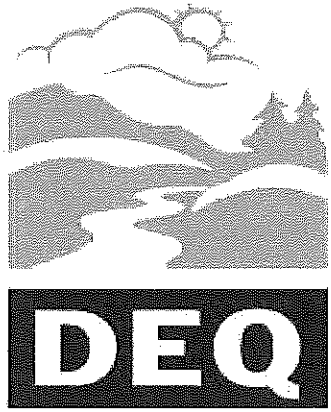
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 05/07/1999



State of Oregon
Department of Environmental Quality

A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

May 7, 1999
Public Service Building
Auditorium
155 N First Ave
Hillsboro, 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 **1:00 p.m.** for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

The Environmental Quality Commissioners will tour several sites in the Tualatin Basin before the regular meeting

Regular Meeting
Beginning at 11:00 a.m.

A. **Informational Item**: Update on the June 1998 Tualatin River Basin DMA Compliance Order

B. **Approval of Minutes**

C. **†Rule Adoption**: Repeal of Rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions

D. **Informational Item**: Erosion Prevention and Sediment Control from Construction Activities Policy Framework Component of Statewide Strategy to Manage Stormwater

E. **Commissioners' Reports**

F. Director's Report

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

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

The Commission has set aside June 24-25, 1999, for their next meeting. It will be in Hermiston, Oregon.

Copies of staff reports for individual agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 229-5301, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

If special physical, language or other accommodations are needed for this meeting, please advise the Director's Office, (503) 229-5301 (voice)/(503) 229-6993 (TTY) as soon as possible but at least 48 hours in advance of the meeting.

April 16, 1999

PROGRESS
Tualatin Basin Dairy Farms

MANURE STORAGE FACTS:

- An average dairy milking 250 cows needs to store over 11 acre-feet of liquids (manure plus water) plus about 35,000 cubic feet of solids (manure only) during the winter.
- Estimated typical construction cost to build a storage facility of this capacity:
  - $75,000 for the farmer.
  - $50,000 for USDA (cost-sharing).
- Most dairy farms in the Tualatin Basin now have adequate manure storage facilities.
- Many facilities were built with technical and financial assistance from the United States Department of Agriculture and the Washington County Soil and Water Conservation District.

Conclusion: Dairy farmers in the Tualatin Basin have invested much time and money in manure storage, with little payback in profitability. Improvements in water quality have been documented. Air quality impacts have sometimes been negative.

MANURE NUTRIENT FACTS:

Typical 250 cow dairy annual nutrients after storage and application losses:

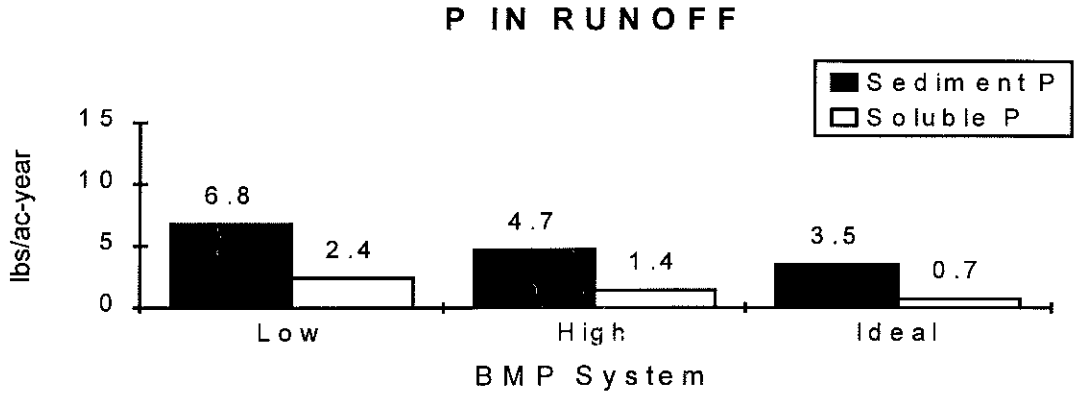
	Nitrogen	**Phosphate**	**Potash**
a. Nutrients in Manure	31000 lbs	23000 lbs	48000 lbs
b. Approximate value	$9,000	$6,000	$7,000
c. Nutrients in Corn Silage	190 lbs/ac	100 lbs/ac	230 lbs/ac
d. Acres of Corn ("a"/"c")	160 acres	230 acres	210 acres

Conclusion: Many dairy farmers find they need little or no commercial fertilizer to grow their corn silage. This situation is due mostly to increased use of information technology (waste utilization plans).

EQC

CHALLENGES
Tualatin Basin Dairy Farms

PHOSPHORUS FACTS:



This graph shows EPIC Model Predictions for non-point source phosphorus (P) runoff from Tualatin Basin dairy farms. Each system received 20 tons per acre of solid manure.

SYSTEM	SOIL TEST P (ppm)	FERTILIZER P205 (lbs/ac)	CONS. TILLAGE?	MANURE STORAGE
Low	177	96	no	None
High	133	98	no	5 months
Ideal	**69**[A]	30	**yes**[A]	5 months

[A] = Most sensitive parameters with respect to P runoff.

Conclusion: EPIC predicts that Soil Test P (a function of *amount* of manure applied) is critical. Most dairy farms apply manure at rates that meet nitrogen needs of the crop, which results in excessive applications of P and an increase in Soil Test P. The major challenge on dairy farms is finding more land (often on other farms) so manure can be applied at lighter rates.

RIPARIAN BUFFER FACTS

- Farmers don't like tall trees along streams because streambanks erode when the trees fall over.
- Farmers don't want to give up productive land in order to plant trees.
- Farmers are concerned about weeds in riparian areas spreading to their fields.
- Many older farmers and landlords worked hard clearing trees to create cropland.

Conclusion: Planting riparian forest buffers is a huge challenge on Tualatin Basin farms. Current USDA programs pay about $100 per acre maximum incentive for farmers to plant riparian buffers, but this amount is so low that no Tualatin Basin farmers have signed up for these programs.

TUALATIN BASIN EQC TOUR
MAY 7, 1999

Objective: A short tour to review example agricultural and urban land uses and water quality best management practices, and to discuss successes and challenges in implementing programs to address nonpoint source and stormwater pollution. The tour is hosted by the Unified Sewerage Agency and the Oregon Department of Agriculture, along with the other Tualatin Basin Designated Management Agencies.

Tour Stop - What	Where	What you'll see
Bus loading: approx. 8:45 am	West side of Public Services Building, 155 N. First Ave, Hillsboro	
Licorice Lane Farm – approx. 9:15 – 10:00 am	Take 1st south, left on Oak St (Hwy8), follow TV Hwy to River Road (right), right on Rood Br. Road. Site is on Rood Bridge Road, just south of the Tualatin River, across road from Meriwether Golf Club	Dairy farm operation, including waste collection and spray irrigation, Tualatin River stream-side buffer issues
Enroute to urban sites	Return back north on Rood Bridge Road, right on River Road, left on Witch Hazel, right on TV Hwy, left on Cornelius Pass Rd, left on Quatama, follow right where it becomes 227th	Urban, urbanizing area. Some roadside ditch drainage as well as curb & gutter. Cross over Beaverton Creek – can see wide floodplain/wetland complexes. Drive through older Orenco town, low density, skinny streets, swale type drainage.
New townhouse development in Orenco	Turn right from 227th onto Dogwood St, circle neighborhood by going left on 225th, and left again back onto 227th. This is a drive-through.	Denser development, with attempts to match Orenco environment with no curbs/gutters, skinny streets, ditch/swales (with property owner maintenance issues)
New apartment complex water quality facility	From 227th & Dogwood, follow road to left, then right on 228th, left on Alder, right on 231st, right on Cornell, left on Walbridge Lane. This is a slow drive-by.	Right side of Walbridge: view large extended dry detention facility with fence, lawn.
New apartment complex water quality facility	Turn left into apartment complex on left side of Walbridge. Curve left, then right, stop at middle of complex by WQF. This is a stop & get out to look.	View water quality pond designed as visual amenity in center of complex. Discuss aesthetics, safety and temperature issues with both apartment complexes versions of WQFs.
Orenco Station housing development & WQF	Turn right onto NW 229th, left on Butler, drive slowly in middle lane to view swale to left, then left on Orenco Station Parkway, follow to Cornell. This is a drive through.	View dense, neo-traditional Single Family housing, but ugly swale behind concrete retaining wall. Discuss opportunities to make WQF's part of common areas, and challenges of density.

WQF = Water Quality Facility for stormwater treatment

Tour Stop - What	Where	What you'll see
Lattice Semiconductor – swale and pervious pavement	Turn right on Cornell, left on Elam Young Parkway, left on Moore Ct., pull into south side parking lot. This is a stop and get out.	View use of paver blocks on sand, designed to infiltrate stormwater. Discuss stormwater quantity – quality connection and ideas of effective impervious area reduction.
Orenco Creek 25' buffer	Turn right on Elam Young Parkway, right into parking lot of new red brick commercial buildings, just north of Light Rail. Stop in back by fence along stream. Get out if time.	View retaining wall/fence, and 25' buffer separation from stream/wetlands to development. Discuss existing buffer requirements and potential future (Title 3).
Education Service District WQF's	From parking lot, go north, cross over NE Ray Circle, into parking area of Ed. Service District. Slow drive through of parking area, straight through to other side of Ray Circle	View small extended detention area, preserved trees, parking lot swales with direct, curb-cut drainage.
Existing Development Issues review on the way back.	Left on Ray, right on Elam Young Pkwy, left on Cornell, right on Grant, left on 1st, back to Public Services Building.	On the way back, view existing development including "strip" commercial and older residential areas. Discuss water quality mgmt techniques for existing areas (maintenance, public ed, etc.), retrofit challenges, limits of authority.

WQF = Water Quality Facility for stormwater treatment

UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

TESTIMONY
BEFORE THE
ENVIRONMENTAL QUALITY COMMISSION
May 7, 1999
Public Comment: Unified Sewerage Agency

I am John Jackson of the Unified Sewerage Agency (USA) located in Washington County. Today, I am representing the Cities and USA within our 120 square mile urban service area of the Tualatin River watershed. They include the 11 cities of Tualatin, Tigard, Beaverton, Durham, King City, Sherwood, Hillsboro, Cornelius, Forest Grove, Banks, and North Plains. Our service area also includes the unincorporated urban area of Washington County.

It is my intent to supplement the information you received on the field trip and describe how what you saw today fits in the overall water quality program of the Department of Environmental Quality and the Willamette Restoration Initiative of Governor John Kitzhaber.

We would like you to take from this presentation the following messages:

1) USA is committed to continued water quality improvements. We stand on our successes thus far and our ability to work with our watershed partners in improving the water quality of the Tualatin River watershed.
2) We are committed to improvements in overall stream health, which is far more complex than simply reducing phosphorus loads.
3) USA is in compliance with its regulatory requirements under the Clean Water Act: Stormwater NPDES permit, Wastewater NPDES permits, and the TMDL Compliance Orders of your Commission.
4) Data show water quality is improving in the main river and in the rural and urban tributaries.
5) We need to take stock in what we have learned thus far. We are all interested in being smarter today and tomorrow through the continued use of adaptive management.

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Hillsboro, Oregon 97124-3072
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FAX: 503/640-3525

6) We all want to make informed decisions to maximize the effectiveness of Surface Water Management (SWM) programs here in the Tualatin watershed. The public is expecting that our efforts and their investments yield real environmental improvement.
7) We believe our program has yielded the benefits and improvements and if properly focused it will continue to do so in the future.

USA has two major programs dedicated to clean water, the Wastewater Treatment Program and the Surfacewater Management Program. Both have been successful in meeting the water quality challenges that continue to be presented in this watershed. We have instituted over $200 million in treatment plant improvements. Our ratepayers continue to provide revenue for flow augmentation of the main river and to meet the TMDL and NPDES requirements. The river is now meeting pH standards, and is very close to meeting the Dissolved Oxygen standard. The algal growth peaks have been reduced.

Specific to stormwater and stream enhancement efforts, we have implemented a myriad of Best Management Practices. You saw a very quick snapshot of some them on this morning's field trip. These include:

- On-site water quality facilities are required for new development storm treatment. There are approximately 800 built inside USA's boundary since 1990.
- Streamside & wetland buffers currently require 25 feet and have been in place since 1990. It is expected that this requirement will be strengthened in the near future in concert with the land use planning requirements of Metro and local planning jurisdictions.
- Erosion control program for all new developments continues to be viewed as one of the best in the nation as evidenced by continued requests for training outside our district. We are committed to continued improvement of the program.
- Street sweeping is occurring on most curbed streets 1 to 2 times per month, which is removing over 4000 tons of street dirt annually.
- Catch basin cleaning occurs once every 18 months removing approximately 700 tons of material annually. This program is moving to cleaning once per year.
- Fall leaf pickup removes approximately 11,000 cubic yards of organic material and sources of nutrients each year.

