as a result of the proposed amendments. As a result of the federal rules implemented in 1994, small businesses incurred an additional operating expense estimated to range from $975 to $3,000 per year for a gasoline retailer to buy insurance to cover one facility that has three new or upgraded USTs. Insurance premiums vary based on underwriting criteria that evaluates risks on items such as the age of the tanks and piping, tank and piping materials, size of the tanks, types of products stored, manual or automatic leak detection methods and whether the tanks are owned or leased by the insured.

**Small Business** (continued)

On a practical basis, there may be many small businesses that are currently not in compliance with the federal requirements for financial responsibility. For those not already in compliance, there will be the operating expenses for insurance premiums that have been avoided for four years. The impact this may have on individual businesses will vary depending on the solvency of the company or individual UST owner. For marginal operations, the one-time cost of upgrading or replacing USTs, plus annual insurance costs may mean that it is no longer profitable to sell fuel or cost-effective to keep USTs for private business use.

The proposed changes in the permitting program and miscellaneous housekeeping items are not expected to have any economic impact on small business.

**Large Business**

There is no additional economic impact on large business as a result of the proposed amendments. Federal requirements for all UST owners have been in place since 1994. As the annual cost for insurance is calculated for each individual UST (approximately $325 to $1000 per year per UST), insurance costs increase with the number of USTs a large business owns. Insurance premiums are determined in the same manner as described for small businesses. Some very large companies may not have incurred any additional costs if they were able to qualify under a self-insurance option provided in the rules. It is expected that most, if not all, large businesses are already in compliance with financial responsibility requirements.

The proposed changes in the permitting program and miscellaneous housekeeping items are not expected to have any economic impact on large business.

**Local Governments**

There is no additional economic impact on local governments as a result of the proposed amendments. The federal financial responsibility requirements and information on insurance costs for local governments is the same as that for small and large business. Some local governments may not have incurred any additional costs if they were able to qualify under several local government self-insurance options provided in the rules. It is expected that local government entities are already in compliance with financial responsibility requirements.

The proposed changes in the permitting program and miscellaneous housekeeping items are not expected to have any economic impact on local government.

**State Agencies**

Department of Environmental Quality - Implementing the financial responsibility rules may add from two to six hours to a compliance inspection, depending on how thorough a review is made of the financial instrument used by a tank owner or permittee to demonstrate compliance with the rule. As a result, fewer comprehensive facility inspections will be made after this amendment is adopted. Regarding the permitting amendments, we currently have a two to four month backlog on issuing temporary permits. If the general permit by rule program is adopted, our goal, after the initial conversion of existing temporary permits in November and December, is to issue general permit registration certificates within two weeks of receiving a permit application and registration form.

Other Agencies - There is no economic impact on state agencies as a result of the proposed amendments. State agencies are not required to demonstrate financial responsibility. EPA concluded that given the taxing power of states, they could be considered self-insured. The proposed changes in the permitting program and miscellaneous housekeeping items are not expected to have any economic impact on state agencies.

**Assumptions**

All relevant assumptions are set forth in the Introduction.

**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.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment B-3
# Land Use Evaluation Statement

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

   The proposed financial responsibility rule requires underground storage tank (UST) owners and permittees to buy environmental insurance, or arrange equivalent financial assurance, to clean up environmental contamination and pay third party damages caused by releases of regulated substances. The proposed general permits by rule to install, bring into operation or operate, or decommission by temporary or permanent closure, is an effort to administer a practical permit program alternative to the issuance of individual, site specific permits.

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:**

      Not applicable.

   b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?** ☐ **Yes** ☐ **No (if no, explain):**

      Not applicable.

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

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on
   a. resources, objectives or areas identified in the statewide planning goals, or
   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:
- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

No. The permit requirements for installation, operation and decommissioning of underground storage tanks has not previously been identified as a program affecting land use. The proposed amendments to the underground storage tank rules are not actions that would cause the Department to change its determination regarding land use.

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

Not applicable.

| | | |
|---|---|---|
| Mary Wahl, Administrator | Roberta Young | July 15, 1998 |
| Division | Intergovernmental Coordinator | Date |

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
UST Compliance Rule Revisions

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. Federal requirements for financial responsibility for Underground Storage Tanks (USTs); 40 CFR Part 280 Subpart H. Permit requirements for USTs is a state only requirement for administrative purposes. The technical requirements associated with the permits are equivalent to Federal requirements.

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

The financial responsibility requirements are performance based.

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

Yes. The intent of financial responsibility is to pre-arrange the financial capacity to clean up contamination from releases of regulated substances from USTs, mitigate off-site impacts and cover third party damages. EPA looked at national statistics of tank releases and national availability of financial mechanisms before adopting the financial responsibility requirements in 1990. The issues addressed in the federal process address issues of concern to Oregon.

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

Yes. Adopting the federal financial responsibility requirements by reference will provide equivalent federal/state requirements and resolve the current confusion over whether these requirements are currently applicable in Oregon. The federal requirements are in effect for UST owners because Oregon's program has not been authorized. Authorization is not possible as long as Oregon has less stringent financial responsibility rules.

Not applicable to permit requirements.

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

December 22, 1998 is the end of a ten year national effort to upgrade or replace non-complying USTs with tanks and piping that meet current state-of-art technical standards. December 23, 1998 is a reasonable date after which tank owners must demonstrate financial responsibility to protect their investment in equipment to meet the technical standards.

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

Not applicable.

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

Yes. The federal rules have been in place since February 18, 1994 for all classes of tank owners. The state program has only required financial responsibility of tank owners with 101 or more tanks. This amendment would have the state program apply to private tank owners owning 1 to 100 tanks and local government tanks. Those not already in compliance with federal requirements have avoided insurance costs for four years. Currently, there are approximately 3,300 UST facilities in Oregon.

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

Not applicable - the proposal is to adopt equivalent requirements.

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

The Department is proposing to adopt the federal financial responsibility rules by reference so the state program will be equivalent.

Permitting requirements are a state only requirement. The permit is used to a) keep track of USTs in Oregon, 2) collect an annual compliance fee, 3) provide technical assistance and 4) identify facilities for inspections. The permit by rule will be the mechanism to insure product deliveries only go to USTs that receive a registration certificate to operate. Other tanks that are being installed or removed will not be authorized to receive product deliveries.

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

Yes. The allowable financial assurance mechanisms are available nationally. The most likely financial mechanism will be environmental insurance which the department understands is available through at least four companies at this time.

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

The concept of financial responsibility is to pre-arrange the financial capacity to clean up releases of regulated substances should the UST system fail in any way. It is estimated that most USTs systems that meet the new performance standards will last for approximately 20 years without problems that can't be corrected.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment B-5
# Cover Memorandum from Public Notice

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

**Date:** August 1, 1998

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal and Rulemaking Statements - UST Compliance Rule Revisions

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding UST compliance rules found in OAR 340 - Division 150. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's (Commission) intended action to adopt a rule.

This proposal would:

- adopt financial responsibility requirements for private tank owners with 1 to 100 tanks and local government tank owners;
- adopt general permits by rule for installing, bringing into operation or operating and temporary and permanent closures of USTs; and
- Include miscellaneous housekeeping items to clarify existing regulations.

The Commission has the statutory authority to address this issue under ORS 466.746 and 468.020. These rules implement ORS 466.706 through 446.835, 466.994 and 466.995.

**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 | List of UST Work Group members |

**Hearing Process Details**

The Department is conducting public hearings at which comments will be accepted either orally or in writing. The hearings will be held as follows:

**Date:** August 18, 1998
**Time:** 10:30 am
**Place:** 811 SW 6th, Room 3A
Portland

**Date:** August 19, 1998
**Time:** 1:30 pm
**Place:** 125 E. 8th, B/C room
Eugene

**Date:** August 20, 1998
**Time:** 11:00 am
**Place:** 10 South Oakdale, Auditorium
Medford

**Date:** August 25, 1998
**Time:** 11:00 am
**Place:** 388 SW 2nd, Library
Ontario

**Date:** August 26, 1998
**Time:** 11:00 am
**Place:** 63055 N. Hwy 97, ODOT
Bend

There will be an information session before each hearing. Laurie McCulloch will be the Presiding Officer at the hearings.

**Deadline for submittal of Written Comments:** 5:00 pm, September 4, 1998
at the address below

Written comments can be presented at the hearing or to the Department any time prior to the date and time above. Comments should be sent to: Department of Environmental Quality
Attn: Laurie McCulloch
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 Commission 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 Commission as originally proposed or with modifications made in response to public comments received.

The Commission 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 October 29 - 30, 1998, in Ontario, Oregon. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final Commission 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 a mailing list regarding this proposal.

**Background on Development of the Rulemaking Proposal**

**Why is there a need for the rule?**

Regarding the issue of financial responsibility (i.e., insurance that covers contamination cleanup, off-site impacts and third party damages), current state rules only apply to tank owners owning 101 or more USTs. Since February 18, 1994 federal rules also apply this requirement to tank owners owning 1 to 100 USTs and to local governments owning USTs. In order for Oregon to secure program authorization to operate its program in lieu of the federal program (which is a stated goal of the legislature and many Oregon businesses), the program needs to be equivalent and therefore cover these additional classes of tank owners.

The Department is proposing to issue general permits by rule, in lieu of issuing individual tank permits. To date, as the regulated tank population shrunk from some 30,000 USTs to 9,000 USTs over the last ten year compliance program, the department has issued temporary permits which mainly served as a business license to track tanks and collect annual fees to administer our technical assistance, compliance inspection and enforcement programs. On December 23, 1998 all the remaining tanks should either meet upgrade or new technical performance standards or be decommissioned by temporary or permanent closure by December 22, 1999. The department has concluded that a general permit by rule is a practical approach for the future given the relative uniformity of underground storage tank systems, the stability of the tank performance standards since December 1988 and the limited program resources to issue individual permits.

**How was the rule developed?**

An UST Compliance Work Group of interested and affected parties was convened to review and discuss these issues with department staff. The department also held five educational and informational meetings throughout the state in mid-July to specifically review these issues with existing tank owners and permittees. Lastly, the department is proposing to hold five public hearings throughout the state during the last two weeks in August to receive oral and written testimony on these proposed rule amendments.

Federal regulations for Financial Responsibility, 40 CFR Part 280, Subpart H was the only document relied upon for this rulemaking. In accordance with ORS 183.335(2)(b)(D), this document may be reviewed by contacting the individual listed at the end of this memorandum.

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

These proposed rules principally affect existing and future owners of regulated USTs, persons designated as permittees who are responsible for the daily operation of USTs and property owners where USTs are installed.

Financial responsibility has been required by federal regulations since 1994. For those entities not yet in compliance, adoption of the financial responsibility rules will increase annual operating costs by approximately $325 to $1000 per tank to purchase environmental insurance or equivalent financial protection. At the same time, by purchasing this protection, the tank owners or permittees financial ability to clean up environmental contamination caused by releases of petroleum or other hazardous substances will be enhanced. The general public also benefits by tank owners and permittees being in a better financial position to quickly deal with releases to the environment.
For those tank owners and permittees who have been able to upgrade or replace their USTs to new tank standards, the change from temporary permits to a general permit by rule to operate tanks will only involve the submission of a registration form. For tank owners and permittees

not able to upgrade or replace their non-complying tanks by December 22, 1998, the change in permitting is significant. The department is proposing to terminate all temporary permits on December 23, 1998. At that point these tank owners and permittees will only qualify for a general decommissioning permit that requires temporary or permanent closure over the next twelve months.

Current regulations prohibit the acceptance of, or delivery of fuel or product to an UST that does not have a valid permit. The permit by rule for decommissioning requires that USTs be properly closed within twelve months, and prohibits any more product deliveries into these USTs. Petroleum retailers with USTs that have not been upgraded or replaced will not be able to sell fuels after December 23, 1998. For non-retailers it means some loss of convenience as they will have to purchase fuel at gas stations or card locks.

There are local, state and federal agencies that operate existing USTs with temporary permits that will need to comply with the proposed changes. They must comply with the permit by rule requirements for operating or decommissioning USTs, whichever is applicable.

The general public will benefit by closure of older, non-complying tanks and cleanup of environmental contamination that may have already occurred from these tanks. The general public may also be impacted by having fewer retail locations at which to purchase fuel and may have to drive longer distances to buy fuel for their cars and trucks.