- Stream enhancements are increasing to meet the temperature, dissolved oxygen, and fish habitat needs of our streams before the requirements to do so are established. USA constructed or funded approximately 3.7 miles of stream corridor vegetative enhancements over the last two years. The Governor visited two of these sites in March of this year to see how urban activities can help support the Oregon fish recovery plan.

There are many more activities that time today don't allow discussing. Our February TMDL report to DEQ, as required in your June 1998 compliance order, lays out an extensive, detailed discussion of all our activities in both the main text and appendices.

Having said that, we still have challenges. We don't live in a perfect world. There is still room for improvement and for others to help. A couple of the challenges that DEQ and USA staff are working on:

- It is not possible to predict with certain precision the effectiveness of program elements. Our efforts to date have therefore focused on pursuing all strategies we think can produce results and gauging their effectiveness in stream. Some believe we can model the effectiveness of stormwater management programs with sufficient precision to allow inclusion of numerical load limits in permits for use as an enforcement tool. We disagree. Models are fraught with assumptions and have no place in compliance actions. Some elements of programs lend themselves to modeling though it is very approximate in nature. Most BMPs don't lend themselves to calculations of pounds per day of removal. How does one reliably and accurately predict the pounds of phosphorus removed by catch basin stenciling, erosion control, detection and correction of illicit sanitary connections to the storm sewer system, education programs, and streamside vegetation planting? For this reason, the Clean Water Act and supporting regulation does not propose to include such limits in stormwater permits.

- The discovery of much higher than anticipated levels of background phosphorus have caused us to reconsider strategies and goals for phosphorus control within the basin. It should also serve to demonstrate the wisdom of DEQ's past approach of adaptive management of phosphorus issues in the Tualatin based upon

implementation of aggressive strategies, monitoring and adjustment. That is the intelligent approach to managing phosphorus within this very complex system.

USA's Vision is to "Enhance the environment and quality of life in the Tualatin River Watershed through visionary and collaborative management of water resources in partnership with others." We view the Department and Commission as partners in this pursuit.

We are pleased that you have come to visit our watershed and see first hand the commitment of Tualatin Basin citizens and jurisdictions to a healthy Tualatin River watershed. We hope your visit is beneficial to you in your important role of guiding our progress.

State of Oregon
Department of Environmental Quality Memorandum

Date: April 15, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item A, Informational update on the status of the Tualatin Basin DMA Implementation and Compliance Order, EQC Meeting May 7, 1999

Statement of Purpose

To provide an informational update on the status of the Tualatin Basin DMA Implementation and Compliance Order and the development of Total Maximum Daily Loads (TMDLs) in the Tualatin Basin.

Background

On June 11, 1998, the Commission revised the Tualatin Sub-Basin Nonpoint Source Management Implementation/Compliance Order to allow a time period for updates and modification to the Tualatin Basin TMDLs and basin plans, and to provide an enforceable mechanism for assuring continued compliance with the TMDL (Attachment A). This revision resulted in the Tualatin Basin DMA Implementation and Compliance Order. The order identifies work tasks to meet the Tualatin Basin TMDLs established for phosphorus. The DMAs identified in the order are: The Unified Sewage Agency of Washington County, Clackamas County, Washington County, Multnomah County, City of Lake Oswego, City of West Linn, City of Portland, Oregon Department of Agriculture and Oregon Department of Forestry.

As part of this order, the Designated Management Agencies (DMAs) were given six (6) tasks. Four (4) of these tasks are ongoing tasks required by previous orders. The remaining two (2) tasks are new and require the submittal of two reports on TMDL compliance. The first report was due at the end of February 1999, and the second is due at the end of June 1999. The EQC Compliance Order is in effect until completion of the activities in the schedule but will not extend beyond the end of May 2000.

The purpose of this informational item is to provide an update on the status of the modifications to the Tualatin Basin TMDLs and basin plans, and to provide an update on the review of the first of the two DMA reports.

DMA February Report Review

As stated in the June 1998 compliance order, the DMAs' February reports were intended to:

> *"describ(e) how their existing programs for present and future development assures compliance with TMDLs, how their current programs for pollution control compares to the TMDLs and appropriate allocations,.....describe any actions necessary to update their program to implement bacteria management plans, temperature management plans, and changes to achieve substantial compliance with METRO Goal 6, title 3 model ordinances as appropriate. This report will describe any modifications or updates to the existing plans that will be implemented prior to the final reports described in task 6[*]."*

Each of the DMAs submitted these draft reports in a timely manner and made what is considered by the Department to be a good faith effort to comply with the order. The Department is currently reviewing the reports and will provide comments back to the DMAs. The Department feels that we will be able to work with the DMAs to correct any shortcomings and hope to receive June reports that will prove acceptable to all parties.

TMDL Development

The Tualatin Basin TMDLs are currently in the process of being updated and modified for two main reasons: 1) to include TMDLs for new parameters and/or stream segments listed in the 1998 303(d) list (temperature, bacteria, chlorophyll a, toxics, dissolved oxygen, and biological criteria), and 2) to review, and modify if necessary, existing TMDLs in light of any new information that has been gained since their development. This updating and modification is being implemented through a watershed approach, where all of the pollutant impacts are considered in a holistic manner. Though this approach may take a little more time, it should prove to be much more efficient and effective than a compartmentalized approach.

The work to update and modify the Tualatin Basin TMDLs through a watershed approach is proceeding well, but this work has not been able to follow the aggressive timeline that was presented to the Commission in June 1998. There are several reasons for this, but the most important is that the Department is trying to follow a methodical and comprehensive approach to TMDL development that will be scientifically, legally and politically defensible. This requires the development, review and/or application of water quality modeling for many of the 303(d) listed parameters. The TMDL

[*] Task 6 is the report required to be submitted by the DMAs by the end of June 1999.

development schedule that the Department is proceeding with is attached (Attachment B).

Authority of the Commission with Respect to the Issue

The Commission requested an update on the status of the Tualatin Basin DMA Implementation and Compliance Order after a year.

Alternatives and Evaluation

No alternatives were presented; this is an informational item.

Summary of Public Input Opportunity

This is an informational item and the Commission is not required to take action. No public input opportunity was provided at this time but will be done as part of the TMDL update.

Conclusions

Reports required under Task 5 were submitted on time and are being reviewed. The process to update the TMDL in the Tualatin Basin is behind the schedule that was proposed earlier but will be completed before the expiration of the Compliance Order.

Intended Future Actions

The Department intends to return to the Commission following the development and public review of the draft TMDLs.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

Attachment A: Tualatin Basin DMA Implementation and Compliance Order June 11-12, 1998
Attachment B: TMDL development schedule

Reference Documents (available upon request)

Approved:

Section: Andrew I. LaCivita

Division: Andrew I. LaCivita for WSM

Report Prepared by Rob Burkhart

Phone: 503-229-5566

Date Prepared: April 15, 1999

Tualatin Basin DMA Implementation and Compliance Order
June 11-12, 1998

Designated Management Agencies:

The Unified Sewerage Agency of Washington County, representing participating cities
Clackamas County and River Grove
Washington County
Multnomah County
City of Lake Oswego
City of West Linn
City of Portland
Oregon Department of Agriculture
Oregon Department of Forestry.

Purpose:

This order has three purposes.

1) The order assures continued implementation of plans developed under the Tualatin Basin TMDL and the ongoing activities contained in the Tualatin Sub-basin Nonpoint Source Management Implementation / Compliance Schedule and Order for Designated Management Agencies adopted by the EQC as Attachment A to Agenda Item ~~E~~ F on January 9-10, 1997 .

2) The order defines the specific reporting requirements which provide the enforceable mechanism for assuring implementation of the TMDLs during the period covered by the compliance order. The compliance period allows implementation of the schedule of activities identified in Agenda Item E of the June 11-12, 1998 EQC meeting. These activities are being conducted either by the DMAs or in cooperation with the DEQ to update the basin TMDLs and basin plans. The compliance order will be in effect until the completion of the activities in the schedule which will result in a updated basin plan and implementation strategy, but will not extend beyond the end of May, 2000.

3) The compliance order represents the EQC policy for appropriate actions to continue implementation of pollution control efforts while the TMDLs and implementation strategies are being updated.

DMA Tasks

The first four (4) DMA tasks are ongoing tasks required by previous orders. Tasks 5 and 6 are new tasks.

1. The DMAs will continue existing monitoring program in the basin. The data will be submitted to DEQ annually for upload into STORET data base. The DMAs will review data annually and submit a data analysis report in January of each year. The DMAs will submit a coordinated monitoring strategy to DEQ by the end of April of each year.

2. The DMAs will continue with existing Public Awareness / Education programs. A public awareness report will be submitted to DEQ by the end of January each year.

3. The DMAs will provide an annual report to DEQ. The annual report will describe
   - 3.1. implementation of management practices
   - 3.2. resolution of site specific problems
   - 3.3. revision of rules and ordinances
   - 3.4. evaluation of ongoing activities taken by the DMA to implement the TMDLs

4. The DMAs will continue the existing programs for compliance with the Tualatin TMDL. These tasks include:

4.1. the continued implementation of best management practices to insure widespread adoption and implementation of management measures,

4.2. the continuing inventories to identify pollution problems and the development of site specific solutions,

4.3. the inventory, prioritization and development of schedules for the protection, enhancement or restoration of riparian areas

4.4. continue erosion control programs, plans, and enforcement activities , review of the erosion control program for new development, investigation of the need for control of erosion and runoff from no-development activities throughout the basin, and review of need to adopt or refine existing ordinances,

4.5. continue implementation of program that on a priority basis maintains roadside ditches in such a way to minimize transportation of sediment, nutrients, and other pollutants to waters of the state

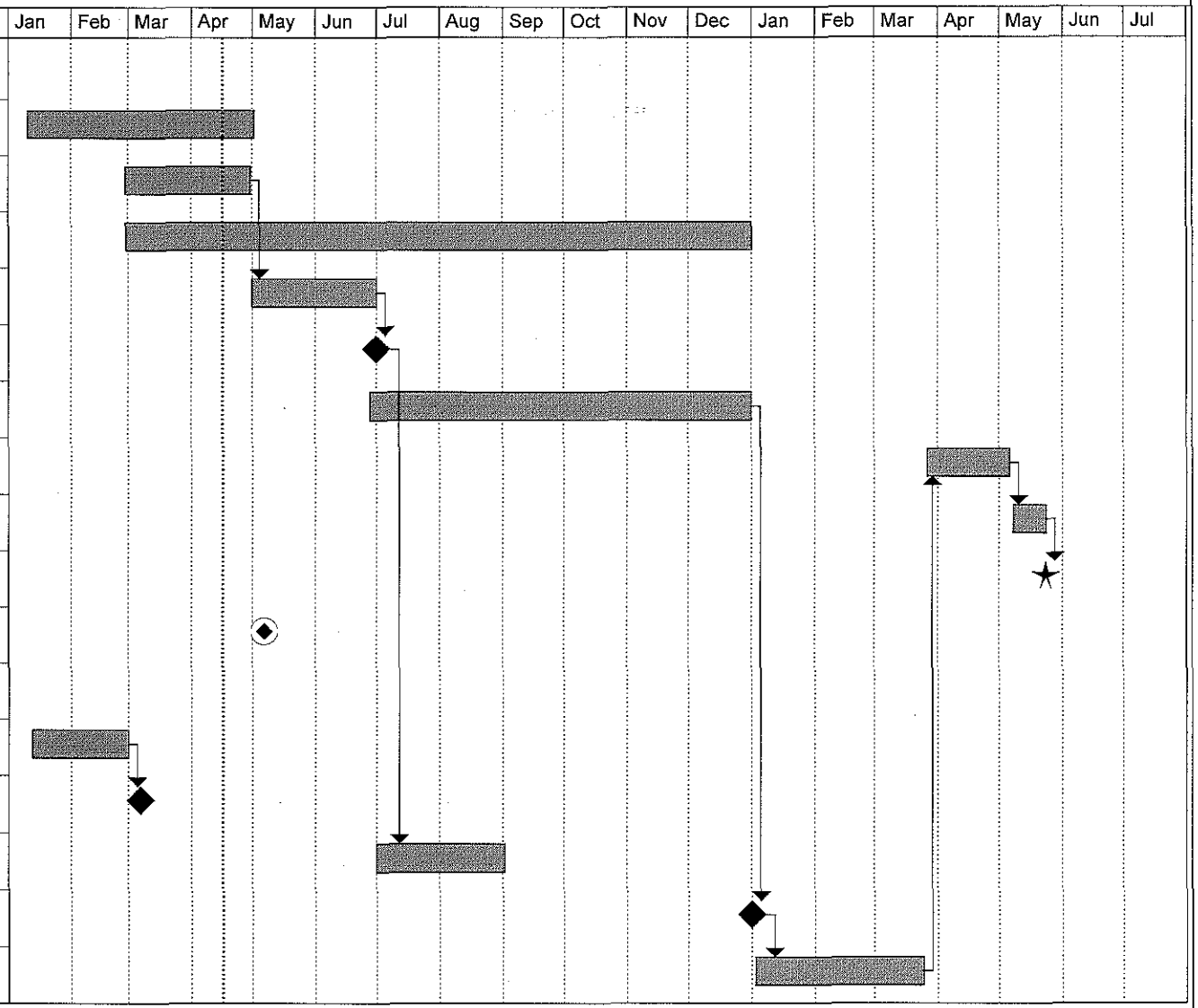
Tasks 5 and 6 are included in the scheduled TMDL and basin plan update:

5) By the end of February, 1999 the DMAs will provide DEQ a draft report describing how their existing programs for future development assures compliance with TMDLs, how their current programs for pollution control compares to the TMDLs and appropriate allocations. The Draft report will describe any actions necessary to update their program to implement bacteria management plans, temperature management plans, and changes to achieve substantial compliance with METRO Goal 6, title 3 model ordinances as appropriate. This report will describe any modifications or updates to the existing plans that will be implemented prior to the final reports described in task 6.

6) By the end of June, 1999 the DMAs will each provide a report to the DEQ that evaluates their existing programs, describes how the program will comply with existing allocations and water quality standards. The report will describe what actions are needed to update existing programs to comply with the TMDLs and a schedule of activities that will be taken to update existing programs as needed.

DRAFT Tualatin Basin TMDL Schedule

ID	Task Name
1	**TMDL Development**
2	Development of Inhouse Draft TMDLs (Initial Sections: Criteria, Data, Modeling/Analysis)
3	Technical Review and/or Further Analysis of Data and Data Needs
4	Collection of Supplemental Data and Analysis of Data
5	DEQ Development of Initial Draft TMDLs or TMDL Summaries
6	Distribution of Initial Draft TMDLs
7	DEQ Development of Final Draft TMDLs
8	DEQ Development of Final TMDLs
9	EQC Approval of NH3 and P TMDLs
10	Submission of TMDLs to EPA
11	EQC Informational/Update Meeting
12	**Public Involvement**
13	Development of Outreach Materials (Fact Sheets, etc.)
14	Public Presentation: Project Scope, Status, etc.
15	Informal Public Review of Initial Draft TMDLs
16	Distribution of Final Draft TMDLs for Comment
17	Public Comment Period for Final Draft TMDLs



R. BURKHART 4/16/99

Agenda Item A
Attachment B

Approved_____
Approved with Corrections__X__

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Seventy-Fifth Meeting

March 19, 1999
Regular Meeting

On January 29, 1999, the Environmental Quality Commission met for their regular meeting at DEQ headquarters, 811 SW Sixth Avenue, Portland, Oregon 97204. The following Environmental Quality Commission members were present:

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

Also present were Larry Knudsen, Larry Edelman, and Michael Huston, Assistant Attorneys General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality (DEQ); and other staff from DEQ.

Note: The 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 at 8:40 a.m.

B. Approval of Tax Credits

Maggie Vandehey, Tax Credit Coordinator, presented this item.

Applications for Approval

5145 – Dean McKay Farms, Inc. and 5146 – Mark McKay Farms, Inc.

Commissioner ~~Reeve~~ *Eden* asked why the facility address for Dean McKay Farms, Inc. (#5145) and Mark McKay Farms, Inc. (#5146) were identical. Staff clarified that the McKay brothers each inherited equal halves of their father's farm and the address is the farm office address. The two tractors claimed on the respective applications are not one and the same.

5041 – HMT Technology Corporation

The Commission asked if the subtraction of HMT's ductwork from the eligible facility cost was consistent with the subtraction of Hyundai Semiconductor America, Inc.'s ductwork in December 1998. Staff stated the treatment of the HMT ductwork was consistent with the treatment of the Hyundai ductwork. The reviewer clarified that Hyundai claimed a greater portion of the ductwork as part of the pollution control system within their installation than HMT claimed.

Underground Storage Tank Reviews

The Commission asked how the reduced percentage for underground storage tanks (UST) was determined exemplifying application #5131. Staff explained the reduction in the percentage allocable to pollution control was determined factoring the 100% allocable components; the difference in the cost of the corrosion protected tank and piping system and an equivalent bare steel system as a percent of the protected system; and ninety percent of the cost of the tank-gauge system. Staff agreed to present this reduction in percentage in a manner similar to the field burning reviews in the future.

5053 - Wellons, Inc.
Questions regarding Wellons' ability to assume that their facility is principal purpose because they are meeting the requirements of Willamette Industries' ACDP were addressed. There are numerous examples to support this position and the food processing industry was referenced. The Commission asked what components were claimed as part of the air pollution control facility. Commissioner Van Vliet cautioned staff to carefully consider the inclusion of the multi-cone collector, and the conveyors and augers as this could expand the tax credit. Staff recommended postponing the approval of application #5053 until staff could modify the report and address the Commission's concerns.

Commissioner Van Vliet made a motion to approve the tax credit applications presented in Attachment B of Agenda Item B and its Addendum with the exception of application #5053 (Wellons, Inc.). Commissioner McMahan seconded the motion and it carried with five "yes" votes.

Application for Denial
Staff explained Freres Lumber Co., Inc., understood the basis of the denial of tax credit application #5119 and they did not indicate that they wished to address the Commission. Commissioner Reeve made a motion to deny the tax credit application presented in Attachment C of Agenda Item B. Commissioner Eden seconded the motion and it carried with five "yes" votes.

Commission Action by Application Number

App.No.	Applicant	Certified Cost	Percentage	Commission Action		
				Attachment B	Attachment C	Addendum
4751	PGE	$759,299	100%	Approve		
4881	PGE	$18,576	100%	Approve		
5041	HMT Technology Corp.	$1,072,469	100%			Approve
5042	HMT Technology Corp.	$5,613,466	100%			Approve
5046	Thomas Joseph, Inc.	$66,700	NA	Approve		
5053	Wellons, Inc.	$294,745	100%	Postponed		
5080	Morrow Co. Grain Growers	$33,014	100%	Approve		
5082	Morrow Co. Grain Growers	$29,697	100%	Approve		
5107	Russell Oil Company	$13,724	100%	Approve		
5108	Russell Oil Company	$5,300	100%	Approve		
5113	United Disposal Service Inc.	$42,213	100%	Approve		
5117	Capitol Rec. & Disposal, Inc.	$20,709	100%	Approve		
5119	Freres Lumber Co., Inc.	$27,962	100%		Deny	
5120	United Disposal Service Inc.	$8,814	100%	Approve		
5122	McKern's Texaco Food Mart	$92,423	94%	Approve		
5131	Carter's Service Stations, Inc.	$83,968	89%	Approve		
5145	Dean McKay Farms, Inc.	$136,817	75%	Approve		
5146	Mark McKay Farms, Inc.	$173,719	84%	Approve		

EQC Monitoring Authority
The EQC's Tax Credit Monitoring Authority was discussed. The Department of Justice indicated the Commission has the authority to provide some monitoring of certified facilities to determine if the facility is still operated in accordance with the terms of the certificate. In the simplest form an audit would consist of a letter requesting an affirmation that a certified facility is being operated in accordance with the conditions of certification. However, the tax credit program lacked resources to go into any greater detail. Director Marsh cautioned that any certificate audits could not be paid from general fund as that would impinge upon other Department programs. The Commission emphasized that any expense incurred performing a tax credit program audit function should be at the expense of tax credit beneficiaries. The Commission directed staff to develop a recommendation regarding an audit of certified facilities.

Jim Roys, Budget Manager, gave a legislative update on the bills pertaining to pollution control tax credits.

C. Action Item: National Marine Fisheries Request for a Waiver for Total Dissolved Gas for Fish Passage on the Mainstem of the Columbia River

Gene Foster, DEQ staff, Mark Schneider, National Marine Fisheries Service, and Margaret Filardo, the Fish Passage Center, presented this item. The National Marine Fisheries Service (NMFS) petitioned the Commission for a variance to the state's total dissolved gas standard to enable spill over McNary, John Day, The Dalles, and Bonneville Dams to assist juvenile outmigrating salmon and steelhead. The petition requested a waiver from the current total dissolved gas standard of 110% to 115% total dissolved gas as measured in the forebays of the dams and 120% in the tailraces of the dams. The waiver request was for the dates April 3, 1999, through August 31, 1999.

The Commissioners indicated they would like to receive information on the U.S. Army Corps of Engineers (USACE) Gas Abatement Program pinpointing the commitment from the USACE to NMFS to address total dissolved gas issues and the timetables for achieving the identified milestones. A condition was added to the Order that required NMFS to provide a report by February 27, 2000, on the status of the Columbia River Gas Abatement Program, USACE and NMFS commitments to the Gas Abatement Program, and the efforts to achieve the state water quality standard of 110%. The past year's research on total dissolved gas and the effects on migrating juvenile salmonids was also discussed.

Commissioner Van Vliet made a motion to *adopt the proposed findings to* support the waiver request with the conditions in appendix B. Commissioner Eden seconded the motion and it carried with five "yes" votes.

D. Rule Adoption: LRAPA Stationary Source (ACDP) Fee Increases and Asbestos Rule Amendments

Grecia Castro, operations Manager for Lane Regional Air Pollution Authority (LRAPA), and Dave Nordberg, DEQ staff, presented this item.

Commissioner Reeve noted that LRAPA's rules seem essentially the same as state rules and asked if there were ways in which LRAPA's rules were more stringent than the state measures. Grecia Castro indicated LRAPA's rules have a somewhat broader requirement for filing asbestos project notifications, and Dave Nordberg added that the regional authority mandates use of an asbestos removal "containment" in a circumstance where one is not specified under state provisions. The determination of any discrepancies between LRAPA and state provisions is done by staff who are experts in the area of the rules concerned, and are called to LRAPA's attention for correction as cited in the staff report attachments.

Commissioner Van Vliet moved that LRAPA's revised permit fees as a revision to the Oregon Clean Air Act State Implementation Plan (OAR 340-020-0047) be approved and to approve the revisions to LRAPA's asbestos regulations as proposed. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

E. Rule Adoption: Amend OAR to Adopt New Land Disposal Restrictions (LDR) for Spent Hazardous Waste Potliner and Certain Federal Hazardous Waste Regulations

Anne Price, Manager, Hazardous Waste Policy and Program Development Section, and Gary Calaba, DEQ Staff, presented this item.

The rules are divided into three areas: new waste listings; conditional exclusions from regulations for certain wastes that are recycled; and changes to LDR requirements.

Commissioner Van Vliet asked who would be affected by the new rules conditionally excluding wood preservers from some regulation if they recycle pesticide contaminated wastewater. Staff replied that only the facilities whose water-borne wood preservation processes and who reuse the pesticide contaminated wastewater for its pesticidal properties would be conditionally excluded from complying with some hazardous waste regulation of those wastewaters.

The Department was asked how they will implement the new fertilizer standards. DEQ would work with the Oregon Department of Agriculture to implement the standards, and hazardous waste-derived fertilizer manufacturers would be responsible for ensuring that their fertilizer products meet Oregon standards.

The Commission expressed concern that by applying Phase III LDR standards, instead of the originally proposed and more stringent Phase IV standards, to fertilizers made from K061 hazardous waste baghouse dust, DEQ may not be protective enough. When asked whether the Phase III standards could be referenced in the rule as interim standards,

staff replied that the Phase III standards for fertilizers made from K061 hazardous waste baghouse dust would not go into effect until March 31, 2000, in order to give the industry time to develop manufacturing technology to meet the standards and because EPA is currently working on standards. Department legal counsel suggested not stating that the Phase III standards are interim. The Department committed to returning to the Commission in the Spring of 2000 to review the issue.

Commissioner Eden made a motion to adopt the proposed rules. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

F-1. Action Item: Adoption of Order Clarifying Hazardous Waste Permit Decision for Umatilla Chemical Agent Disposal Facility

At the January 29, 1999, EQC meeting, staff was directed to prepare a draft "Order Clarifying Permit Decision" related to the Umatilla Chemical Agent Disposal Facility. Larry Edelman, legal counsel, prepared the draft and presented it to the Commission. A motion was made by Commissioner Eden to adopt the Order without change. The motion was seconded by Commissioner Van Vliet and a role call vote was taken: Commissioner Eden-yes; Commissioner Van Vliet-yes; Commissioner McMahan-yes; Chair Whipple-yes; and Commissioner Reeve-abstained. The motion carried with four "yes" votes.

Public Comment

Frank Wann presented comment on heavy metals.

F-2. Informational Item: Discussion of Future Opportunity for Update and Comment on Development of Carbon Filter Technology

Wayne Thomas, Umatilla Program Manager, and Sue Oliver, Senior Hazardous Waste Specialist, presented their recommendation for the content of an informational work session on the development of carbon filter technology. Proposed subjects for the work session included industrial applications of carbon filters, effectiveness, operational complexity, safety, and waste generation. The Commission concurred with the Department's approach, but asked that the work session focus specifically on the carbon filter system design that is being utilized at the Umatilla Chemical Agent Disposal Facility. It was agreed that the work session would be conducted during the Commission's June 1999 meeting to be held in Hermiston.

A. Approval of Minutes

The following correction was made to the January 29, 1999, minutes: on page 2, section D1, last paragraph, the first line should read, "Commissioner Van Vliet moved to approve the request with the addendum *including the findings approved by staff."* Commissioner Reeve moved the minutes be approved as corrected. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

H. Action Item: Petition for Rulemaking to Regulate Recreational 2-Stroke Marine Engines

On February 24, 1999, the Department received a Petition for Rulemaking from Dan Pence and Peter Wilcox. The petition requested the Commission to commence rulemaking to: (1) phase out the use of existing 2-stroke marine engines in environmentally sensitive waterways and sources of drinking water within a few years and to comprise less than five percent of all engines in marine engines within 10 years; and (2) create fairness in new engine emission control standards between automobiles and recreational marine craft within 20 years.

The petitioners presented information to the Commission on the environmental effects of using 2-stroke engines in waterways. They also present several possible regulatory schemes to begin the phase out of 2-stroke engines including requiring a fee when a boat owner gets a boat permit, the amount of which would be dependent on the engine size, or the prohibition of the use of the engines based on the CWA antidegradation policy.

Commissioner Reeve made a motion to deny the petition. Commissioner Eden amended the motion to include "and direct the Department to conduct discussions with other agencies and the public to determine if anything can be done to reduce the use of 2-stroke engines on Oregon waters." Commissioner Reeve approved the amendment to his motion. Commissioner Eden seconded the motion with amendment and it carried with five "yes" votes.

G. Action Item: Appeal of Hearing Order Regarding Violation and Assessment of Civil Penalty in the Matter of Staff Jennings, Inc., Case No. UT-NWR-96-274A

Staff Jennings, Inc., appealed from a hearing officer's Findings of Fact and Conclusions of Law, dated March 18, 1998. In that order, the hearing officer found that Staff Jennings violated ORS 468B.025 and OAR 340-122-242 and was liable for a civil penalty in the amount of $8,400. The hearing officer also found that Staff Jennings had failed to complete the investigation and cleanup of a petroleum release from an underground storage tank. No civil penalty was assessed by the Department for this violation.

The Department was represented by Christopher Rich, Environmental Law Specialist and Michael Huston, Assistant Attorney General. Staff Jennings was represented by Christopher Reive of Bogle & Gates.

Staff Jennings argued that the civil penalty assessment was improper for several reasons including that the statute of limitations had expired by the time the Department assessed the civil penalty, or that the Department assessed the civil penalty for the wrong violation. In essence Staff Jennings argued that the pollution was caused in 1988 when the underground storage tanks leaked. The Department should have assessed the civil penalty for the failure to complete the investigation and cleanup of a petroleum release from an underground storage tank. The Department argued that the contamination in itself along with the failure to prevent the ongoing contamination are "causing pollution" in terms of the statute.

A motion was made by Commissioner Eden to uphold the hearing officer's findings of fact and conclusions of law by finding the contamination was a continuing violation of ORS 468B.025. It was seconded by Commissioner McMahan and a role call vote was taken: Commissioner McMahan-yes; Commissioner Van Vliet-yes; Commissioner Reeve-no; Commissioner Eden-yes; and Chair Whipple-yes. The motion carried with four "yes" votes. The Commissioner directed legal counsel to draft the order to be signed by Chair Whipple.

I. Commissioners' Reports

There were no Commissioners' reports.

J. Director's Report

The New Carissa was the source of much activity within DEQ during the months of February and March. As the State On-Scene Coordinator for the incident, DEQ was responsible for working with the Coast Guard and the Responsible Party (a representative of the owners and insurers) to coordinate efforts for removal of the ship and cleanup activities related to the oil spill. Over 69 DEQ staff worked on the New Carissa for a total of 4,273 hours (18 staff worked on the incident when the ship ran aground again in Waldport for a total of 513 additional hours). Through a unified effort, wise decisions, and the cooperation of nature, over 80 percent of the oil that had threatened the shorelines of Oregon was successfully destroyed or isolated at sea. The impacts from the released oil are significant, but much more limited than was threatened when the New Carissa first came ashore

Ross Island Update: The recapping of the breached area was completed during the last week of February. This is the area previously used by the Port of Portland for the disposal of contaminated sediment, mined by Ross Island Sand and Gravel (RISG) last spring. Discussions regarding additional sampling and maintenance of the cap, pursuant to an Order of Consent, are ongoing. The Draft Site Investigation Work Plan for the Port of Portland Dredged Material Disposal, Ross Island Facility, is currently under preliminary review. In addition, DEQ has received a proposal from RISG on how to integrate the Port's investigation with the other site investigation tasks RISG will be required to complete.

DEQ hosted the annual Spring Pacific NW P2 Roundtable in Portland March 9-11,1999, for EPA Region10 partners who are interested in pollution prevention. The roundtable has been expanded to include providers of pollution prevention assistance, compliance assistance, and industrial technical assistance.

After three significant delays, the State of Oregon has signed a contract for Phase I soil cleanup at the McCormick & Baxter Creosoting Co. Superfund Site. The state's contractor, Wilder Construction Company, began work at the site, in late February. The work is expected to be completed by April 30, 1999. Twenty distinct areas at the site are slated for soil excavation, during the Phase I cleanup. A second DEQ contractor, Ecology & Environment, Inc., (E&E) will be on-site full-time, to provide continuous oversight of the cleanup work. Among other things, E&E will conduct air quality monitoring to assure that hazardous dust and fumes do not threaten nearby residences. In addition, E&E will conduct the soil sampling described above to ensure that the cleanup work attains the goals set forth in the ROD. DEQ will

conduct an informal public meeting in early March, once cleanup activities are underway. The purpose of the meeting will be to provide an opportunity for site neighbors and other interested parties to ask questions and express any concerns they may have about the cleanup work.

EPA's Superfund Response Team and contractors have completed cleanup of a North Portland warehouse after three months of intense effort. What began as a police response to a domestic dispute in October, 1998, escalated into a Portland Fire Bureau-Hazmat Team response due to a variety of hazardous chemicals and storage conditions; the Fire Bureau referred the site to DEQ. After a site inspection by Paul Christiansen and Rebecca Christiansen of DEQ, EPA's highly capable team was invited to conduct the cleanup. The warehouse was loaded with over 10,000 containers of chemicals, many unknown. Dust in the warehouse had high levels of cyanide, lead, and mercury. Ultimately, the EPA team disposed of over 6,000 containers of hazardous waste, 1,280 cubic yards of contaminated debris and 80 cubic yards of contaminated soil. The building was blasted with compressed air and some contaminated residue remains; however, the building no longer poses a threat to the community.

The following DEQ employees are retiring: Mike Eagan - WMC, 8 years; Larry Miller - NWR, 9 years; Jo Brooks - Public Affairs, 14 years; Marilyn Lindsay - WR, 18 years; Mary Heath - WR, 19 years; Howard Harris - AQ, 20 years; Tom Lucas - HQ, 22 years; Dick Warkentin - Lab, 22 years; Larry Lemkau - ER, 25 years; and Jim Vilendre - NWR, 31 years.

The Business Systems Development section is working with the Information Technology section and others around DEQ preparing to replace the main Sequent computer and upgrade the software that run on it. Some of the application software that we use now is obsolete, and some is not certified to work correctly for the year 2000.

There being no further business, the meeting was adjourned at 3:35 p.m.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item C
May 7, 1999 Meeting

Title:

Repeal of Rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions.

Summary:

The Department is proposing to repeal portions of the "Consumer and Commercial Product Rules" that are for the Portland area which limit the amount of specific solvents that can be used in various consumer and commercial products. The proposed repeal is a result of recently adopted EPA regulations which will produce the same environmental benefit and make the Oregon rules redundant. The portions of these rules that the Department is proposing to retain are the requirements for refinishers in the Portland area to use High Volume- Low Pressure spray guns and mechanical spray gun cleaning equipment.

In addition the Department is proposing to remove certain chemical compounds from the State definition of Volatile Organic Compounds (VOC) to comply with the Federal List and to specify that said VOCs in the definition apply to the formation of ground level ozone.

Department Recommendation:

It is recommended that the Commission repeal/amend Oregon's rules regarding Consumer Products, Architectural Coatings, Motor Vehicle Refinishing and VOC definitions as presented in Attachment A and this staff report.

Dave Nordberg
Report Author

Gregory A. Green
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: April 15, 1999

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item C, EQC Meeting of May 7, 1999

Background

On January 13, 1999, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rule amendments which would rescind and revise the "Consumer and Commercial Product" rules adopted for the Portland area. These rules limit the amount of solvents (Volatile Organic Compounds) that can be used in Consumer (household) Products, Architectural Coatings, and Motor Vehicle Refinishing Coatings. The regulations are proposed for repeal because comparable measures recently adopted by EPA nationwide will produce the same environmental benefit. The proposal also contains housekeeping amendments that update the definition of Volatile Organic Compounds or "VOC". These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the Portland Ozone Maintenance Plan as part of the Clean Air Act required State Implementation Plan.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on February 1, 1999. The Hearing Notice and informational materials were mailed to people who asked to be notified of rulemaking actions, and to a list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on January 22, 1999.

A Public Hearing was held February 25, 1999 with Dave Nordberg of the department's staff serving as Presiding Officer. Written comments were received through 5:00 p.m. March 2, 1999. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and the Summary of Public Comment (Attachment D) lists all the comments received. (A copy of the comments is available upon request.)

Department staff evaluated the comments received (Attachment D) and because they indicated unanimous support for the department's proposal, no substantive modifications are being recommended by the department.

The following sections list key terms used in this report, summarize the issue this proposed rulemaking action is intended to address, cite the authority to address the issue, indicate the process for developing the rulemaking proposal including alternatives considered, summarize the rulemaking proposal presented for public hearing, report the significant public comments submitted and show the changes proposed in response to those comments, describe how the rule will work and how it is proposed to be implemented, and provide a recommendation for commission action.

Key Words and Acronyms

Consumer and Commercial Product Rules: Rules that reduce VOC emissions from products used widely throughout society (not just by industry).

HVLP: High Volume/Low Pressure (Spray Gun)--equipment that lowers paint use by reducing overspray.

Motor Vehicle Refinishing Coating: Paint used for automotive repair.

SIP: State Implementation Plan (OAR 340-020-0047) required by the Clean Air Act.

VOC: Volatile Organic Compounds—chemicals (mostly solvents) that contribute to the formation of ground-level ozone.

Issue this Proposed Rulemaking Action is Intended to Address

Under the Clean Air Act, EPA establishes standards for the amount of ground-level ozone pollution (smog) allowed in the air. Ground level ozone is not emitted directly as a pollutant, but is created from Volatile Organic Compounds (VOC) reacting in sunlight with oxides of nitrogen (NOx). Therefore, ozone levels can only be reduced by limiting the emission of these ozone "precursors".