**How will the rule be implemented?**

Tank owners, permittees, property owners and other interested parties will be informed of the proposed changes through several TANKLINE Bulletins, five public education meetings and five public hearings. The specific transition from temporary permits to general permits by rule will be accomplished by a registration form to be mailed to tank owners and permittees in early November 1998. Department staff will be trained on financial responsibility inspection as schedules allow.

**Are there time constraints?**

December 22, 1998 represents the end of a ten year federal/state compliance program to upgrade or replace USTs holding regulated substances. The department is proposing to apply the financial responsibility requirements concurrent with the transition to upgraded and replaced USTs. That is also an appropriate time to transition from temporary UST permits to final permits. Concurrent with the transition to final permits, the department is proposing effective implementation of the existing rules prohibiting product deliveries to non-complying tanks.

**Contact for More Information**

If you would like more information on this rulemaking proposal, receive a copy of the proposed rules, or would like to be added to a mailing list, please contact:

Laurie McCulloch
UST Policy Coordinator
811 SW Sixth Avenue
Portland, OR 97204
503-229-5769 Phone

503-229-6954 Fax
EMAIL: mcculloch.laurie.j@deq.state.or.us
Toll Free: 1-800-742-7878 (answering machine, please leave message)

**Or visit our Web Page at:**

**http://www.deq.state.or.us/wmc/tank/ust-lust.htm**

**Copies of the draft rules are available after August 1, 1998**

On Web Page or hard copy by request

*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

State of Oregon

# Department of Environmental Quality Memorandum

To: Environmental Quality Commission Date: September 30, 1998

From: Laurie J. McCulloch, UST Program

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: UST Compliance Rule Revisions
Attachment C

Five separate rulemaking hearings on the proposed revisions to the Underground Storage Tank Compliance rules were held around the State. At each meeting, people were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Prior to receiving testimony, Richard Reiter briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

| | |
|---|---|
| Hearing Date and Time: | August 18, 1998, beginning at 11:10 am, ending at 11:50 am |
| Hearing Location: | Portland |
| Number of People in Attendance: | 3 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 19, 1998, beginning at 1:45 pm, ending at 2:10 pm |
| Hearing Location: | Eugene |
| Number of People in Attendance: | 3 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 20, 1998, beginning at 11:10 am, ending at 11:48 am |
| Hearing Location: | Medford |
| Number of People in Attendance: | 4 |
| Number of People Giving Testimony: | 1 |

| | |
|---|---|
| Hearing Date and Time: | August 25, 1998, scheduled to begin at 11:00 am |
| Hearing Location: | Ontario |
| Number of People in Attendance: | 0 |
| Number of People Giving Testimony: | 0 |

| | |
|---|---|
| Hearing Date and Time: | August 26, 1998, beginning at 11:10 am, ending at 11:50 am |
| Hearing Location: | Bend |
| Number of People in Attendance: | 2 |
| Number of People Giving Testimony: | 0 |
| | Note: one person attending the Cleanup hearing was interested in UST Compliance issues instead |

Presiding Officer's Report on
UST Compliance Rulemaking Hearings
September 30, 1998

## Summary of Oral Testimony

One person, Mr. Mike Hawkins, (Commentator No. 1) provided oral testimony at the Medford hearing. Comments were primarily about implementation issues, such as ability to have timely issuance of permits when projects are being completed near the deadline and when the property owners signature on the registration form may take a longer time to secure.

## Written Testimony

No person handed in written comments during the public hearings. Five people provided written comments during the public comment period.

Commentator No. 2 - Ms. Linda Cohu's comments included editorial suggestions for clarity and that some information on the registration application was onerous (history of tank system).

Commentator No. 3 - Mrs. Edna Strong commented that the compliance requirements for underground tanks were too costly and that they could not afford to do the upgrade without a grant of some type.

Commentator No. 4 - Mr. Chris Wohlers noted that it may take several weeks to get the required signatures of the tank owner, permittee, and property owner when these are three different entities. He recommended that there be some provision for temporary issuance of operating certificates during the time near the December 22nd deadline. Mr. Wohlers also expressed concern that petroleum sellers and distributors would be held accountable for a tank owner's compliance by use of the fuel prohibition provision. He also recommended that there be a clear method (e.g. visual notice at the facility) by which distributors could determine if a customer had a valid operating certificate.

Commentator No. 5 - Mr. Richard Ramsey's comments were focused on the cost of insurance (financial responsibility) and questioned the beneficial need for this. He was concerned that the biggest burden was on small businesses and that large companies would not be affected as they have already posted bonds [to meet financial ability requirements].

Commentator No. 6 - Mr. Larry Duckett had comments on two areas: 1) timing of issuance of permits for existing operating facilities was too short; he suggested some type of "buffer period" be allowed so that facilities could continue to receive fuel if they have self-certified as upgraded while permit issues are sorted out, and 2) OPMA members are concerned that distributors would have an undue share of burden of enforcement of the new rules. A suggested outcome would be for Oregon to have a much better database of information on USTs so distributors could rely on DEQ for permit information on tanks.

DEQ will respond to the comments received in the Staff Report to the Commission.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment D
# Department's Evaluation of Public Comments

COMMENT: Commentators No. 1, 4 and 6 expressed concern over potential confusion and delays that may occur during the processing of all the paperwork for approximately 3,000 facilities to accomplish the transition from terminating temporary permits to implementing general permits by December 23, 1998. There are two concerns. One concern involves facilities that have upgraded and don't receive the registration certificate for operation in time to get the certificate number to their distributor to authorize fuel deliveries after December 23, 1998. The second concern involves distributors who may deposit fuel into upgraded tanks after December 23, 1998 at a facility that hasn't received it's registration certificate to operate yet.

RESPONSE: As it continues to develop its implementation plan to effect this transition to general permits, the Department shares the commentator's concerns. In evaluating the essential steps to effect this change, the Department has concluded that only facilities that have upgraded to the 1998 technical standards, and will continue to arrange fuel deliveries, need a new registration certificate number to document their status with distributors. All other facilities will need technical assistance from the Department to complete the decommissioning process by temporary or permanent closure or change-in-service, but a registration certificate is not essential. For those facilities decommissioning, the facility, responsible persons and tank information is already known to the Department by their previous registration and permit filings. Therefore, the Department is proposing a rule modification to only require a general permit registration form from persons who have upgraded and will deposit fuel into their tanks.

A related benefit to this revised process is that it helps to insure most, if not all, existing facilities will remain in compliance with the permitting requirements. While those who have upgraded have a clear incentive to re-register with the Department and get a certificate to operate because it authorizes fuel deliveries, those who are decommissioning may procrastinate since a certificate from the Department isn't central to the decommissioning process because they won't be arranging for fuel deliveries. It is not the intent of this transition process from temporary permits to general permits to inadvertently cause facilities to be in non-compliance for failure to comply with revised permitting procedures.

COMMENT: A related comment by Commentators No. 1 and 4 is the Department's proposal to require signatures of the property owner, tank owner and permittee on the general permit registration form. The specific concern is with absentee and/or out-of-state property owners and the relatively short period of time between the effective date of the rules (about November 5, 1998) and December 22, 1998 to get these documents signed and back to DEQ for processing.

RESPONSE: Of the three signatures, the property owner's signature is the least critical relative to permit changes, particularly since the Department already has that information on file from previous registration and permit filings. DEQ requires property owner information because of potential liability in the case of a spill or release. Furthermore, if needed and not available through our existing records, property ownership information is also available through County deed records. That is not true of tank ownership or permittee information.

On the other hand, ORS 466.765 makes it the duty of the tank owner or permittee (but not property owner) to comply with permit conditions, including the proposed general permit conditions and requirements. Because of their dual responsibility for complying with permit requirements, the Department believes it is essential that both the tank owner and permittee sign the general permit registration form. For existing temporary permit holders, the Department is proposing a modification to the rules that would only require signatures of the tank owner and proposed permittee on the general permit registration form.

COMMENT: Commentator No. 4 requested that the Department come up with a visual means for identifying those facilities that have upgraded and received a general permit registration certificate for operation. This would help fuel distributor employees to only deliver to permitted facilities and avoid possible enforcement action for delivering fuel to a non-permitted facilities.

RESPONSE: Most commonly, a visual identifier is referred to as a "tank tagging" program. The Washington Department of Ecology (DOE) will be implementing such a tank tagging system by issuing a metal plate (similar to a car license plate) to facilities that have upgraded to the 1998 technical standards and meet the financial responsibility requirements. DOE received a $25 per tank per year fee increase at the time of implementing their tank tagging program. We have briefly examined Washington's program and concluded that based on current tank fee revenue and tank staffing level, the Department cannot institute such a program in Oregon at this time. We are willing to continue to work with the petroleum industry to develop such a program and figure out how to pay for the tags and staff to administer such a program.

In an earlier draft of the rules that was discussed at the public education meetings, the Department proposed that the permittee post a weatherproof copy of the registration certificate in a visible location for the benefit of distributors. Several persons attending the public education meetings commented that it was impractical to expect rural facilities to have easy access to businesses who could laminate an 8 ½ by 11 inch certificate. The commentators suggested that either the Department do the lamination before they mail the certificate or delete the requirement. For similar cost and staffing reasons cited above, the Department decided to delete the requirement in the rules send out for public hearing. No rule change is proposed.

COMMENT: Commentator No. 4 expressed concern that because of the significant modifications to previous rules and the apparent complexity of technical compliance issues, DEQ stand prepared to provide technical assistance to tank owners and operators.

RESPONSE: As it always has, the Department considers technical assistance an essential component of the UST Compliance program. Its interest in providing technical assistance is limited, however, by the level of resource fundable through tank fees. That staffing level has fallen from a high of 15 FTE about 8 years ago to its current level of 8 FTE. With the continuing permanent decommissioning of tanks brought about by the tank rules and changes in fuel marketing practices to fewer, high volume facilities our staffing will likely fall to 6.0 FTE next biennium based on current tank fee levels.

COMMENT: Commentator No. 1 expressed concern for those facilities who will be doing upgrading construction right up to the December 22nd deadline. The commentator ask if the Department will have procedures in place to quickly process general permit registration certificates received at the last minute?

RESPONSE: The Department appreciates the commentator's concern and earlier in this memo discussed two rule changes that will minimize the amount of paper processing that will need to occur during the 45 day transition period. In addition, the Department will include some specific instructions in the general permit registration packet to help guide those last minute filers who will be dependent on construction schedules. The Department will develop and distribute to tank owners and permittees a description of a process to deal with last minute problems on a case-by-case basis.

COMMENT: Commentator No. 2 requested that release reporting requirements found at OAR 340-150-0003 (42) be eliminated for spills that occur on pavement and are immediately cleaned up with absorbent materials. The commentator wonders if the Department needs to receive information on small spills with no environmental impact because they were immediately cleanup up?

RESPONSE: It is the Department's opinion that the commentator's concerns are already dealt with in the underlying reporting provisions found at 40 CFR 280.53 and OAR 340-122-0220, both of which apply to UST petroleum releases. 40 CFR 280.53 and OAR 340-122-0220 specifically exclude reporting spills and releases under 25 gallons and spills that are contained and cleaned up within 24 hours, which we believe would cover most or all of the small spills referred to by commentator. Nonetheless, the Department proposes adding the phrase "that are required to be reported" to 340-150-0003 (42) to emphasize that reports are required only for spills that are required to be reported, not those small spills that are not required to be reported.

COMMENT: Commentator No. 2 requested that the Department delete two items from the general permit registration form: information regarding the history of repairs and any other information to protect public health.

RESPONSE: 40 CFR 280.33 (f) and 280.34 (b) (3) require that information on system repairs be maintained for the operating life of the tank. Information about repair history can be useful when investigating a suspected or confirmed release and in understanding an existing system's history of construction. We also understand, however, that records are not always well maintained or always transferred during property transactions. To address the commentator's concern, the existing instructions on the registration form state "please fill in the form to the best of your knowledge" and in addition provides for a valid response of "unknown" to the question of history of repairs. No rule change is proposed.