In the past, the Portland area failed to meet the ozone standard, but air pollution was reduced and by the early 1990's the ozone standard was attained. However, population growth and steadily increasing motor vehicle traffic threatened to reverse the trend, and in 1992 the Governor appointed a Task Force on Motor Vehicle Emissions in response. The task force was charged with selecting strategies to be used to maintain the ozone standard into the future. One strategy chosen was to reduce VOCs from consumer and commercial products. National rules for these sources of VOC emissions were required to be developed by EPA under Section 183(e) of the

Clean Air Act. At that time EPA's rules were expected to be completed by 1995. When those rules were delayed beyond the time that VOC reductions were needed to meet Portland's emission targets, the department developed local rules similar to the measures EPA was eventually expected to issue.

The rules adopted for Portland apply to Consumer Products, Architectural Coatings, Aerosol Spray Paint and Motor Vehicle Refinishing. The Consumer Product rules establish limits for the amount of VOC that can be used in a variety of household products such as hair sprays, air fresheners, windshield washer fluids and antiperspirants. Oregon's rules for Architectural Coatings limit the amount of solvent used to paint all "stationary structures" (houses, industrial equipment, traffic striping, etc.). The rules for Spray Paint limit the VOC content of paint sold in aerosol cans. Finally, the rules for Motor Vehicle Refinishing in Portland set limits for the amount of VOC in automotive coatings and also require painters to use efficient spray guns and gun cleaning equipment to further reduce solvent emissions.

In September 1998, EPA finalized nationwide rules for three of these rule categories: Consumer Products, Architectural Coatings and Auto Refinishing Coatings. The federal rules apply only to product manufacturers (or importers) so the national rules do not duplicate Oregon's requirements for auto refinishers to use equipment that reduces solvent emissions. The current federal rules also differ from Oregon's provisions in that EPA's rules for spray paint (aerosol cans) are not scheduled to be promulgated for several more years.

As a result, VOC reductions for many consumer and commercial product categories are now achieved nationally with no expenditure of department resources. Therefore, this rulemaking proposes to repeal Oregon's requirements for the Portland area in cases where those requirements are now duplicated nationwide. This action will achieve the original intent of the Governor's Task Force, relieve the need to "implement" redundant local measures and provide more uniform requirements for the regulated community.

This proposal also contains rule revisions that remove chemical compounds from the state definitions of VOCs. On, August 25, 1997 and April 4, 1998 EPA modified the federal definition of VOC when they published findings in the Federal Register that a total of 17 additional compounds were found to have "negligible photochemical reactivity". This rulemaking action will make the state and federal definitions of VOC consistent and continues the department's policy of removing such compounds from the VOC definitions when EPA determines that they will not significantly contribute to the formation of ground-level ozone.

Relationship to Federal and Adjacent State Rules

If the commission adopts this proposal, Oregon's rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings will be repealed, and the Portland Ozone Maintenance Plan will rely instead on VOC reductions achieved by comparable federal requirements. Oregon's rules for the Portland area will remain more stringent than the federal rules for the requirement that auto refinishers use HVLP spray guns and spray gun cleaners. These measures will continue as part of the SIP to maintain air quality in the Portland area.

To the north, the Southwest Washington Air Pollution Control Authority (SWAPCA) has rules for the Vancouver, Washington area that are identical to Oregon's rules for Motor Vehicle Refinishing and Architectural Coatings. Staff at SWAPCA indicate their agency is likely to take action similar to this proposal in the near future.

To the south, VOC emissions from consumer and commercial products are controlled at the state and local levels. California Air Resources Board (CARB) enforces statewide regulations for Consumer Products that are the same as both Oregon's existing rules and the new federal regulations in many product categories. However, in some categories CARB regulations are significantly more stringent. Requirements for Architectural Coatings and Auto Refinishing are established by California's local Air Quality Management Districts. Except for districts located in the more rural regions, these agencies have requirements for these VOC sources that are generally more stringent than Oregon or national requirements.

Authority to Address the Issue

Authority to address this issue is provided in ORS 468.020 and 468A.035.

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

The rule amendments stem from advisory committee recommendations made when Oregon's consumer and commercial product rules were originally developed. In 1994 and 1995, two committees were formed to advise the department: the Consumer Products – Architectural Coatings Advisory Committee and the Auto Refinishing Task Force. Both committees agreed that when comparable federal measures were implemented the duplicated provisions of Oregon's rules should be rescinded.

The rules finalized by EPA in 1998 parallel Oregon's rules for Architectural Coatings, Consumer

Products and the portions of the Motor Vehicle Refinishing rules that apply to the VOC content of automotive paint products. The provisions of Oregon's rules that apply to these areas are being proposed for repeal, but other requirements are being retained. The portions being retained apply to aerosol spray paint (for which EPA is not scheduled to propose rules until 2001), and the auto refinishing requirements for the use of High Volume/Low Pressure (HVLP) spray guns and spray gun cleaning equipment.

During the advisory committee process the Auto Refinishing Task Force chose the use of spray gun cleaners as one of the methods needed to achieve a VOC reduction target of 40 percent. In addition, the committee recommended that the rules mandate the use of HVLP spray guns. This recommendation was made with the knowledge that VOC reductions produced by HVLP spray guns could not be used in DEQ's airshed planning calculations because the amount of VOC they save cannot be reliably quantified. The committee noted that both techniques produce economic savings as well as environmental benefits. The department informed the committee that similar equipment requirements would not be part of the federal auto refinishing rules and that the equipment requirements for the Portland area would likely be retained after EPA's rules were finalized.

Following EPA's adoption of federal rules in 1998, the department notified interested parties of its intention to revise Oregon's rules to achieve the Governor's Task Force's original intent of reducing VOCs from consumer and commercial products by relying on federal rules. Because the department indicated its intention to follow this course of action from the outset, no alternative course of action was seriously considered. The letter to interested parties stated that the agency was considering proceeding directly to rulemaking and specifically asked for comments if any parties saw a need for further advisory committee discussion. No further need was identified.

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

The current rulemaking proposal is the same as the proposal advanced for public comment. Those who provided comments agreed with the department that continuing Oregon's existing measures became unnecessary for rules where comparable federal requirements now apply.

As stated earlier, the state and national rules are comparable in most respects. It is noted however, that differences do exist. The fundamental difference is that EPA is authorized to regulate consumer and commercial products only at the manufacturing level. Therefore, EPA's rules differ from Oregon rules by not setting requirements for distributors, retailers or users of products, and by omitting restrictions on the type of equipment used by auto painters. In the areas where state and federal rule requirements vary, the federal measures are generally

somewhat less restrictive. Differences between the rules are outlined below:

Architectural Coatings:

- Of the 61 product categories in EPA's rules, the federal VOC limits are more stringent in four cases (alkali resistant primers, swimming pool coatings, opaque below ground wood preservatives and lacquer stains) and DEQ's limits are more stringent in nine cases (antenna coatings, calcimine recoaters, clear shellacs, concrete curing & sealing compounds, concrete surface retarders, conversion varnishes, faux finishes, stain controllers and zone marking coatings). Most of the differences concern small volume specialty categories.
- EPA's rules allow manufacturers to produce high VOC coatings if they pay an "exceedance fee". DEQ rules do not share this feature, but the economic disincentive of the exceedance fee is expected to keep its use relatively small.
- EPA's rules differ from DEQ's in that the federal rules allow each manufacturer to exempt the VOC used in small volume products. The exemption begins at twenty-five tons per year for each manufacturer but decreases to ten tons in 2002. EPA indicates this provision will weaken VOC reductions generated by two percent or less.

Consumer Products:

- The VOC limit for Windshield Washer Fluid is substantially relaxed in the federal rule (35 percent versus DEQ's 23.5 percent). The higher VOC limit will allow freezing protection to –25°F whereas products that comply with Oregon's rule only protect to 0°F. Windshield Washer Fluid is manufactured and sold in a diverse, decentralized manner, and an ongoing implementation effort would be required to maintain substantial compliance if the 23.5 percent limit were to be locally retained.
- The federal VOC limit for Nail Polish Remover is 85 percent versus the state limit of 75 percent. The effect on VOC emissions is insignificant.

Auto Refinishing:

- EPA's rule does not require the use of HVLP guns and spray gun cleaners. These provisions of the state regulations will be retained.
- EPA's rule exempts lacquer topcoats, noting these coatings comprise a small and decreasing segment of the market. DEQ's rules for automotive refinishing coatings are proposed for repeal in favor of the federal rules.

While the federal rules are slightly less stringent than Oregon's rules in the aspects cited above, EPA indicates they will actually achieve VOC reductions at least as significant as the existing

measures in the Portland Ozone Maintenance Plan. This is because Oregon's rules only apply to the Portland area—making it a virtual island surrounded by an area where no controls exist. The consequence is that noncomplying products inevitably leak into the regulated area from the outlying region and thereby decrease the effectiveness of locally applied restrictions. Because EPA's rules apply nationwide, border leakage is insignificant and the effectiveness of the federal rules is not reduced. Therefore, the VOC reductions achieved by Oregon's rules in the Portland Ozone Maintenance Plan can be fully substituted by EPA's regulations.

As a result, the functional equivalence of EPA's rules make most of Oregon's rules redundant and provisions that now duplicate federal measures are proposed for elimination. More specifically, Oregon's rules for Consumer Products, Architectural Coatings, and the provisions that apply to coatings for Motor Vehicle Refinishing are proposed for repeal. The requirements in Oregon's rules for refinishers in the Portland area to use High-Volume/Low-Pressure spray guns and mechanical spray gun cleaning equipment will be retained.

Regarding Oregon's VOC definitions, the federal and Oregon versions are essentially the same, although again--a difference exists. The proposed amendments add a technical clarification to Oregon's definitions to specify these definitions relate only to issues of ground level (tropospheric) ozone and do not apply to ozone depleting reactions in the stratosphere.

Summary of Significant Public Comment and Changes Proposed in Response

Six people submitted written comments and one person presented verbal testimony during the public comment period. All comments indicated support for the proposed action, and no substantive modifications were made to the rules proposed for repeal/amendment by the commission.

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

The federal Consumer and Commercial product regulations go in effect over a nine month period. The national Consumer Products rules apply after December 10, 1998; Auto Refinishing rules take effect January 11, 1999; Architectural Coatings rules go into effect September 11, 1999. Because the federal rules affect only product manufacturers (and do not restrict the sale of high VOC products) Oregon's rules must remain in effect an additional period to assure that complying products have time to move through the distribution stream and produce local benefits. Therefore, the proposed changes to Oregon's Consumer and Commercial product rules will be filed with the Oregon Secretary of State to take effect six months after the compliance date of comparable EPA measures. That is, Oregon's rules will be filed to take effect according

to the following schedule:

Rule Group	Rule Numbers	Secretary of State Effective Date
SIP Revision	OAR 340-020-0047	On filing (May 1999)
VOC Definitions	OAR 340-022-0102 & 340-028-0110	On filing (May 1999)
Consumer Products	OAR 340-022-0800 to 340-022-0860	June 10, 1999
Motor Vehicle Refinishing	OAR 340-022-0700 to 340-022-0760	July 12, 1999
Architectural Coatings	OAR 340-022-1000 to 340-022-1050	March 13, 2000

The portions of Oregon's rules that are retained (aerosol spray paint rules and equipment requirements for auto refinishers) will be implemented as part of the general duties of the Air Quality and Complaint staff of DEQ's Northwest Regional offices. No training is needed to continue these measures.

Changes to the VOC definitions will be implemented as slight modifications to the department's ongoing air quality programs.

Recommendation for Commission Action

It is recommended that the commission repeal/amend Oregon's rules regarding Consumer Products, Architectural Coatings, Motor Vehicle Refinishing and VOC definitions as presented in Attachment A as a revision to the State of Oregon Clean Air Act Implementation Plan to become effective on the dates provided in this staff report.

Attachments

A. Rule Rescissions/Amendments Proposed for Adoption:
   1. SIP Rule (amendment)
   2. Motor Vehicle Refinishing (rescission and amendment)
   3. Consumer Products (rescission)
   4. Architectural Coatings (rescission)
   5. Division 22 VOC Definition (amendment)
   6. Division 28 VOC Definition (amendment)

B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice

C. Presiding Officer's Report on Public Hearing

D. Summary of Public Comment

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section: Brian Finneran for A. Liebe

Division: Gregory A. Green

Report Prepared By: Dave Nordberg

Phone: (503) 229-5519

Date Prepared: March 26, 1999

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10/19/95

340-020-0047

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act**, Public Law 88-206 as last amended by Public Law 101-549.

(2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rulemaking procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department is authorized

(a) to submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of **40 CFR 51.102 (July 1, 1992)** ; and

(b) to approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]
[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]
Stat. Auth.: ORS Ch. 468.020
Stat. Implemented: ORS Ch. 468A.035
Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. &cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99

Motor Vehicle Refinishing

340-022-0700
Applicability

OAR 340-022-0700 through 340-022-0760 apply to any person:

~~(1) Who sells, offers for sale, distributes or manufactures motor vehicle refinishing coatings for sale in Oregon, or~~

~~(2) W~~who owns, leases, operates or controls a motor vehicle refinishing facility in the Portland AQMA.

Stat. Auth.: ORS 468.020 & 468A.035
Stats. Implemented: ORS 468A.035
Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-0710
Definitions

As used in OAR 340-022-0700 through 340-022-0760:

~~(1) "Aerosol Spray" coating means a pre-mixed coating supplied in pressurized containers of 16 ounces or less.~~

~~(2) "Anti-glare/Safety Coating" means a coating formulated to minimize light reflection to interior areas of a vehicle and which shows a reflectance of 25 or less on a 60° gloss meter.~~

~~(3) "Basecoat" means a pigmented topcoat which is the first topcoat applied as a part of a multistage topcoat system.~~

~~(4) "Basecoat/Clearcoat Topcoat System" means a topcoat system composed of a basecoat portion and a clearcoat portion. The VOC content of a basecoat/clearcoat topcoat system shall be calculated according to the following formula:~~

~~$VOC_{bc/cc} = (VOC_{bc} + 2\,VOC_{cc})/3$~~

~~Where:~~
~~$VOC_{bc/cc}$ = the composite VOC content, less water and less exempt compounds to be used for compliance determination under the basecoat/ clearcoat topcoat system coating category.~~
~~VOC_{bc} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.~~
~~$2\,VOC_{cc}$ = twice the VOC content of any given clearcoat as prepared for use, less water and less exempt compounds.~~

~~(5) "Bright Metal Trim Repair Coating" means a coating applied directly to chrome plated metal surfaces for the purposes of appearance.~~

~~(6) "Clearcoat" means a topcoat which contains no pigments or only transparent pigments and which is the final topcoat applied as a part of a multistage topcoat system.~~

(1) ~~(7)~~ "Department" means the Oregon Department of Environmental Quality.

~~(8) "Elastomeric Materials" mean coatings which are specifically formulated and applied over coated or uncoated flexible plastic substrates for the purpose of adhesion.~~

~~(9) "Exempt compounds" means compounds of carbon excluded from the definition of VOC.~~

~~(10) "Graphic Design Application" means the application of logos, letters, numbers, or artistic representations such as murals, landscapes and portraits.~~

(2) ~~(11)~~ "High Volume, Low Pressure Spray", or "HVLP" means equipment used to apply coatings with a spray device which operates at a nozzle air pressure between 0.1 and 10 pounds per square inch gravity (psig).

~~(12) "Impact Resistant Coating" means any coating applied to a rocker panel for the purpose of chip resistance to road debris.~~

~~(13) "Manufacturer" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.~~

~~(14) "Midcoat" means a semi-transparent topcoat which is the middle topcoat applied as part of a three-stage topcoat system.~~

(3) ~~(15)~~ "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion as defined in ORS 801.360.

(4) ~~(16)~~ "Motor Vehicle Refinishing" means the application of surface coating to on-road motor vehicles or non-road motor vehicles, or their existing parts and components, except Original Equipment Manufacturer (OEM) coatings applied at manufacturing plants.

(5) ~~(17)~~ "Motor Vehicle Refinishing Coating" means any coating designed for, or represented by the manufacturer as being suitable for motor vehicle refinishing.

(6) ~~(18)~~ "Motor Vehicle Refinishing Facility" means a location at which motor vehicle refinishing is performed.

~~(19) "Multi-Color Coating" means a coating which is packaged in a single container that exhibits more than one color when applied, and is used to protect surfaces of vehicle cargo areas.~~

~~(20) "Multistage Topcoat System" means any basecoat/clearcoat topcoat system or any three-stage topcoat system manufactured as a system, and used as specified by the manufacturer.~~

(7) ~~(21)~~ "Non-Road Motor Vehicle" means any motor vehicle other than an on-road motor vehicle. "Non-Road Motor Vehicle" includes, but is not limited to, fixed load vehicles, farm tractors, farm trailers, all-terrain vehicles, and golf carts as these vehicles are defined in ORS Chapter 801.

(8) ~~(22)~~ "On-Road Motor Vehicle" means any motor vehicle which is required to be registered under ORS 803.300 or exempt from registration under ORS 803.305(5), 803.305(6), or 803.305(15) through 803.305(19). "On-Road Motor Vehicle" includes, but is not limited to: passenger cars, trucks, vans, motorcycles, mopeds, motor homes, truck tractors, buses, tow vehicles, trailers other than farm trailers, and camper shells.

(9) ~~(23)~~ "Person" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(10) ~~(24)~~ "Portland Air Quality Maintenance Area" or "Portland AQMA" is defined in OAR 340-031-0500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)

~~(25) "Precoat Coating" means a coating applied to bare metal primarily to deactivate the surface for corrosion resistance to a subsequent water-base primer.~~

~~(26) "Pretreatment Wash Primer" means a coating which contains at least 0.5% acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to promote corrosion resistance and adhesion.~~

~~(27) "Primer" means a coating applied for purposes of corrosion resistance or adhesion of subsequent coatings.~~

~~(28) "Primer Sealer" means a coating applied prior to the application of a topcoat for the purpose of color uniformity, or to promote the ability of a underlying coating to resist penetration by the topcoat.~~

~~(29) "Primer Surfacer" means a coating applied for the purpose of corrosion resistance or adhesion, and which promotes a uniform surface by filling in surface imperfections.~~

(11) ~~(30)~~ "Public Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

~~(31) "Rocker Panel" means the panel area of a motor vehicle which is no more than 10 inches from the bottom of a door, quarter panel, of fender.~~

~~(32) "Rubberized Asphaltic Underbody Coating" means a coating applied to the wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, of the underside of the motor vehicle itself for the purpose of sound deadening or protection.~~

~~(33) "Specialty Coating" means any of the following coatings when used in accordance with each coating's specialized design purpose: adhesion promoters, uniform finish blenders, elastomeric materials, impact resistant coatings, anti-glare safety coatings, rubberized asphaltic underbody coatings, water hold-out coatings, weld-through coatings, bright metal trim repair coatings, and surface appearance additives.~~

~~(34) "Spot Repairs" mean motor vehicle refinishing repairs in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.~~

~~(35) "Stencil Coating" means an ink or a pigmented coating which is rolled or brushed onto a template or a stamp in order to add identifying letters, symbols, or numbers to motor vehicles, mobile equipment, or their parts and components.~~

~~(36) "Surface Appearance Additive" means gloss control additives, fish-eye eliminators, retarders, and other additives designed to achieve the surface appearance of the original equipment specifications.~~

~~(37) "Three-Stage Coating System" means a topcoat system composed of a basecoat portion, a midcoat portion, and a transparent clearcoat portion. For compliance purposes, the VOC content of a three-stage coating system shall be calculated according to the following formula:~~

~~$VOC_{3\text{-}stage} = \frac{(VOC_{be} + VOC_{me} + 2\,VOC_{ce})}{4}$~~

~~Where:~~

~~$VOC_{3\text{-}stage}$ = the composite VOC content, less water and less exempt compounds in the three-stage coating system.~~

~~VOC_{be} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.~~

~~VOC_{me} = the VOC content of any given midcoat as prepared for use, less water and less exempt compounds.~~

~~$2VOC_{ce}$ = twice the VOC content, as prepared for application, of any given clearcoat.~~

~~(38) "Topcoat" means a coating applied over any coating, for the purpose of appearance, identification, or protection.~~

~~(39) "Touch-up Coating" means a coating applied by brush or non-refillable aerosol can to cover minor surface damage and dispensed in containers of no more than 8 ounces.~~

~~(40) "Uniform Finish Blender" means a coating which is applied in spot repairs for the purpose of blending a paint overspray area of a repaired topcoat to match the appearance of an adjacent existing topcoat.~~

(12) ~~(41)~~ "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.

(13) ~~(42)~~ "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-022-0102. ~~For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-022-0760.~~

~~(43) "Water Hold-Out Coating" means a coating applied to the interior cavity areas of doors, quarter panels, and rocker panels for the purpose of corrosion resistance to prolonged water exposure.~~

~~(44) "Weld Through Coating" means a coating applied to metal immediately prior to welding to provide corrosion resistance.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Stat. Auth.: ORS Ch. 468.020

Stats. Implemented: ORS Ch. 468A.025

Hist: DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 16-1996, f. & cert. ef. 8-14-96

~~340-022-0720~~

~~Coating Standards and Exemptions~~

~~(1) Where required by OAR 340-022-0730 and 340-022-0740, motor vehicle refinishing coatings shall not exceed the VOC content limitations in **Table C** when prepared in accordance with the manufacturer's instructions, except as provided in section (2) of this rule.~~

~~Table C~~

~~VOC CONTENT LIMITS OF MOTOR VEHICLE REFINISHING COATINGS~~

~~Coating Type VOC Content Limits*~~

~~Pretreatment Wash Primer 6.5 (lbs/gal)~~
~~Precoat 6.5~~
~~Primer 4.8~~
~~Primer Surfacer 4.8~~
~~Primer Sealer 4.6~~
~~Topcoat 5.0~~
~~Basecoat/Clearcoat Topcoat System 5.0~~
~~Three Stage Coating System 5.2~~
~~Multi Color Coating 5.7~~
~~Specialty Coating 7.0~~

~~VOC content is determined as prepared for use in accordance with manufacturer's instructions, and shall be calculated by the following equation:~~

$$\text{Pounds of VOC per gallon} = \frac{W_{voc}}{V_m - V_w - V_{ec}}$$

~~Where:~~

~~W_{VOC} = Weight of VOC in pounds, or the weight of all volatile compounds less the weight of water, less the weight of exempt compounds;~~

~~V_m = Volume of material in gallons;~~

~~V_w = Volume of water in gallons;~~

~~V_{ec} = Volume of exempt compounds in gallons.~~

~~[**NOTE**: *VOC emission limits are expressed as pounds of VOC per gallon of coating excluding the volume of water and exempt compounds.]~~

~~(2) Exemptions. The VOCcontent limits in section (1) of this rule shall not apply to:~~
~~(a) Coatings supplied in aerosol spray cans;~~
~~(b) Touch-up coatings;~~

~~(c) Stencil coatings;~~
~~(d) Coatings used for graphic design applications.~~
~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.025~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

~~340-022-0730~~
~~Requirements for Manufacture and Sale of Coatings~~
~~(1) Manufacture. Any person who manufactures motor vehicle refinishing coatings for sale within Oregon after January 1, 1996 shall:~~
~~(a) Provide written instructions for preparation of the product; and~~
~~(b) Designate in writing the VOC content of these products as prepared for use in accordance with the manufacturer's instructions.~~
~~(2) Shipment to the Portland AQMA. Except as provided in section (4) of this rule, no person shall knowingly sell, ship or provide a motor vehicle refinishing coating after January 1, 1996 for use within the Portland AQMA unless the VOCcontent of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-022-0720 when prepared in accordance with the manufacturer's instructions.~~
~~(3) Sale within Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill Counties. Except as provided in section (4) of this rule, no person shall sell motor vehicle refinishing coatings after January 1, 1996 within Clackamas, Columbia, Marion, Multnomah, Washington or Yamhill counties unless the VOC content of the product as designated by the manufacturer complies with the VOCcontent limits in OAR 340-022-0720 when prepared in accordance with the manufacturer's instructions.~~
~~(4) Sale for use outside the Portland-Vancouver Interstate AQMA. Motor vehicle refinishing coatings which do not comply with the VOC limitations of OAR 340-022-0720 may be sold for shipment to the Portland AQMA, or sold within Clackamas, Columbia, Marion, Multnomah, Washington, or Yamhill Counties if:~~
~~(a) The product is to be used outside the boundary of the Portland-Vancouver Interstate AQMA; and~~
~~(b) The purchaser provides written certification to the seller in the manner described by section (5) of this rule that the product is to be used outside the Portland-Vancouver Interstate AQMA.~~
~~(5) Purchase Certifications. When required by section (4) of this rule, certifications of intended use shall at a minimum contain the following information:~~
~~(a) Purchaser's name and address;~~
~~(b) Date of Purchase;~~
~~(c) Name of coating or coating system purchased;~~
~~(d) Type of coating;~~
~~(e) Quantity of coating purchased;~~
~~(f) Address of location where coating will be used;~~
~~(g) A statement certifying that the coating will not be used within the Portland-Vancouver Interstate AQMA to the best of the purchaser's knowledge; and~~
~~(h) Purchaser's signature.~~
~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.035~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