Regarding the question of requesting any other information during the registration process, the Department has not used that authority in the past. Since the phrase is somewhat vague and open-ended, as suggested by commentator, we are proposing to delete that requirement from the existing rules.

COMMENT: Commentator No. 5 expressed concern about the cost of purchasing environmental liability insurance, particularly by small businesses. The commentator further believes it's just a matter of big government and big business teaming up against smaller businesses and making it difficult for them to compete.

RESPONSE: Without disputing the commentator's statements or beliefs, the fact is EPA adopted financial responsibility requirements to insure that as future spills and releases occur, which they inevitably will for a variety of reasons, moneys would be available to handle timely cleanups and resolution of third party damages without jeopardizing the financial health of the business. The Department concurs with EPA's thoughts on this matter and believes that is a valid reason to bring its program into conformance with the federal rules.

Depending on the decision made by a facility to upgrade or replace tanks, the choices on the type of equipment used to upgrade or replace, and a particular insurance company's underwriting criteria, the financial impacts suggested by the commentator may occur. No rule change is recommended.

COMMENT: Commentator No. 3 expressed concern about the costs to upgrade and the likelihood of a business closure if their facility could not receive a grant from the Department.

RESPONSE: While the Department is concerned that some businesses may close because of the cost to upgrade or replace tanks, the program was passed to try and prevent future spills and releases, to repair or replace existing equipment that is failing and to cleanup spills and releases where environmental damage has already occurred. Oregon legislators were also concerned about the financial impact on smaller businesses in rural areas and did arrange financial assistance that has helped, or is currently helping, some 120 smaller businesses in rural areas throughout the state.

Over the last six years, the Department has made concerted efforts to mail information directly to facility owners and operators to inform them of the financial assistance program and solicit applications. At the moment, all filing deadlines have passed and all moneys in the current program have been committed to applicants. Other than the existing tax credit program, no other financial assistance is available to commentator at this time.

COMMENT: Commentator No. 6 raised concerns that sellers and distributors may be bearing an undue share of the burden to enforce the new rules because of the requirement to maintain written records of permit registration numbers for each UST.

RESPONSE: The requirement that facilities provide a general permit registration certificate number to sellers and distributors and that sellers and distributors maintain a written list of such numbers is not a new requirement. Both these requirements have been in effect since 1990 under the current rules. Further, over the years the Department has conducted distributor audits and found a high level of compliance by facilities, sellers and distributors. Although the process should be known to permittees, sellers and distributors, the old lists will no longer be valid after December 22, 1998 and new lists will need to be established during the 45 day transition period between November 5, 1998 and December 23, 1998. No rule change is recommended.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment E

# Detailed Changes to Original Rulemaking Proposal in Response to Public Comment

## OAR 340-150-0003 (42)(a)(2)

Recommended:

(42) The following language shall be used in lieu of 40 CFR 280.34(a):
(a) Reporting. Owners and operators must submit the following information to the implementing agency:
(1) Notification for all UST systems (§ 280.22), which includes certification of installation for all new UST systems (§ 280.29(e));
(2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

Hearing Proposal:

(42) The following language shall be used in lieu of 40 CFR 280.34(a):
(a) Reporting. Owners and operators must submit the following information to the implementing agency:
(1) Notification for all UST systems (§ 280.22), which includes certification of installation for all new UST systems (§ 280.29(e));
(2) Reports of all releases that are required to be reported including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

Reason:

Clarify the existing rule to make it clear that reports are not required for smaller spills and releases that are below a reportable quantity.

## OAR 340-150-0020 (1)

Recommended:

Underground Storage Tank General Permit Registration Certificate Required
(1) After December 22, 1998 , no person shall install, operate or decommission an underground storage tank without first obtaining an underground storage tank general permit registration certificate as defined in OAR 340-150-0010 (17) from the department.

Hearing Proposal: Underground Storage Tank General Permit Registration Certificate Required

(1) After December 22, 1998 , no person shall install, operate or decommission an underground storage tank without first obtaining an underground storage tank general permit registration certificate as defined in OAR 340-150-0010 (17) from the department, except as otherwise provided in OAR 340-150-0021 (3) for persons who must decommission temporarily permitted tanks on or after December 23, 1998.

Reason: Provide that existing permittees who will be decommissioning their tanks do not have to submit a general permit registration form. This will free up staff resources to focus on existing permittees who will submit a general permit registration form to operate and need to receive a general permit registration certificate to operate from DEQ by December 23, 1998. It also assures that existing permittees who might not otherwise return the general permit registration form in a timely manner will have a general permit to decommission after December 22, 1998. See also related amendment to OAR 340-150-0021 (2) and (3) below.

**OAR 340-150-0021 (2) and (3)**

Recommended: Termination of Existing Temporary Permits

Effective December 23, 1998 all existing temporary permits previously issued pursuant to OAR 340-150-0020(5) or OAR 340-150-0040(5) are terminated.

Hearing Proposal: Termination of Existing Temporary Permits

Effective December 23, 1998 all existing temporary permits previously issued pursuant to OAR 340-150-0020(5) or OAR 340-150-0040(5) are terminated.

(2) All persons holding a temporary permit issued pursuant to OAR 340-150-0020(5) or OAR 340-150-0040(5) on or before December 22, 1998 and operating underground storage tanks, including depositing regulated substances into said tanks, on or after December 23, 1998 must have a general permit registration certificate for operation pursuant to OAR 340-150-0020 and must provide the general permit registration certificate number to their distributor pursuant to OAR 340-150-0150 (2). To obtain a general permit registration certificate, such persons must submit a general permit registration form pursuant to OAR 340-150-0040.

(3) All persons holding a temporary permit issued pursuant to OAR 340-150-0020(5) or OAR 340-150-0040(5) on or before December 22, 1998 who have not obtained a general permit registration certificate for

operation of USTs by December 23, 1998 shall be permitted to decommission the USTs in accordance with the conditions and requirements of the general permit for decommissioning an UST by temporary or permanent closure or change-in-service pursuant to OAR 340-150-0166 on or after December 23, 1998. Such persons are not permitted to operate the USTs or deposit a regulated substance into the USTs on or after December 23, 1998.

NOTE: Persons decommissioning under subsection (3) of this section are not required to submit a general permit registration form. The Department will provide to these persons a copy of the general permit for decommissioning an UST by temporary or permanent closure or change-in-service after December 23, 1998.

Reason: Provides that existing permittees who will be decommissioning their tanks do not have to submit a general permit registration form. This will free up staff resources to focus on existing permittees who will submit a general permit registration form to operate and need to receive a general permit registration certificate to operate from DEQ by December 23, 1998. It also assures that existing permittees who might not otherwise return the general permit registration form in a timely manner will have a general permit to decommission after December 22, 1998. See also related amendment to OAR 340-150-0020 above.

**OAR 340-150-0050 (4), (13) and new (16)**

Recommended: Information Required on the General Permit Registration Form

The underground storage tank general permit registration form shall include:

(1) The legal name and mailing address of the owner of the underground storage tank.

(2) The legal name and mailing address of the owner of the real property in which the underground storage tank is located.

(3) The legal name and mailing address of the proposed permittee of the underground storage tank.

(4) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee.

(5) The facility name and location.

(6) The substances currently stored, to be stored or last stored.

(7) The operating status of the tank.

(8) The estimated age of the tank.

(9) Description of the tank, including tank design and construction materials.

(10) Description of piping, including piping design and construction materials.
(11) History of tank system repairs.
(12) Type of leak detection and overfill protection.
(13) Any other information that may be necessary to protect public health, safety, or the environment.
(14) The federal notification form, Sections I through VI of Appendix I of 40 CFR 280 (or appropriate state form).
(15) For multi-chambered or multi-compartmented tanks, information required by subsections 6 through 14 of this section shall be provided for each chamber or compartment on the general permit registration form.
(16) The general permit registration form shall specify which general permit or permits (installation, operation or decommission) the registrant is applying for.

Hearing Proposal:

Information Required on the General Permit Registration Form
The underground storage tank general permit registration form shall include:
(1) The legal name and mailing address of the owner of the underground storage tank.
(2) The legal name and mailing address of the owner of the real property in which the underground storage tank is located.
(3) The legal name and mailing address of the proposed permittee of the underground storage tank.
(4) The signatures of the owner of the underground storage tank, the owner of the real property and the proposed permittee except as otherwise provided in subsection (16) of this section.
(5) The facility name and location.
(6) The substances currently stored, to be stored or last stored.
(7) The operating status of the tank.
(8) The estimated age of the tank.
(9) Description of the tank, including tank design and construction materials.
(10) Description of piping, including piping design and construction materials.
(11) History of tank system repairs.
(12) Type of leak detection and overfill protection.
~~(13) Any other information that may be necessary to protect public health, safety, or the environment.~~
(13 ~~14~~) The federal notification form, Sections I through VI of Appendix I of 40 CFR 280 (or appropriate state form).
(14 ~~15~~) For multi-chambered or multi-compartmented tanks, information required by subsections 6 through 14 of this section shall be provided for each chamber or compartment on the general permit registration form.

(15 ~~16~~) The general permit registration form shall specify which general permit or permits (installation, operation or decommission) the registrant is applying for.

(16) The property owner's signature is not required on general permit registration forms submitted by persons currently holding a temporary permit issued pursuant to OAR 340-150-0020 (5) or OAR 340-150-0040 (5) on or before December 22, 1998.

Reason:

Subsection 4 is being amended and new subsection (16) is being added to eliminate the need to obtain the signature of existing property owners for existing facilities going from a temporary permit to a general permit. There are a significant number of absentee and out-of-state property owners and requiring their signature may delay a tank owner and permittee from receiving a general permit operating certificate by December 23, 1998. Without the operating certificate, these facilities would not be able to arrange fuel deliveries from their distributors and their business would be adversely affected. Furthermore, the property owners' signature is already on file from earlier registrations and permit filings or property ownership may be verified though County property deed records.

Section (13) is being deleted. To date the department has not requested this information and the department does not see implementing this section in the future as part of the general permit registration process. As suggested by the commentator, this provision is rather vague and open-ended as written.

**OAR 340-150-0166 (2) (g)**

Recommended:

(2) The general conditions and requirements applicable to the decommissioning of an UST that is holding, or held , a regulated substance are:

(g) No permittee shall decommission an UST that does not meet the conditions and requirements of this general permit and all other applicable rules and laws. The permittee has the duty to immediately take such actions as are necessary to bring the UST decommissioning into compliance with the conditions and requirements of this general permit and all applicable rules and laws.

Hearing Proposal:

(2) The general conditions and requirements applicable to the decommissioning of an UST that is holding, or held , a regulated substance are:

(g) No permittee shall perform a decommissioning of an UST unless such decommissioning ~~that does not~~ meets the conditions and requirements of this general permit and all other applicable rules and laws. The permittee has the duty to immediately take such actions as are necessary to bring the UST decommissioning into compliance with the conditions and requirements of this general permit and all applicable rules and laws.

Reason: During the public comment review period it was brought to the author's attention by other department staff reviewing subsection (g) that subsection (g) as written has the UST meeting the conditions and requirements of a general permit rather than more appropriately placing that responsibility on the permittee.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment F
## Work Group Members

| Name | Affiliation | Address |
|---|---|---|
| Ron Bergeson | Bergeson-Bose & Assoc. | 65 Centenial Loop, Eugene |
| Jim Hickey | Environmental Insurance Agency | 9860 SW Hall Blvd., Portland |
| Gregg Miller | Northwest Pump & Equipment | 2800 NW 31st, Portland |
| Bob Manley | Wilco Farmers | P.O. Box 258, Mt. Angel |
| Mike Sherlock | Oregon Gasoline Dealers Assoc. | P.O. Box 7065, Eugene |
| Tom Powers | U.S. Bakery | P.O. Box 14769, Portland |
| Brian Doherty | Miller Nash | 111 SW 5th, Portland |
| Tom Gallagher | Ball Janik and Novack | 960 Liberty St., SE, Salem |
| Brian Boe | Oregon Petroleum Marketers Assoc. | 319 SW Front Ave., Portland |
| Matt Blevins | Oregon League of Cons. Voters | 111 SW Front Ave., Portland |
| Susan Stein | Stein Oil Company | 19805 SE McLoughlin, Portland |
| John Phimister | Western Stations | 2929 NW 29th, Portland |
| Jeff Arntson | Albina Fuel Company | P.O. Box 768, Vancouver, WA |
| Terry Mohr | Carson Oil Company | P.O. Box 10948, Portland |
| Kent Elliott | Elliott, Powell Badow & Baker | 1521 SW Salmon, Portland |

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
UST Compliance Rule Revisions

Attachment G
# Rule Implementation Plan

## Summary of the Proposed Rule

The proposed rules are revisions to the existing UST Compliance Rules, OAR 340-150-0001 through 340-150-0166. It is proposed to adopt by reference federal financial responsibility requirements (most commonly met by buying environmental insurance) for tank owners and permittees that own 1 to 100 USTs and USTs owned by local government. The proposal to adopt general permits by rule is a state only requirement. The general permits by rule are intended to serve in lieu of individual, site-specific permits issued by the department. Minor rule changes are included that address multi-compartment tanks, make generic references to Division 122 rule specific, and clarify when UST fees are required.

## Proposed Effective Date of the Rule

The general permits by rule would be effective upon filing with the Secretary of State, as soon as possible after the October 29-30, 1998 EQC meeting, or about November 5, 1998. It is intended the financial responsibility requirements would be made effective December 23, 1998.

## Proposal for Notification of Affected Persons

Upon adoption of the proposed rules, the following notifications will be made:

a) Direct mailing to all licensed UST Service providers (in conjunction with notices regarding changes to UST Cleanup rules);
b) Publish articles in TANKLINE (UST Program bulletin) for first 1999 edition;
c) Notify organizations that have expressed interest in DEQ UST activities (e.g. Oregon Gasoline Dealers Association, Oregon Petroleum Marketers Association, etc.);
d) Work with Public Affairs section to draft and distribute a news release; and
e) Place information on WMC UST Program web page, including copy of final rules.

Proposed Implementing Actions

The following actions are proposed:

- A general permit by rule registration form will be mailed to all existing UST temporary permit holders around November 5, 1998. The forms are required to be returned by December 1, 1998 for those intending to continue to operate after December 22, 1998.

- General permit registration certificates will be mailed on or before December 23, 1998 to those persons returning registration forms by December 1, 1998. After that, registration certificates will be mailed on a first come, first serve basis with a goal of issuing certificates within two weeks of receiving a complete permit application and registration form.

- All existing temporary UST permits are proposed to be terminated by rule on December 23, 1998.

- Financial responsibility is to be demonstrated by tank owners and permittees on or after December 23, 1998. EPA fact sheets are available to mail to permittees upon request.

- Monitoring and inspections of temporary or permanent closures of USTs will occur during calendar year 1999 for those tanks not upgraded or replaced by December 23, 1998. It is estimated as many as 2,700 tanks may be decommissioned by closure during 1999.

- Emphasis on inspecting for compliance with financial responsibility requirements and other technical requirements will be scheduled for calendar year 2000. By then most inactive tanks will have been closed and the remaining active tank universe is estimated at 6,300 tanks.

Proposed Training/Assistance Actions

DEQ staff will receive training on rule changes during the Statewide Tank staff meeting in October, 1998. At that time, UST staff will be asked to identify any areas needing further guidance or policy resolution. In early January 2000, UST staff will receive specific training on conducting an inspection for checking the financial responsibility requirements. The training will provide guidance on what to look for in the way of specific forms and wording to insure a valid financial assurance instrument is in effect.

## Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item F**
**Meeting**

**Title:**

Temporary Rulemaking To Align State Land Disposal Restrictions ("LDR") With The Federal Land Disposal Restrictions: OAR Chapter 340, Division 100, Section 0002(1), LDR for Spent Potliner (K088)

**Summary:**

In September 1998, U.S. EPA promulgated a final rule amending the Hazardous Waste Land Disposal Restrictions ("LDR") program in 40 Code of Federal Regulations Parts 268 and 271 to establish treatment standards for spent potliner from primary aluminum reduction. The Department is proposing to adopt temporarily these U.S. EPA amendments to the LDR program that apply to spent potliner and to repeal temporarily the parts of the existing state-adopted LDR program that apply to spent potliner. The federal standards were vacated by the U.S. Court of Appeals for the District of Columbia due to a finding under federal law that the testing method used in developing the standard was applied in an arbitrary and capricious manner. To avoid serious prejudice to the public interest and to the interests of the parties concerned, the Department proposes temporary adoption of the new federal standards until final state rulemaking can take place.

**Department Recommendation:**

Temporarily adopt the rule amendments presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

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

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** October 15, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh, Director

**Subject:** Agenda Item F, EQC Meeting October 30, 1998

## Issue this Proposed Rulemaking Action is Intended to Address

In September 1998, the United States Environmental Protection Agency ("U.S. EPA") promulgated a final rule amending the Hazardous Waste Land Disposal Restrictions ("LDR") program in 40 Code of Federal Regulations Parts 268 and 271 to establish treatment standards for spent potliner from primary aluminum reduction. The Department is proposing to adopt temporarily these U.S. EPA amendments to the LDR program that apply to spent potliner and to repeal temporarily the parts of the existing state-adopted LDR program that apply to spent potliner.

Failure to immediately adopt the U.S. EPA's new LDR treatment standards for spent potliner (K088) and to repeal the existing state-adopted LDR treatment standards for spent potliner will result in serious prejudice to the public interest and the interests of the following parties: K088 generators, facilities managing K088, the Department and U.S. EPA. Prejudice will result due to the conflict between the existing state-adopted treatment standards and the new treatment standards U.S. EPA has adopted to address test method deficiencies found by the U.S. Court of Appeals for the District of Columbia.

## Background

The federal LDR treatment standard for spent potliner from primary aluminum reduction (K088), which the Department has currently adopted into state law by reference, was, in April 1998, vacated by the United States Court of Appeals for the District of Columbia Circuit ("Court of Appeals"). The Court of Appeals determined that, under federal law, the two LDR treatment standards for arsenic and fluoride were arbitrary and capricious because the testing method applied did not accurately predict the leaching of these constituents from spent potliner into the environment. In response to a motion by U.S. EPA, the court stayed issuance of its mandate to allow U.S. EPA to promulgate replacement LDR treatment standards for spent potliner.

In September 1998, U.S. EPA promulgated a replacement set of LDR standards: Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), 63 Federal Register 51254 (September 24, 1998). The rule, effective September 21, 1998, prohibits land disposal of spent potliner unless certain hazardous constituents in the spent potliner have been treated in compliance with the new numerical LDR treatment standards in the rule.

The current state standards are in some cases more stringent than the U.S. EPA standards. The current state standards contain the LDR treatment standards for arsenic and fluoride that the Court of Appeals found to be arbitrary and capricious under federal law. The Department, in implementing the federally delegated hazardous waste program, strives to be thoughtful and deliberate when proposing for adoption regulations that are more stringent than the federal standards. The Commission usually adopts more stringent standards based on a finding that a greater level of protectiveness than that provided under the federal program is required in Oregon due to Oregon-specific needs, exposures, waste streams or other factors.

With respect to spent potliner (K088), a waste stream for which a significant portion of the generation and management occurs in the Pacific Northwest, the Department intends to be consistent with the federal treatment and land disposal restriction standards unless, upon evaluation, more stringent standards are deemed necessary. Since U.S. EPA promulgated the September 1998 LDR treatment standards for spent potliner under the federal Hazardous and Solid Waste Amendments of 1984, the federal standard took effect in Oregon on September 21, 1998, the federal effective date. However, since the previously adopted state standard is still in effect in Oregon, this creates a conflict. Retaining the state and federal K088 LDR standards will create undue hardship by requiring the regulated community of hazardous waste generators and hazardous waste management facilities in Oregon to comply with two different sets of LDR requirements for spent potliner.

This conflicting regulatory authority will (1) create confusion within the regulated community, including increased potential for noncompliance because of misunderstanding of the correct standards; (2) create an increased workload for the regulated community and the Department to ensure compliance with the two sets of applicable treatment standards; and (3) create confusion and potential discord between the Department and U.S. EPA over which agency will oversee implementation of the standards.

To prevent serious prejudice to the public interest and to the interests of the parties concerned through eliminating the confusion between the federal and state standards and through ensuring protectiveness in keeping with the federal hazardous waste program in the interim, the Department proposes immediate temporary repeal of the current state K088 LDR standard and temporary adoption of the federal standards for K088 set forth in 63 Federal Register 51254-51267.

If adopted, these temporary rules will expire 180 days after their effective date. The Department intends to propose permanent rules for this regulatory matter for adoption by the Commission at its meeting in March, 1999.

**Relationship to Federal Rules**

The proposed temporary rule amendments are identical to federal requirements in EPA rules.

**Authority of the Commission with Respect to the Issue**

The Commission has the authority to develop and to approve these temporary rules under ORS 466.020, 466.070, 466.075, 466.086, 466.100, 468.020 and 183.335.

**Summary of Public Input Opportunity**

The Department is sending the staff report and informational materials to all persons who asked to be notified of rulemaking actions, and to a mailing list of approximately 400 persons known by the Department to be potentially affected by or interested in the proposed rulemaking action.

**Intended Future Actions**

The proposed temporary rules, if adopted, will apply to persons who generate spent potliner in Oregon and to hazardous waste management facilities who store, treat or dispose of spent potliner in Oregon. The Department intends to propose permanent rules for this regulatory matter for adoption by the Commission at its meeting in March, 1999.

**Department Recommendation**

The Department recommends that the Commission temporarily adopt the rule amendments in OAR 340-100-0002(1) as presented in Attachment A of the Department Staff Report.

**Attachments**

A. Temporary Rule (Amendments) Proposed for Adoption
B. Statement of Need and Justification for Temporary Rule

**Reference Documents (available upon request)**

1. ORS Chapters 183, 466 and 468

2. EPA Final Rule, Land Disposal Restrictions Phase III -- Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners, 61 Federal Register 15566 (April 8, 1996).

3. EPA Final Rule, Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), 63 Federal Register 51254 (September 24, 1998).

Approved: Mary Wahl

Hazardous Waste Policy and Program Development
Waste Management and Cleanup Division
Report Prepared By: Anne R. Price
Phone: (503) 229-6585
Date Prepared: 10/15/98

# ATTACHMENT A

Proposed Temporary Rule Amendments

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

| | | |
|---|---|---|
| In the Matter of Temporary Rulemaking To Align State Land Disposal Restrictions (LDR) With The Federal Land Disposal Restrictions: OAR Chapter 340, Division 100, Section 0002(1), LDR for Spent Potliner (K088) | ) ) ) ) ) ) | Proposed Amendments |

1. Rule 340-100-0002 is proposed to be amended temporarily as follows:

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

**340-100-0002** (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 108, 109, 111, 113 and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 273 and Subpart A and Subpart B of Part 124 promulgated through April 30, 1998 are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.[1] In addition, effective September 21, 1998, Title 40 Code of Federal Register Parts 268 and 271, as adopted by the Commission (as it applies to spent potliner (K088)), are temporarily repealed, and these Parts, as amended at 63 Federal Register 51254-51267, September 24, 1998, are temporarily adopted by reference.

---

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

(2) Except as otherwise modified or specified by OAR Chapter 340, Division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 279 promulgated through April 30, 1998, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

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

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

Stat. Auth.: ORS Ch. 183.337, 465.009, 466.020, 468.020
Stat. Implemented: ORS Ch. 466.015, 466.075, 466.086
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 23-1987, f. & ef. 12-16-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 11-1993, f. & cert. ef. 7-29-93; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 31-1994 (Temp), f. 12-6-94, cert. ef. 12-19-94

Attachment B
Temporary Rulemaking to Align State and Federal Land Disposal Restrictions:
Changes to OAR Chapter 340
EQC Agenda Item F
October 30, 1998

Secretary of State
**STATEMENT OF NEED AND JUSTIFICATION**

Department of Environmental Quality, Waste Management and Cleanup Division

| | | |
|---|---|---|
| In the Matter of Temporary Rulemaking | ) | Statutory Authority, |
| To Align State Land Disposal Restrictions | ) | Statutes Implemented, |
| (LDR) With The Federal Land Disposal | ) | Statement of Need, |
| Restrictions: | ) | Principal Documents Relied Upon, |
| OAR Chapter 340, Division 100, Section | ) | |
| 0002(1), LDR for Spent Potliner (K088) | ) | |

**Statutory Authority:** The Commission has authority to adopt hazardous waste rules under ORS 466.020 and 468.020 and the authority to adopt temporary rules under ORS 183.335.