340-022-0740
Requirements for Motor Vehicle Refinishing in Portland AQMA

Except as provided in section (3) of this rule, persons performing motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall:

(1) ~~After January 1, 1996:~~

~~(a) Use motor vehicle refinishing coating which are identified by the manufacturer as complying with the VOC limits established in OAR 340-022-0720; and~~

~~(b) Prepare and apply the coatings in accordance with the manufacturer's instructions; and~~

~~(2) After June 1, 1996:~~

~~(a)~~ Clean any spray equipment, including paint lines, in a device which:

~~(A)~~ (a) Minimizes solvent evaporation during the cleaning, rinsing, and draining operations;

~~(B)~~ (b) Recirculates solvent during the cleaning operation so the solvent is reused; and

~~(C)~~ (c) Collects spent solvent to be available for proper disposal or recycling; and

~~(b)~~ (2) Apply motor vehicle refinishing coatings by one of the following methods:

~~(A)~~ (a) High Volume Low Pressure spray equipment, operated and maintained in accordance with the manufacturer's recommendations;

~~(B)~~ (b) Electrostatic application equipment, operated and maintained in accordance with the manufacturer's recommendations;

~~(C)~~ (c) Dip coat application;

~~(D)~~ (d) Flow coat application;

~~(E)~~ (e) Brush coat application;

~~(F)~~ (f) Roll coat application;

~~(G)~~ (g) Hand-held aerosol cans; or

~~(H)~~ (h) Any other coating application method which can be demonstrated to effectively control VOC emissions, and which has been approved in writing by the Department.

(3) This rule shall not apply to any person who performs motor vehicle refinishing without compensation, and who performs refinishing on two or fewer on-road motor vehicles, or portions thereof, in any calendar year.

Stat. Auth.: ORS 468.020 & 468A.035

Stats. Implemented: ORS 468A.035

Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

~~340-022-0750~~

~~Recordkeeping and Reporting Requirements~~

~~(1) Recordkeeping.~~

~~(a) Manufacturers of motor vehicle refinishing coatings sold in Oregon shall maintain records which demonstrate that the VOCcontent designated under OAR 340-022-0730(1) is true and accurate. These records shall be maintained for at least 2 years after a manufacturer's sale of a product for use in Oregon, and may include, but are not limited to, product formulation data and test results using test methods specified in OAR 340-022-0760.~~

~~(b) Persons who sell motor vehicle refinishing coatings within the State of Oregon shall maintain records for at least 2 years which are sufficient to allow a determination of compliance with OAR 340-022-0730 (3) and (4). These records shall include, but are not limited to, purchase certifications and sales information specifying the coating identification, quantity sold, and date of sale.~~

~~(c) Persons who perform motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall maintain records for at least 2 years which are sufficient to allow determination of compliance with OAR 340-022-0740. These records shall include, but are not limited to, manufacturers' instructions for preparation of coatings used and purchase information specifying the coating identification, quantity purchased and date of purchase.~~

~~(2) Reporting. Following request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.~~

~~(3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340-022-1120.~~
~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.035~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

340-022-0760
Inspecting and Testing Requirements

~~(1)~~ The owner or operator of any facility subject to OAR 340-022-0700 through 340-022-0760 shall, at any reasonable time, make the facility available for inspection by the Department.

~~(2) Upon request of the Department, any person subject to OAR 340-022-0700 through 340-022-0760 shall furnish samples of motor vehicle refinishing coatings selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-022-0720.~~

~~(3) Testing conducted under this rule shall be in accordance with EPA Method 24 or Method 25 as described in **CFR Title 40 Part 60** (July 1, 1994), or by other methods approved by the Department and EPA.~~

Stat. Auth.: ORS 468.020 & 468A.035
Stats. Implemented: ORS 468A.035
Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

Consumer Products

340-022-0800
Applicability
OAR 340-022-0800 through 340-022-0860 apply to any manufacturer, distributor or retailer of consumer products for sale or use in the Portland AQMA.
Stat. Auth.: ORS 468.020 & 468A.035
Stats. Implemented: ORS 468A.035
Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-0810
Definitions
As used in OAR 340-022-0800 through 340-022-0860:
(1) "Aerosol product" means a pressurized spray system that dispenses product ingredients by means of propellant or mechanically induced force. This does not include pump sprays.
(2) "Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers which are intended for home use, use in structural pest control, industrial use, or institutional use. Subsections (a) through (d) are for purposes of this section only.
(a) Home use means use in a household or its immediate environment.
(b) Structural pest control means a use requiring a license.
(c) Industrial use means use for or in a manufacturing, mining, or chemical process, or use in the operation of factories, processing plants, and similar sites.
(d) Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.
(3) "Air freshener" means any consumer product including, but not limited to sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This does not include products that are used on the human body, products that function primarily as cleaning products, or disinfectant products claiming to deodorize by killing germs on surfaces. It does include spray disinfectants and other products that are expressly represented for use as air fresheners. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representations about a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.
(4) "All other forms" means all consumer product forms for which no form-specific VOC standard is specified under OAR 340-022-0820(1). Unless specified otherwise by the applicable VOC standard, this includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).
(5) "Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.
(6) "ASTM" means the American Society for Testing and Materials.
(7) "Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer fluid system either as an anti-freeze of for the purpose of cleaning, washing, or wetting the windshield(s). This does not include any fluid which is placed in the washer fluid system of a motor vehicle prior to the time of initial sale.

~~(8) "Bait station insecticide" means a container enclosing an insecticidal bait, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.~~

~~(9) "Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. This does not include products specifically designed to clean toilet bowls or toilet tanks.~~

~~(10) "Carburetor choke cleaner" means a product designed to remove dirt and other contaminants from a carburetor. This does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.~~

~~(11) "Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This does not include subsections (a) through (d):~~

~~(a) Electrical starters and probes,~~

~~(b) Metallic cylinders using paper tinder,~~

~~(c) Natural gas, and~~

~~(d) Propane.~~

~~(12) "Commission" means the Environmental Quality Commission.~~

~~(13) "Complying consumer product" means a consumer product which complies with the VOC content limits in OAR 340-022-0820.~~

~~(14) "Construction and panel adhesive" means any one-component household adhesive sold in containers of one gallon or less, having gap filling capabilities, and which distributes stress throughout the bonded area resulting in reduction or elimination of mechanical fasteners.~~

~~(15) "Consumer" means any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not considered consumers of that product.~~

~~(16) "Consumer product" means any chemically formulated product, or article, held by any person, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds, and which is included in the product categories listed in OAR 340-022-0820(1). This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, architectural coatings or aerosol spray paint.~~

~~(17) "Contact adhesive" means any household adhesive that:~~

~~(a) Is nitrile-based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex;~~

~~(b) When applied to two substrates, forms an instantaneous, non-repositionable bond;~~

~~(c) When dried to touch, exhibits a minimum 30-minute bonding range; and,~~

~~(d) Bonds only to itself without the need of reactivation by solvents or heat.~~

~~(18) "Container" or "Packaging" means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.~~

~~(19) "Cooking spray aerosols" means any aerosol product designed either to reduce sticking in or on cooking and baking surfaces or to be applied on food, or both.~~

~~(20) "Crawling bug insecticide" means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This does not include products designed to be used exclusively on humans or animals.~~

~~(21) "Deodorant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.~~

~~(22) "Device" means any instrument or contrivance (other than a fire arm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other~~

~~than humans and other than bacteria, viruses, or other microorganism on or in living humans or other living animals), but not including equipment used for the application of pesticides for which the pesticides are sold separately.~~

~~(23) "Department" means the Oregon Department of Environmental Quality.~~

~~(24) "Distributor" means any person who sells or supplies a consumer product for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies consumer products directly to a retail outlet. "Distributor" does not include consumers.~~

~~(25) "Double-phase aerosol air freshener" means an aerosol air freshener with the contents in two or more distinct phases that require the product container be shaken before use to mix the phases, producing an emulsion.~~

~~(26) "Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This does not include products which consist entirely of compressed gases for use in electronic or other specialty applications.~~

~~(27) "Exempt compounds" means compounds of carbon specifically excluded from the definition of VOC.~~

~~(28) "Exempt VOCs" means VOCs exempted from OAR 340-022-0820(1) under OAR 340-022-0820(3).~~

~~(29) "Engine degreaser" means a cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.~~

~~(30) "Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.~~

~~(31) "Flea and tick insecticide" means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. This does not include products that are designed to be used exclusively on humans or animals and their bedding.~~

~~(32) "Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber seamless vinyl, and vinyl composite flooring.~~

~~(33) "Floor polish or wax" means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, or coatings subject to architectural and industrial maintenance coating regulations.~~

~~(34) "Flying bug insecticide" means any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths, or gnats. This does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.~~

~~(35) "Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2mm mercury at 20º Celsius (C), which is added to a consumer product to impart an odor or scent or to counteract a objectionable odor.~~

~~(36) "Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. This does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.~~

~~(37) "Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.~~

~~(38) "General purpose adhesive" means any non-aerosol household adhesive designed for use on a variety of substrates, not including contact adhesives or construction and panel adhesives.~~

~~(39) "General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces. This does not include non-water-based degreasers.~~

~~(40) "Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. This does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, or photocopying machines.~~

~~(41) "Hairspray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.~~

~~(42) "Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.~~

~~(43) "Hair styling gel" means a high viscosity, often gelatinous product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.~~

~~(44) "High volatility organic compound" or "HVOC" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters mercury when measured at 20° C.~~

~~(45) "Household adhesive" means any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, two part resorcinol resin based adhesive, or any other product with an adhesive incorporated onto or in an inert substrate.~~

~~(46) "Household product" means any consumer product that is primarily designed to be used in or in the vicinity of living quarters or residences that are occupied or intended for habitation.~~

~~(47) "Initial sale" means the bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in Oregon or elsewhere; and such a bargain, sale, transfer, or delivery, accompanied by registration or licensing of said vehicle in Oregon or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.~~

~~(48) "Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:~~

~~(a) For agricultural use;~~

~~(b) For use in maintaining building structures; or~~

~~(c) Restricted materials that require a permit for use and possession.~~

~~(49) "Insecticide fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.~~

~~(50) "Institutional product" means a consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Insti tutional products do not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.~~

~~(51) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product~~

~~package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.~~

~~(52) "Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements or contributes to the effectiveness of laundry detergents or provides specialized performance.~~

~~(53) "Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.~~

~~(54) "Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.~~

~~(55) "Liquid" means a substance or mixture of substances which is capable of flow as determined under **ASTM D 4359-90**. This does not include powders or other materials that are composed entirely of solid particles.~~

~~(56) "Manufacturer" means the company, firm or establishment which is listed on the product container or package. If the product container or package lists two companies, firms or establishments, the manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the product container or package. If the product container or package does not list a company, firm or establishment, the manufacturer is the party who imported, produced, packaged or assembled the product.~~

~~(57) "Nail polish" means any clear or colored coating designed for application to the fingernails or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.~~

~~(58) "Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.~~

~~(59) "Non-aerosol product" means any product that is not dispensed by a pressurized spray system.~~

~~(60) "Noncomplying consumer product" means a consumer product which does not comply with the VOC content limits in OAR 340-022-0820.~~

~~(61) "Nonresilient flooring" means flooring of a mineral content which is not flexible, including but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.~~

~~(62) "Oven cleaner" means any product designed to clean or remove dried food deposits from oven walls.~~

~~(63) "Percent by weight" means the total weight of VOC less exempt VOCs, expressed as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:~~

~~**Percent By Weight = [(B - C) X 100]**~~
~~A~~

~~Where:~~
~~A = net weight of unit (excluding container and packaging)~~
~~B = weight of VOCs, per unit~~
~~C = weight of VOCs, exempted under OAR 340-022-0820(3), per unit~~

~~(64) "Pesticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, providing that the term pesticide will not include any substance, mixture of substances, or device which the U.S. Environmental Protection Agency does not consider to be a pesticide.~~