**Statutes Implemented:** The Commission is implementing ORS 466.070, 466.075, 466.086 and 466.100 by adopting this temporary rule.

**Need for the Temporary Rule(s):** Failure to immediately adopt the United States Environmental Protection Agency's (U.S. EPA) new LDR treatment standards for spent potliner (K088) and to repeal the existing state-adopted LDR treatment standards for spent potliner will result in serious prejudice to the public interest and the interests of the following parties: K088 generators, facilities managing and disposing K088, the Department and U.S. EPA. Prejudice will result due to the discrepancies between the existing state-adopted treatment standards and the new treatment standards U.S. EPA has adopted to address the deficiencies found by the Court of Appeals. Immediate action is needed to prevent confusion as to which standards are applicable and to ensure appropriate and protective management of the K088 waste stream.

**Documents Relied Upon:**

1. EPA Final Rule, Land Disposal Restrictions Phase III -- Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliner, 61 FR 15566, April 8, 1996.
2. EPA Final Rule, Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), 63 FR 51254, September 24, 1998.

**Justification of Temporary Rule(s):**

The federal land disposal restriction (LDR) treatment standard for spent potliner from primary aluminum reduction (K088) which the Department has currently adopted into state law by reference was, in April 1998, vacated by the United States Court of Appeals for the District of Columbia Circuit ("Court of Appeals"). The Court of Appeals determined the two LDR treatment standards were not supported by the test method used because the method did not accurately predict the leaching of these constituents from spent potliner into the environment. Under federal law the Court of Appeals found the standards to be arbitrary and capricious. In response to a motion by U.S. EPA, the court stayed issuance of its mandate to allow U.S. EPA to promulgate replacement LDR treatment standards for spent potliner.

In September 1998, U.S. EPA promulgated a replacement set of LDR standards: Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), 63 Federal Register 51254 (September 24, 1998). The rule, effective September 21, 1998, prohibits land disposal of spent potliner unless certain hazardous constituents in the spent potliner have been treated in compliance with the new numerical LDR treatment standards in the rule.

Since U.S. EPA promulgated the September 1998 LDR treatment standards for spent potliner under the federal Hazardous and Solid Waste Amendments (HSWA) of 1984, the federal standard took effect in Oregon on September 21, 1998, the federal effective date. However, the previously adopted state standard is still in effect in Oregon. This creates a conflict that results in serious prejudice to the public interest and to the interests of the parties impacted, including generators and disposers of K088, U.S. EPA and the Department.

The Department, in implementing the federally delegated hazardous waste program, strives to be thoughtful and deliberate when proposing for adoption regulations that are more stringent than the federal standards. The Commission usually adopts more stringent standards based on a finding that a greater level of protectiveness than that provided under the federal program is required in Oregon due to Oregon-specific needs, exposures, waste streams or other factors.

With respect to spent potliner (K088), a waste stream for which a significant portion of the generation and management occurs in the Pacific Northwest, the Department intends to be consistent with the federal treatment and land disposal restriction standards unless, upon evaluation, more stringent standards are deemed necessary. The existence of the conflicting state and federal standards in the meantime creates undue hardship on the regulated community impacted.

To eliminate the confusion between the federal and state standards and, in the interim, to ensure protectiveness in keeping with the federal hazardous waste program, the Department proposes temporary repeal of the existing state spent potliner LDR standards and adoption of the federal standards for K088 set forth in 63 Federal Register 51254-51267. The Department will propose final rules for consideration by the Commission in March, 1999.

Langdon Marsh 10-15-98
Authorized Signer and Date

# Environmental Quality Commission

☐ Rule Adoption Item
X Action Item
☐ Information Item

**Agenda Item G**
**October 30, 1998, Meeting**

**Title:** Approval and Denial of Tax Credit Applications

**Summary:** Staff recommends the following actions regarding tax credits:

| ***Approve*** | **Certified Cost** | **Value** |
|---|---|---|
| *Pollution Control Facility Tax Credit* | | |
| Air (1application) | $97,935 | $97,935 |

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

M.C. Vandehey — Report Author
Division Administrator
Director

October 15,1998

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

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** October 15, 1998

**To:** Environmental Quality Commission

**From:** Langdon Marsh, Director

**Subject:** Agenda Item G, October 30, 1998, EQC Meeting
Approval of Tax Credit Application

**Statement of the Need for Action**
This staff report presents staff's analysis of Woodburn Fertilizer, Inc.'s pollution control facility tax credit application. Based on this analysis, the Director's recommendations the approval of this application as presented in Attachment A.

The applicant's tax year ends on November 30, 1998. There are no issues with Woodburn Fertilizer's application number 5058.

**Conclusions**
The recommendation for action on the attached application is consistent with statutory provisions and administrative rules related to the pollution control tax credit program.

**Recommendation for Commission Action**
The Department recommends that the Commission approve the certification of tax credit application number 5058 as presented in Attachment A of the Department's Staff Report.

**Intended Follow-up Actions**
Notify applicant of Environmental Quality Commission actions. Notify Department of Revenue of Issued certificates. Transmit electronic files to Department of Revenue.

**Attachments**
A. Tax Credit Review Report for Approval

**Reference Documents (available upon request)**
1. ORS 468.150 through 468.190
2. OAR 340-16-005 through 340-16-050

Approved:
Section:
Division:

Report Prepared by: Margaret Vandehey
Phone: (503) 229-6878
Date Prepared: October 15, 1998

Taxshare\9810_EQC_Preparation.doc

# Tax Credit Review Report

08/14/98 10:13 AM

Director's Recommendation: **APPROVE**

| | |
|---|---|
| Applicant | **Woodburn Fertilizer, Inc.** |
| Application No. | **5058** |
| Facility Cost | **$97,935** |
| Percentage Allocable | **100%** |
| Useful Life | **5 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 fertilizer plant that is taking tax relief under taxpayer identification number 93-0509242. The applicant is the owner of the facility. The applicant's address is:

**Woodburn Fertilizer, Inc.**
**868 N Front Street**
**PO Box 7**
**Woodburn, OR 97071**

## *Facility Identification*

The certificate will identify the facility as:

**A Torit dust collector, model 128 HPW-8, 50-horse power, 15,000 CFM**

The facility is located at:

**688 N Front Street**
**Woodburn, OR**

## *Technical Information*

The application consists of a 15,000 cfm Torit dust collector with a 50 hp New York blower (size 27") and the necessary ducting from the building to the dust collector. The system removes the dusts generated by the handling and bagging of dry fertilizers in the fertilizer blending plant.

## *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new 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).

| | |
|---|---|
| *Application Received* | **08/14/1998** |
| *Application Substantially Complete* | **10/15/1998** |
| *Construction Started* | **02/01/1998** |
| *Construction Completed* | **06/20/1998** |
| *Facility Placed into Operation* | **06/26/1998** |

## *Facility Cost*

| | | |
|---|---|---|
| Facility Cost | | **$119,935** |
| Ineligible Costs | | |
| | Interior Ductwork | -$22,000 |
| Eligible Facility Cost | | **$97,935** |

The facility cost was greater than $50,000 but less than $500,000. However, Woodburn Fertlizer requested a waiver of the accounting review according to Department guidelines and provided their own statement along with invoices and canceled checks to substantiated the cost of the facility.

## *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 | No salable or useable commodity. |
| ORS 468.190(1)(b) Return on Investment | The useful life of the facility used for the return on investment consideration is 5 years. No gross annual revenues were associated with this facility. |
| ORS 468.190(1)(c) Alternative Methods | Alternative methods were investigated and were found to be more expensive. |
| 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 applicant states that the facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: Dennis E. Cartier, SJO Consulting Engineers
Maggie Vandehey, DEQ

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Reviewers: Dennis E. Cartier, SJO Consulting Engineers
Maggie Vandehey, DEQ

# WOODBURN FERTILIZER, INC

October 15, 1998

Department of Environmental Quality
Tax Credit Program
811 SW Sixth Avenue
Portland, Oregon 97204-1390

I have reviewed the costs for the installation of our baghouse and these costs are eligible for tax credit certification according to ORS 340-016-0070. These costs amount to $97,934.75 and are detailed in the summary of construction costs of the application and represent the actual costs incurred by Woodburn Fertilizer, Inc.

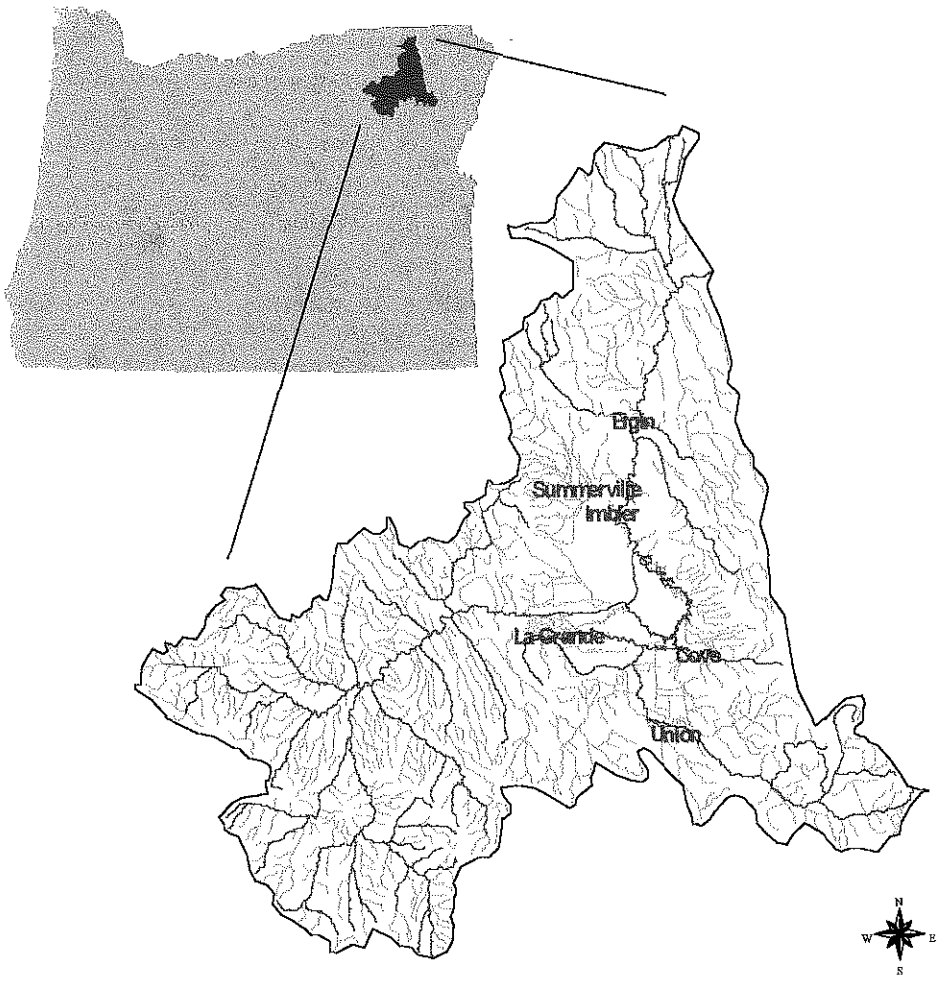
Sincerely,

Scott Burlingham
President

Tax Credit Application #5058

P.O. Box 7 • Woodburn, OR 97071 • (503)981-3521 • FAX (503)981-5747

# Grande Ronde Water Quality Committee
# Status Report

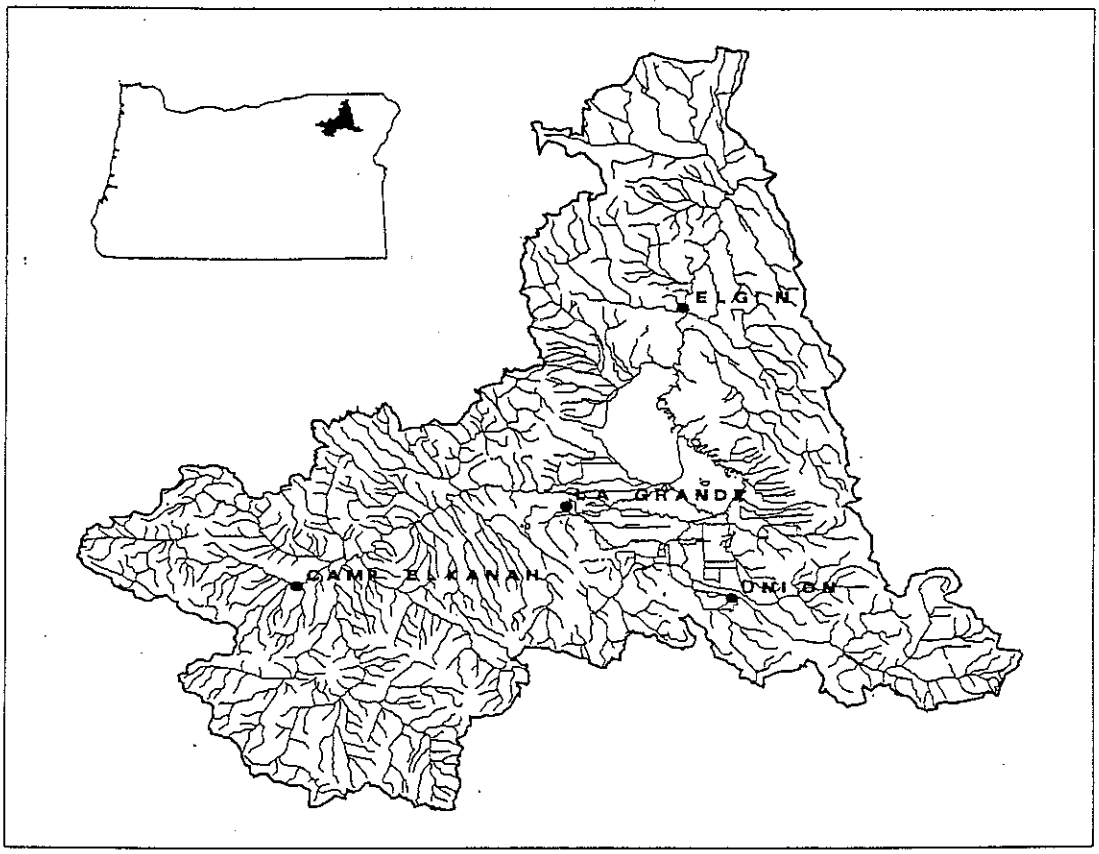



Dr. Gerald Young, Committee Chair
Mitch Wolgamott, Department Staff

Department of Environmental Quality
Eastern Region – Water Quality Program
700 SE Emigrant, #330
Pendleton, OR 97801

October 30, 1998

# Water Quality Report - Grande Ronde River




**WQ CONCERNS AT A GLANCE:**

| | |
|---|---|
| Water Quality Limited? | Yes |
| Segment Identifiers: | Grande Ronde River, 31=GRAN082<br>Catherine Cr. mouth to Union dam, 31D-CATH0 |
| Parameters of Concern: | Dissolved Oxygen, Flow, Habitat, Periphyton, pH, Phosphorus, Sediment, Temperature, Water Contact Recreation |
| Uses Affected: | Anadromous Fish Passage, Salmonid Fish Rearing, Resident Fish & Aquatic Life, Aesthetics |
| Known Sources: | Point Sources -- Sewage Treatment Plants and Industries<br>Nonpoint Sources -- Agriculture, Grazing, Urban, Forestry |

**Oregon Department of Environmental Quality**

**Grande Ronde Model Watershed Program**

# Grande Ronde Water Quality Committee

## Background:

The Clean Water Act (CWA) requires states to set water quality standards or criteria to protect the most sensitive uses of the state's waters. Section 303(d) of the CWA requires states to compile a list of streams with water quality problems. The stream segments identified on this list are said to be "water quality limited." The list is often referred to as the 303(d) list. Under certain circumstances the CWA further requires that these identified problems be addressed through a process known as developing Total Maximum Daily Loads (TMDLs) for relevant pollutants.

Portions of the Grande Ronde River have been on the State's 303(d) list for many years as a result of periodic low dissolved oxygen concentrations and high pH (alkalinity/acidity) levels. Extensive water quality studies were conducted in the early 1990s to further refine our understanding of the cause and extent of the water quality concerns. Partially as a result of these studies, additional stream segments and additional pollution concerns were added to the 303(d) list. As a result, portions of the Grande Ronde River and its tributaries, up stream of the confluence with the Wallowa River, are now identified as having problems with the following parameters: dissolved oxygen, pH, phosphorus, periphyton (algae that is attached to the stream bottom), sediment, temperature, water contact recreation (high bacteria concentrations), flow modification, and habitat modification.

All of these concerns are inter-related: Increased temperature and increased phosphorus leads to increased algae growth. Increased algae growth leads to problems with dissolved oxygen and pH. Increased sediment often carries phosphorus and other nutrients. A decrease in stream bank stability leads to increased sediment as well as wider and shallower stream channels. Wider and shallower stream channels result in increased exposure of the stream to solar radiation, which leads to increased temperature. A decrease in flow also leads to an increase in temperature. Loss of riparian vegetation often leads to a decrease in shade, a decrease in bank stability, a decrease in fish habitat and an increase in stream temperature.

**Oregon Department of Environmental Quality**

**Grande Ronde Model Watershed Program**

# Grande Ronde Water Quality Committee

**Committee Charge:** The Committee will assist and advise the Department of Environmental Quality and Grande Ronde Model Watershed Program in the development of a comprehensive water quality management plan for the Upper Grande Ronde River Subbasin.

## Committee Members:

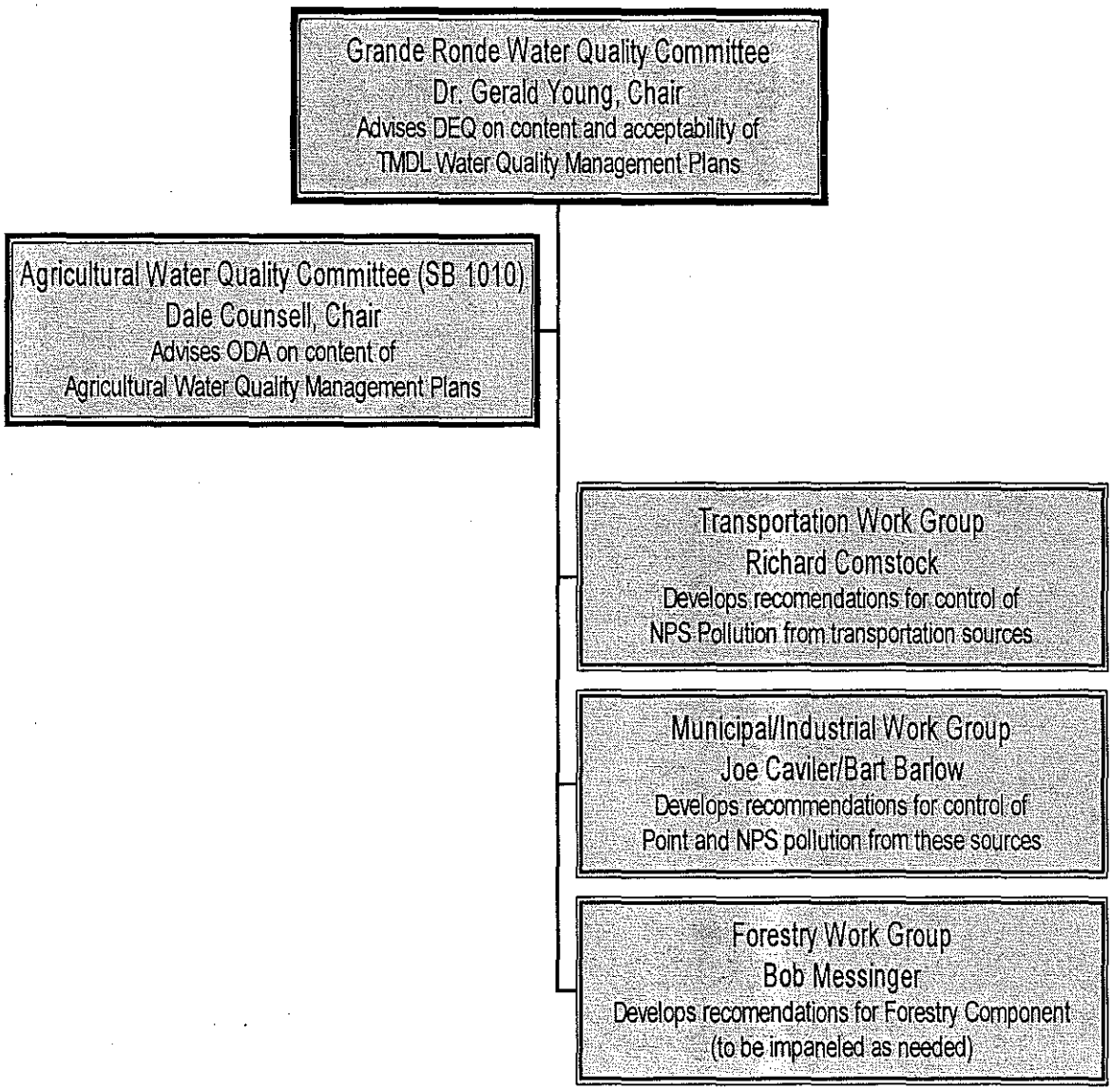
| Name | Interest |
|---|---|
| Dr. Gerald Young | Committee Chair |
| Joe Cavalier | Municipal |
| Bob Messinger | Industry/Commercial Timber |
| Richard Comstock | Transportation |
| Dale Counsell | Grazing |
| Ross Bingaman | Crop agriculture |
| Rick George | Tribal |
| Steve McClure | Union County/GRMWP |
| John Herbst | Small woodlands |
| David Axelrod | Environmental |
| Gary Hathaway | Recreation |
| Paula Moisio | Business |
| Sandy Roth | Public |
| Ron Dake | Public |

## Agency Ad Hoc:

| Agency | Name |
|---|---|
| Oregon Dept. Environmental Quality | Mitch Wolgamott |
| Oregon Dept. Agriculture | Ken Diebel |
| Oregon Dept. Forestry | Gary Rudisill |
| Oregon Dept. Fish & Wildlife | Jeff Zakel |
| Oregon Water Resources Dept. | Rick Lusk |
| Oregon Dept. Transportation | Mike Buchanan |
| Grande Ronde Model Watershed | Patty Perry |
| US Environmental Protection Agency | Christine Kelly |
| USDA Forest Service | Bob Rainville |
| USDA Natural Resource Conservation Service | Mike Burton |
| Bureau of Land Management | Dorothy Mason |
| US Fish & Wildlife Service | Ted Koch |
| National Marine Fisheries Service | Bob Ries |

12/8/97

# Grand Ronde TMDL Committee Organization



Upper Grande Ronde Subbasin Water Quality Management Plan

Draft Work Group Reporting Needs

The primary purpose of the work groups is to identify proposed management measures that are appropriate to this specific basin and that will lead, when implemented, to improved water quality. Broadly speaking this includes identification of actions to be taken to get necessary measures in place, timelines and responsibilities as well as identifying the recommended Best Management Practices (BMPs), and other items as appropriate and as time allows. It is not necessary for each work group to produce a formal report to the advisory committee. (The work groups do have the option of producing a report in they choose and if they have the time and resources to do so. If they choose to write a report is should clearly identify the same elements specified for the Water Quality Management Plan.)

What follows is basically a list of lists. If the work groups produce a list of recommendations for each of the lists specified is should provide the necessary information for the advisory committee to, in cooperation with the work groups, produce the Water Quality Management Plan document.

List of Recommended Proposed Management Measures

This should include:

annotated list of existing rules, ordinances, etc. that apply

list of recommended revisions or additions to the above

(this is related to assurance of implementation)

list of the BMPs themselves with information on effectiveness

recommended timelines and responsibilities

(this could be included with goals and objectives)

List of Suggested Goals and Objectives for Inclusion in Final WQMP

List of Recommendations for Monitoring and Evaluation

List of Recommendations for Public Involvement

HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
FAX: (503) 229-5120
TDD: (503) 378-5938
Telephone: (503) 229-5725

DEPARTMENT OF JUSTICE
PORTLAND OFFICE

October 23, 1998

Carol Whipple, Chair
Environmental Quality Commission
21755 Highway 138 West
Elkton, Oregon 97436

Re: In re William H. Ferguson

Dear Carol:

Enclosed is a proposed opinion and order in the William H. Ferguson case. I believe that it correctly memorializes the Commission's action at the September 17 meeting. I recommend that the Commission set aside a few minutes during the upcoming meeting to address this document. In the meantime, if you have any questions or concerns about this matter, please let me know.

Sincerely,

Larry Knudsen
Assistant Attorney General
Natural Resources Section



Enclosure
c: EQC Commissioners
Lang Marsh
Susan Greco
William H. Ferguson
Jeffery Bachman
LK:lk:LJK0863.LET

**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<br><br>WILLIAM H. FERGUSON,<br><br>Respondent. | FINDINGS OF FACT AND CONCLUSIONS OF LAW, OPINION AND ORDER<br><br>Case No. AQFB-WR-96-351 |

## Background

Mr. 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) 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; violated OAR 340-32-5600(4) by open accumulation of asbestos-containing waste material; violated OAR 340-32-5650 by failing to properly dispose of asbestos-containing waste material; violated OAR 340-32-5620(1) by failing to notify the Department of an asbestos abatement project; violated OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement; and 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.

Mr. William H. Ferguson requested a hearing on December 20, 1996. A hearing was conducted in Medford, Oregon on September 10, 1997. The Respondent appeared with witnesses Joel Ferguson, A. K. Morris, April Sevack, Gary Breeden, and William Corelle. Mr. Jeff Bachman represented the Department with witness Keith Tong.



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PHONE (503) 229-5725

On December 11, 1997, the Hearings Officer issued Findings of Fact, Conclusions of Law and an Order. The Hearings Officer found that the Commission has jurisdiction and that Respondent had violated each of the cited rules except for OAR 340-032-5620(1) (failure to notify the Department of an asbestos abatement project). The Hearings Officer further found that the Respondent was liable for a civil penalty of $1,000 rather than $5,400. This was based upon his determination that the base penalty and the occurrence, responsibility and cooperative factors should be decreased.

The Department filed a timely notice of appeal. It subsequently filed five exceptions to the Hearings Officer's conclusion and opinion. These were filed late. The Respondent submitted a brief that also was filed late.

The Commission set August 10, 1998 as the date to hear oral arguments. At that time, the Commission entered a preliminary ruling denying the Respondent's motion to dismiss based upon the late filing of the Department's exceptions and brief. With this decision, that preliminary ruling is made final. After the Commission made its preliminary ruling, the Chair of the Commission granted both the Department and the Respondent extensions and the Commission accepted the exceptions and briefs.

The Respondent was not present at the August 10, meeting. The Respondent sent a representative in his place. This representative, however, was not a licensed attorney and therefore could not represent the Respondent in the proceedings. The representative withdrew his request to represent the Respondent and the Commission set the matter over until September 17, 1998. The Commission resumed its hearing on September 17. At that time, the Commission heard oral arguments. Mr. Jeffrey Bachman represented the Department and the Respondent represented himself.

**Respondent's Contentions**

Respondent Mr. 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



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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, Mr. Keith Tong (Mr. 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. Mr. 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. Mr. 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 Mr. Tong left, Mr. Joel Ferguson called his father, Respondent herein, and reported his contact with Mr. 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.

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7. Respondent advised Mr. 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. Mr. 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 Mr. 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. Mr. Tong did observe pieces of the material on the ground where the ducting had been located.

11. After the second meeting with Mr. Tong, Respondent and Mr. 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. Mr. 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.

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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 Mr. 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. Mr. 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. Mr. William H. Ferguson is subject to a civil penalty of $1,400.

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DEPARTMENT OF JUSTICE
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PORTLAND, OREGON 97201
PHONE (503) 229-5725

## 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. Respondent 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.

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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 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.

The Hearings Officer concluded that 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. He reasoned that 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, and this liability did not attach prior to notification.

The Department took exception to this determination. It argued that the ruling is contrary to the strict liability standard applicable to this violation.

A majority of the Commission concludes that the Hearings Officer erred in the determinations and that in keeping with the strict liability standard established by ORS

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468.140(1)(f) and the Commission's prior decisions, liability attached when the Respondent began asbestos abatement.

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 thus violated 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.

Respondent violated OAR 340-32-5600(4) by openly accumulating asbestos-containing waste material.

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OAR 340-32-5600(4) provides that open accumulation of friable asbestos-containing waste material is prohibited. 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.

Respondent 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.

Respondent 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



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that the materials were in fact asbestos-containing. It is not appropriate to assess violation under this provision of the rule.

Respondent violated OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement.

OAR 340-33-030(2) provides than 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.

Mr. Joel Ferguson was not a certified asbestos abatement worker.

Respondent 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. Respondent is subject to a civil penalty of $1,400.

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 applied a base penalty of $3,000 finding that this was a class I, moderate magnitude violation as provided in OAR 340-012-0042(1). This was predicated



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on the provision in OAR 340-012-0090(1)(d)(D) which allows the magnitude to be increase one level if the asbestos containing material was compromised of more the 5% asbestos.

The Hearings Officer reduced the base penalty to $1,000 because he believed it was inappropriate to increase the base penalty. His decision was based on conclusion that the violation was not intentional.

A majority of the Commission finds that the Respondent's actions were intentional as that term is used in OAR 340-012-0045. Nevertheless, when the Respondent's conduct is viewed as whole, a majority of the Commission agrees that it will not exercise its discretion to increase the magnitude of the violation. Accordingly, the base penalty is $1,000.

The Department assigned a value 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. The Hearings Officer 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 filed an exception to this ruling.

The Commission was unable to reach an agreement on this issue. Therefore, the decision of the Hearings Officer will stand on this factor. The Commission agrees, however, that the Hearings Officer's reasoning on this point should not be viewed as precedent in future cases.

The Department assigned a value of 6 for "R" because it determined that the violation was intentional. The Hearings Officer reduced the factor to 2 because he concluded that the Respondent's actions were at most negligent. The Department excepted. It noted that intent is defined in OAR 340-012-0030(9) and that the definition requires only "a conscious objective to cause the result of the conduct." Accordingly, only general intent to remove the asbestos-containing material is required, not specific intent to violate the



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asbestos regulations. A majority of the Commission agrees with the Department and accordingly the R factor is 6.

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. The Hearings Officer noted that the Respondent was skeptical and 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. Based on these findings, the Hearings Officer assigned a value of -2 to the "C" factor.

The Commission was unable to reach an agreement on this issue. Therefore, the decision of the Hearings Officer will stand on this factor. The Commission agrees, however, that the Hearings Officer's reasoning on this point should not be viewed as precedent in future cases.

"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 civil penalty as calculated under the rule for violation 1 is $1,400.

The requirements for establishing a penalty have been met. The values assigned and the calculations are set forth above. Respondent is liable for a civil penalty of $1,400.

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## ORDER

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 open accumulation of 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 $1,400 civil penalty.

DATED this ___ day of _____, 1998.

Environmental Quality Commission

_____
Carol Whipple
Chair

Notice of Right to Judicial Review: You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60 day time period, you will lose your right to appeal.

LK:kt/LJK0862.PLE



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# Department of Environmental Quality
# Memorandum

DATE: October 30, 1998

TO: Environmental Quality Commission

FROM: Langdon Marsh

RE: Director's Report

## Air Quality Program Streamlined Permitting Process Improvement Team(SPPIT) completed

The Air Quality program recently met a significant milestone in implementing the strategic plan with the completion of an efficiency study of point source permitting. The study was conducted by the Streamlined Permitting Process Improvement Team (SPPIT), which included staff and managers from regions and headquarters. The final SPPIT report includes far reaching recommendations to streamline the Air Contaminant Discharge Permit (ACDP) program while maintaining environmental protection and service levels. The recommendations include changes to rules, guidance, permit formats, permit processing procedures, and alternatives to permitting for some types of sources.

Implementation of the SPPIT recommendations will support efforts by the AQ program to shift resources from point sources work to area and mobile source work as called for in the strategic plan. This shift is needed because most of the emissions statewide come from area and mobile sources while most of our resources are expended in the point source program. The shift will be even more important as we work to address the new PM2.5 standard and hazardous air pollutants.

## Columbia Slough TMDL and Airport De-icing permit update

The EPA review of DEQ's TMDL submittal for the Columbia Slough should be completed soon. Getting to this point has taken several years of excellent scientific and public involvement work. The document includes load allocations for de-icing and anti-icing chemical discharges from the Portland Airport. Work remains for other municipal and industrial source management. We will firm these requirements through a series of MOAs.

Now that the allocations are in place for de-icing discharges, we have submitted a draft discharge permit for public review. Three glycol discharges do have documented impacts on oxygen levels within the Slough. The permit proposes to reduce discharges significantly. The Port of Portland will be considering options to meet the permit requirements, including diversion of the discharge to the Portland sewer system or direct discharges into the Columbia River. The permits require compliance by the Winter of 2003-2004.

The oxygenated fuel season begins Nov. 1st in Jackson County, Grants Pass, Klamath Falls, Yamhill County and the Portland Tri-county area. The Oxy Fuel Program, along with the Vehicle Inspection Program and other strategies has resulted in lower carbon monoxide levels in Oregon. In addition, newer cars are emitting substantially less carbon monoxide. There have been no violations of federal air quality standards for carbon monoxide in Portland, Medford and Klamath Falls since 1991 and in Grants Pass since 1988.

## DEQ awards solid waste management grants

The DEQ has awarded grants totaling more than $250,000 to Oregon cities, counties and other local governments. The grants, funded through landfill disposal fees, have helped communities with the greatest financial and environmental need. Grants are used to establish or improve recycling opportunities, or for comprehensive solid waste management planning.

## Portland Harbor and Ross Island

There has been considerable progress on the Ross Island and Portland Harbor sediment issues. EPA has agreed to postpone a Regional Decision Team review of Portland Harbor until May. In addition, the Portland Harbor Group representing private and public operations along the waterfront have tentatively agreed to fund DEQ work on the harbor management plan over the next six months. The group is prepared to spend up to $500,000. The Governor announced this agreement earlier this month.

There is also progress at Ross Island. A work group representing DEQ, the Portland of Portland and Ross Island Sand & Gravel has drafted an expanded workplan outline and have begun putting together an inventory of materials disposed of at Ross Island. An outside expert panel has been named to review this work plan and provide their comments. We have also initiated a public involvement process to assure that interested people and organizations are both informed about and involved in the process as we move ahead.

## Southern Deschutes County Onsite federal grant

Oregon has been included as a part of an EPA National Community Decentralized Wastewater Demonstration Project to assist in addressing increasing levels of nitrates in the groundwater in Southern Deschutes County. Among other objectives, the project will field test performance of various technologies for removing nitrates from onsite sewage systems. Three sites have been chosen for this project, and include Warren, Vermont ($1.5 million), Block Island/Green Hill Pond, Rhode Island ($3.0 million), and La Pine, Deschutes County ($5.5 million). The President signed the appropriations bill (HR 4194) which included this project, on October 21st. Preliminary project and work plans are being discussed with EPA. The Department will keep the Commission advised as this project advances.

## City of Dallas poplar tree plantations industrial wastewater re-use, land use questions.

The city of Dalles has applied for an NPDES permit for industrial wastewater irrigation using a 3-5 acres of a 240 acre parcel poplar plantation. This is a proposed test project to evaluate the feasibility of using industrial wastewater beneficially on poplar trees. The effluent will come from Praetizer Industries and will be spray irrigated during the growing season. The effluent contains nitrogen compounds, several metals, and dissolved solids (salts). The nitrogen compounds will be taken in by the trees and used as plant nutrients; the metals are expected to be bound to soil particles; and the dissolved solids will be discharged to Rickerall Creek late fall through spring, or to groundwater.

Friends of Clean Living filed a NOI to appeal with LUBA on this proposal. The basis of the appeal is the County's failure to provide written findings, with the LUCS approval. The petitioners own land adjacent to the proposed plantation. The county findings in the land use issue state that the project is on EFU land and the primary purpose of the plantation is to earn a profit. A plantation and use of holding ponds for irrigation is determined as an allowable use under the statutory definition of "farm use". DEQ has found the LUCS complete. The question on this and any future expansion of this innovative idea will depend upon whether these plantations meet the definition of forest use which is allowed under the statutory definition of "farm use".

## Law Suit settlement on WQ general permit for suction dredging

In 1997 the National Wildlife Federation filed a petition in Circuit Court challenging the Department's issuance of a general NPDES permit for suction dredging. The petition alleged, among other matters, that the general permit was issued in violation of OAR 340-045-0035 which requires notice of how the permit relates to water quality limited parameters, in this case, specifically the temperature standard. The Department and the NWF are in the process of negotiating a settlement which would, in effect, remand the permit decision to the Department to reissue the notice on the general permit. The settlement would keep the general permit in place for all registrations on streams that are not Water Quality Limited for temperature. New registrations under the general permit will be effected beginning in the spring of 1999.

## DEQ employee recognition

The Powell Valley Road Water District voted unanimously to commend the excellent work of Sheree Steward of the DEQ's Water Quality Program for her help in assisting them in developing their drinking water protection plan. They also recognized Dennis Nelson of the State Health Division who worked jointly with Sheree.

The Attorney General's office offered praise for the help and support of DEQ staff in the Rogue Tire Recyclers case. They acknowledged Chuck Donaldson, Audrey Eldridge and Bob Guerra for their assistance.

The Department of Forestry made special thanks to Russell Harding for his assistance in providing an overview of the MOU between DEQ and Forestry on water quality issues to the State Board of Forestry Program for Oregon. This program reviews progress in furthering stewardship of Oregon's private forestlands.

Approved_____
Approved with Corrections__X__

Minutes are not final until approved by the EQC

# Environmental Quality Commission
# Minutes of the Two Hundred and Seventy-Second Meeting

## October 29-30, 1998
## Open House and Regular Meeting

On October 29, 1998 the Environmental Quality Commission toured Ore-Ida Foods, Inc. before convening at the Holiday Inn, 1249 Tapadera Ave., Ontario, Oregon for an open house to meet with local officials. The Commission began *its* regular meeting at 8:30 a.m. on Friday, October 30, 1998, at the Holiday Inn in Ontario, Oregon. The following members were present:

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

Also present were Kurt Burkholder 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 September 17, 1998 minutes: On page 3, last paragraph, the third line should read -- "yes" votes. Commissioner *Van Vliet* ..... A motion was made by Commissioner Van Vliet to approve the minutes with the one modification. It was seconded by Commissioner Reeve and the motion carried with four "yes" votes.

## C. Rule Adoption: Solid Waste "Catchall Rulemaking

Paul Slyman, Solid Waste Manager, gave background on the legislation being implemented in this rule change and use of the Solid Waste Advisory Group (SWAG) in developing the rules. Deanna Mueller-Crispin, senior solid waste planner, gave a brief presentation on existing Oregon recycling program requirements.

There were some questions on changes in the minimum glass recycled content regulations. Commissioner Reeve asked how the Department would enforce the requirement for out-of-state glass manufacturers to use minimum glass content, and encouraged DEQ to determine an enforcement mechanism before the enforcement deadline is reached. It was suggested a label might be used on complying glass containers stating they meet the Oregon standards. When asked why glass manufacturers are reluctant to use recycled glass, Ms. Crispin explained that the decision was a balance between sorting/cleaning costs and energy benefits, and for some manufacturers the most important issue was a stable source of feedstock. The effect of co-mingling collection of recyclables could lower the quality of recycled glass (cullet) as well.

Eliminating the financial assurance requirement for general permit composting facilities also generated some questions. The Waste, Management and Clean-up Division has been working with the Water Quality Division to

develop the best regulatory scheme while continuing to promote composting as a SW management tool. Surface water data from several other states which do not show problems has been reviewed. The issue of "zero impact" on groundwater was brought up by a member of the SWAG as a perceived internal inconsistency in DEQ regulations.

A motion was made by Commissioner Reeve to adopt the proposed rules as presented in Attachment A of the staff report. Commissioner McMahan seconded the motion and it was carried by four "yes" votes.

Later in the meeting Larry Knudsen, Assistant Attorney General, noted this rule adoption was not complete, as there was an additional correction requested by staff in an October 23, 1998 memo from Lang Marsh to the Commission. This was a correction to two statutory references. A motion was made by Commissioner Reeve to adopt the additional corrections. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

## D. Rule Adoption: Underground Storage Tank Rule Revisions

Mike Kortenhof, Underground Storage Tank Manager, presented a summary of the proposed rule revisions. Mike Anderson, hydrogeologist, provided additional technical information. Recommended changes will address each of the following:

- Establish acceptable risk levels consistent with ORS 465.315;
- Streamline the cleanup process for a new category of sites: "low-impact sites;"
- Include provisions for the development of generic remedies as directed by ORS 465.315;
- Combine two sets of cleanup rules into one set and restructure them for easier reading and implementation; and
- Establish a new Division 177 for administrative requirements for the cleanup of releases from residential heating oil tanks.

Commissioners asked questions about a number of miscellaneous items such as what the term "contaminated soil" means and how lead is addressed in the sampling requirements. The two main topics of interest, however, were the low-impact site (LIS) requirements (OAR 340-122-0243) and the provisions for developing generic remedies (OAR 340-122-0252). Commissioner Reeve proposed including provisions for allowing agricultural tank sites to use the LIS requirements. After some discussion with Commissioner Van Vliet of the term commercial, it was proposed that the phrase "or commercial" be added in the following sentence in OAR 340-122-0243.

> "The purpose of the low-impact site designation is to provide a streamlined process for operating gas stations or other industrial <u>or commercial</u> properties that allows these facilities to remain in operation while the responsible person manages any potential risk from contamination remaining at the site."

Commissioner Reeve felt that wording change was sufficient as long as the Department agreed agricultural use was just another commercial use of the property.

The Department was asked how it intends to use the generic remedy section of the rules. Mike Anderson explained the intent was to provide more specific cleanup recommendations for categories of sites that had common characteristics. Residential heating oil tank cleanups were given as an example. Kurt Burkholder, Assistant Attorney General, explained that generic remedies are not enforceable or implementable on their own, but had to be used within the context of the *existing* rules.

A vote on this agenda item was delayed until after the presentation of the next item (UST Compliance Rules). Commissioner Van Vliet then made a motion to adopt the UST Cleanup Rule package with the wording change noted above. Commissioner McMahan seconded the motion and it carried with four "yes" votes.

## E. Rule Adoption: Underground Storage Tanks Compliance Rule Revisions

Mike Kortenhof presented a summary of the proposed rule revisions, including an update on tank facility status and the December 22, 1998 deadline for upgrade, replacement or closure of old tank systems. Recommended changes are designed to address each of the following:

- Adopt financial responsibility requirements for private tank owners with 1 to 100 tanks as well as local government tank owners.
- Adopt general permits by rule for installing, operating and decommissioning USTs, which replaces the temporary permits that have been in use since 1988 and;
- Incorporate miscellaneous housekeeping amendments involving:
    - Multi-chambered tanks, each chamber is considered a separate tank
    - payment of back fees on previously unregistered tanks
    - seek legal business names on general permit registration forms, and
    - report releases above confirmed release levels

An addendum to the October 15, 1998 rule adoption package was presented during the meeting containing drafting error corrections.

Commissioners asked follow-up questions about tank facility status and Department efforts to meet the deadline. Commissioner Reeve recommended that grammatical problems in 340-150-0003 (35) be corrected by rewording the first two sentences to say:

> "To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. ~~D~~ and dispose of all liquids and accumulated sludges by recycling or disposeal."

A motion was made by Commissioner Van Vliet to adopt the UST Compliance Rule package with the wording change noted above and including the addendum. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

## F. Rule Adoption: Temporary Rulemaking to Align the State Land Disposal Restrictions with the Federal Land Disposal Restrictions

Anne Price, Hazardous Waste Manager, and Richard Duval, Hazardous Waste Compliance Staff from the DEQ Pendleton office, presented this item. In September 1998, U.S. EPA promulgated a final rule amending the Hazardous Waste Land Disposal Restrictions ("LDR") program in 40 Code of Federal Regulations Parts 268 and 271 to establish treatment standards for spent potliner from primary aluminum reduction. To avoid serious prejudice to the public interest and to the interests of the parties concerned, the Department proposed to adopt temporarily these U.S. EPA amendments to the LDR program that apply to spent potliner and to repeal temporarily the parts of the existing state-adopted LDR program that apply to spent potliner. The federal standards were vacated by the U.S. Court of Appeals for the District of Columbia due to a finding under federal law that the testing method used in developing the standard was applied in an arbitrary and capricious manner.

A motion was made by Commissioner Van Vliet to temporarily adopt the new federal LDR rules and repeal the existing LDR rules as outlined in the staff report including attachments A & B. The Department will proceed through formal final rulemaking on these rules, returning to the EQC for their consideration in March, 1999. *The motion was seconded by Commissioner Reeve and carried with four "yes" votes.*

## G. Approval of Tax Credit

Director Langdon Marsh presented the pollution control facility tax credit application number 5058 for approval. The applicant's (Woodburn Fertilizer, Inc.s) tax-year end is November 30, 1998. There being no discussion, a motion was made by Commissioner McMahan to approve the tax credit. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

## H. Update on the Grande Ronde TMDL

Joni Hammond, DEQ Eastern Region Water Manager, Mitch Wolgamott, DEQ Eastern Region Staff, and Dr. Gerald Young, Chair, Grande Ronde Water Quality Committee presented the update.

The Commission was reminded that they had adopted a rule in October 1997 related to TMDLs in the Grande River Basin. The rule established concentration limits for nutrients, required point sources to develop facilities plans to meet the nutrient limits and required water quality management plans to be developed to address all the 303(d) listed issues in the Upper Grande Ronde River Subbasin. The rule directed the Department to establish a local advisory committee to assist in the development of the management plans.

Dr. Young gave a progress report on the Grande Ronde Water Quality Committee. The committee is made up of representatives of all affected interests and affected state and federal agencies. There are four work groups under the umbrella of the advisory committee: Municipal/industrial, transportation, forestry and agriculture. The agriculture work group is the same as the SB 1010 Committee that is developing a plan to address agricultural sources working with the Department of Agriculture. The advisory committee recognizes the authority of both the Forest Practices Act and SB 1010. The work groups are making recommendations to the advisory committee related to pollution control for their source category. The full committee will review recommendations and develop a single integrated plan for the entire Upper Grande Ronde River Subbasin. Funding for implementation of projects to improve water quality will be a big issue. This is especially true for agriculture where financial assistance will be necessary. The Commission thanked Dr. Young for his efforts and involvement.

## I. 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

At the September, 1998 EQC meeting the Commission directed Larry Knudsen, Assistant Attorney General, to prepare the final order according to the motion that was passed. The final order was presented to the Commission. Commissioner Reeve moved to accept the order as written; Commissioner Van Vliet seconded the motion. Commissioners Whipple, Reeve and Van Vliet voted to approve the motion. Commissioner McMahan abstained as she was not present for the initial discussion regarding this case.

## Public Comment

Terry Drever Gee, representing the Eastern Oregon Mining Association, informed the Commission that the Eastern Oregon Mining Association had issued a letter of intent to sue to the Federal Highway Administration, The Oregon Department of Transportation, Multnomah County and the City of Portland. The intent to sue notice asserts the federal government has violated the Endangered Species Act by failing to examine whether restoration work may affect a listed species.

## J. Commissioners' Reports

There were no Commissioners' reports given.

## K. Director's Report

The Director, Lang Marsh, distributed a report to be read by the Commissioners at a later date. He then read a letter he would be sending to an Eastern Region DEQ employee, Tim Davison, for his outstanding contribution to the Department. Stephanie Hallock, Eastern Region Administrator, presented him with a plaque from the Commission acknowledging *his* 25 years of service to the Department.

There being no further business, the meeting was adjourned at 12:05 p.m.