~~(65) "Portland Air Quality Maintenance Area" or "Portland AQMA" is defined in OAR 340-031-0500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)~~

~~(66) "Principal display panel or panels" means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.~~

~~(67) "Product category" means the applicable category which best describes the product as listed in this rule.~~

~~(68) "Product form" means the applicable form which most accurately describes the product's dispensing form, including aerosol products, gels, liquids, pump sprays, and solids.~~

~~(69) "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.~~

~~(70) "Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.~~

~~(71) "Restricted materials" means any pesticides established for restricted use under Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 United States Code § 136, et seq.~~

~~(72) "Retailer" means any person who sells, supplies, or offers consumer products for sale directly to consumers.~~

~~(73) "Retail outlet" means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.~~

~~(74) "Single-phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.~~

~~(75) "Shaving cream" means an aerosol product which dispenses a foam lather intended for use with a blade, cartridge razor, or other wet shaving system in the removal of facial or other bodily hair.~~

~~(76) "Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of flow as determined under **ASTM D 4359-90**.~~

~~(77) "Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.~~

~~(78) "Subsequent sale" means the bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than alien, of a motor vehicle which has been registered or licensed outside of the Portland AQMA, except when such vehicle is not required under law to be registered or licensed in Oregon or elsewhere; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where bargain, sale, transfer, or delivery occurred.~~

~~(79) "Usage directions" means the text or graphics on the product's label or accompanying literature which describes to the user the manner and quantity in which the product is to be employed.~~

~~(80) "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-022-0102(73). For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-022-0860.~~

~~(81) "Wasp and hornet insecticide" means any insecticide product that is designed for use against wasps, hornets, yellow jackets, or bees by allowing the user to spray a high volume directed stream or burst from a safe distance at the intended pest or its hiding place.~~

~~(82) "Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.~~

~~(83) "Wood floor wax" means wax-based products for use solely on wood floors.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]~~
~~[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]~~
~~Stat. Auth.: ORS Ch. 468.020~~
~~Stats. Implemented: ORS Ch. 468A.025~~
~~Hist: DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 16-1996, f. & cert. ef. 8-14-96~~

~~340-022-0820~~
~~Consumer Product Standards & Exemptions~~
~~(1) Where required by OAR 340-022-0830, consumer products shall not exceed the VOC content limits in **Table D** or HVOC content limits in Table E, as modified by the special conditions and exceptions in sections(2) and (3) of this rule.~~

~~Table D~~

~~CONSUMER PRODUCT VOC CONTENT LIMITS~~

~~Product Category~~	**~~VOC Percent-by-Weight~~**
~~Air Fresheners:~~	
~~Single-phase Aerosols~~	~~70~~
~~Double-phase Aerosols~~	~~30~~
~~Liquid & Pump Sprays~~	~~18~~
~~Solids & Gels~~	~~3~~
~~Automotive Windshield Washer Fluids~~	~~23.5~~
~~Bathroom & Tile Cleaners:~~	
~~Aerosols~~	~~7~~
~~All Other Forms~~	~~5~~
~~Carburetor Choke Cleaners~~	~~75~~
~~Charcoal Lighter Materials~~	~~See subsection (2)(e) of this rule~~
~~Cooking Spray Aerosols~~	~~18~~
~~Dusting Aids:~~	
~~Aerosol~~	~~35~~
~~All Other Forms~~	~~7~~
~~Engine Degreasers~~	~~75~~
~~Fabric Protectants~~	~~75~~
~~Floor Polishes and Waxes~~	
~~Products for Flexible Flooring~~	~~7~~
~~Products for Nonresilient Flooring~~	~~10~~
~~Wood Floor Wax~~	~~90~~
~~Furniture Maintenance Products:~~	
~~Aerosols~~	~~25~~
~~General Purpose Cleaners~~	~~10~~
~~Glass Cleaners:~~	
~~Aerosols~~	~~12~~
~~All Other Forms~~	~~8~~
~~Hairsprays~~	~~80~~
~~Hair Mousses~~	~~16~~

~~Hair Styling Gels 6~~
~~Household Adhesives:~~
~~Aerosols 75~~
~~Contact 80~~
~~Construction & Panel 40~~
~~General Purpose 10~~
~~Insecticides:~~
~~Crawling Bug 40~~
~~Flea & Tick 25~~
~~Flying Bug 35~~
~~Foggers 45~~
~~Lawn & Garden 20~~
~~Laundry Prewash:~~
~~Aerosols & Solids 22~~
~~All Other Forms 5~~
~~Laundry Starch Products 5~~
~~Nail Polish Removers 75~~
~~Oven Cleaners:~~
~~Aerosols & Pump Sprays 8~~
~~Liquids 5~~
~~Shaving Creams 5~~

~~**Table E**~~

~~**Antiperspirant/Deodorant HVOC Content Limits**~~

~~**Product Category HVOC Percent by Weight**~~
~~Antiperspirants:~~
~~Aerosols 60~~
~~Non-aerosols 0~~
~~Deodorants~~
~~Aerosols 20~~
~~Non-aerosols 0~~

~~(2) Special conditions. The following conditions shall apply to products subject to VOC or HVOC limits under section (1) of this rule:~~
~~(a) For consumer products for which the usage directions specifically state that the product should be diluted prior to use, the limits specified in section (1) of this rule shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, the usage directions shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.~~
~~(b) Notwithstanding the definition of product category in OAR 340-022-0810, if anywhere on a consumer product or in any promotion of the product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOCstandard is specified in section (1) of this rule, then the lowest VOCstandard shall apply. This requirement does not apply to general purpose cleaners or antiperspirants.~~
~~(c) The requirements for charcoal lighter materials are as follow:~~

(A)Where required by OAR 340-022-0830, charcoal lighter material emissions shall not exceed an average of 0.020 pounds of VOC per start when used in accordance with the directions on the label of the product.

(B) Compliance with this subsection shall be demonstrated by:

(i) Testing in accordance with procedures specified in OAR 340-022-0860; or

(ii) Certification of charcoal lighter materials by Executive Order of the California Air Resources Board (CARB), unless the CARB certification is revoked.

(C) Charcoal lighter material labels and accompanying literature shall clearly show usage direction for the product. For liquid charcoal lighter materials, the directions shall accurately reflect the required quantity of charcoal lighter material per pound of charcoal for that product that was used in determining compliance with this subsection.

(3) Exempt VOCs. The requirements of section (1) of this rule shall not apply to:

(a) Fragrances or colorants up to a combined level of 2.0% VOC by weight contained in any consumer product.

(b) VOCs of products subject to section (1) **Table D** of this rule that:

(A)Contain more than 12 carbon atoms per molecule, and for which the vapor pressure is unknown;

(B) Have a vapor pressure of 0.1 mm Hg or less at 20°C; or

(C) Have a melting point higher than 20°C and do not sublime (e.g. do not change directly from a solid into a gas without melting), if the vapor pressure is unknown.

(c) VOCs of products subject to section (1) Table E of this rule that:

(A) Contain more than 10 carbon atoms per molecule, and for which the vapor pressure is unknown; or

(B) Has a vapor pressure of 2 mm Hg or less at 20°C.

(d) Air fresheners and insecticides containing at least 98% paradichlorobenzene.

(e) Adhesives sold in containers of one fluid ounce or less combined net weight.

(f) Bait station insecticides.

(g) Air fresheners that are comprised entirely of fragrance and compounds which are not defined as VOC under OAR 340-022-0810 or exempted under subsection (b) of this section.

(h) Products for which an innovative product exemption has been approved under OAR 340-022-0840 provided the manufacturer complies with terms and conditions of such approval and the approval has not been revoked.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Environmental Quality.]

Stat. Auth.: ORS 468.020 & 468A.035

Stats. Implemented: ORS 468A.035

Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-0830

Requirements for Manufacture and Sale of Consumer Products

(1) Manufacturers. Except as provided in section (4) of this rule, any person who manufactures consumer products after January 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, for retail sale within the Portland AQMA shall:

(a) Manufacture complying consumer products for products marked in the Portland AQMA;

(b) Clearly display on each consumer product container or package, the date on which the product was manufactured, or a code indicating such date;

(c) If a noncomplying product is manufactured, provide written notification to all distributors supplied with products in that product category that:

(A) Allows identification of complying consumer products and noncomplying consumer products in the product category; and

(B) Informs distributors that noncomplying consumer products shall not be distributed, directly or indirectly, to retail outlets in the Portland AQMA; and

(d) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying consumer products have been supplied in violation of this rule.

(2) Distributors. Except as provided in section (4) of this rule, any distributor of consumer products manufactured after January 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet within the Portland AQMA shall:

(a) Ensure that any consumer products identified by the manufacturer as noncomplying consumer products are not distributed directly to retail outlets in the Portland AQMA;

(b) Provide any information about a consumer product supplied by a manufacturer under subsection (1)(c) of this rule to any other distributor to whom the consumer product is sold, supplied or distributed for subsequent distribution to a retail outlet in the Portland AQMA; and

(c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying consumer products have been supplied in violation of this rule.

(3) Retailers.

(a) Except as provided in section (4) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying consumer product manufactured after January 1, 1996.

(b) Upon notification by the Department, a manufacturer, or a distributor that any noncomplying consumer products have been supplied, a retailer shall remove noncomplying products from consumer-accessible areas of retail outlets within the Portland AQMA.

(4) Exceptions.

(a) For consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §136 et seq.), this rule applies to consumer products manufactured after January 1, 1997.

(b) For consumer products which have been granted a compliance extension under OAR 340-022-1110, this rule applies to consumer products manufactured after the date specified in the compliance extension order.

(c) This rule does not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale, or at the time of subsequent sale of vehicle registered or licensed outside of the Portland AQMA.

Stat. Auth.: ORS 468.020 & 468A.035

Stats. Implemented: ORS 468A.035

Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-0840

Innovative Products

(1) The Department shall exempt a consumer product from the requirements of OAR 340-022-0820 if a manufacturer demonstrates that, due to some characteristic of the product formulation, design, delivery system, or other factors, the use of the product will result in equal or less VOC emissions as compared to:

(a) The VOC emissions from a representative consumer product which complies with the VOC standards specified in 340-022-0820(1); or

(b) The calculated VOC emissions from a representative noncomplying consumer product, if the product had been reformulated to comply with the VOC standards specified in 340-022-0820(1).

(2) Determination of calculated emissions.

(a) Except as provided in subsection (b) of this section, determination of VOC emissions made pursuant to subsection (1)(b) of this rule shall be calculated using the following:

ER = ENC x VOCSTD / VOCNC

~~Where: ER = The VOC emissions from the representative noncomplying consumer product, had it been reformulated.~~
~~ENC = The VOC emissions from the representative noncomplying consumer product in its current formation.~~
~~VOCSTD = The VOC standard specified in 340-022-0820.~~
~~VOCNC = The VOC content of the noncomplying consumer product in its current formulation.~~

~~(b) If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristics of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Department.~~
~~(3) For the purposes of this rule, a representative consumer product is one which:~~
~~(a) Is subject to the same VOC limit in 340-022-0820(1) as the innovative product;~~
~~(b) Is of the same product form, unless the innovative product uses a form which was nonexistent in the product category on the date of application under section (4) or this rule; and~~
~~(c) Has at least similar efficacy as other consumer products in the same category based on generally accepted tests for that category.~~
~~(4) A manufacturer shall apply in writing to the Department for any exemption claimed under this rule. Information claimed by the applicant as confidential or otherwise exempt from disclosure shall be submitted in accordance with OAR 340-002-1120. The application shall include:~~
~~(a) The supporting documentation that demonstrates the actual emissions from the innovative product, including the physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product use;~~
~~(b) Any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content of the innovative product; and~~
~~(c) Test methods for determining VOC content.~~
~~(5) Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.~~
~~(6) The Department shall within 90 days after an application has been deemed complete, determine whether, under what conditions, and to what extent, an exemption from the requirements of 340-022-0820(1) shall be approved. The applicant and the Department may mutually agree to extend the period for making a determination, and additional supporting documentation may be submitted by the applicant before the determination is reached. The Department shall notify the applicant in writing of the determination and the terms and conditions established under section (7) of this rule.~~
~~(7) In approving an innovative product exemption, the Department shall establish terms and conditions which allow the emission limitations established under section (1) of this rule to be enforced. Such terms and conditions may include, but are not limited to, the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Department to be necessary. The Department shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.~~
~~(8) Notwithstanding section (6) of this rule, if a product has been granted an Innovative Product exemption by the California Air Resources Board (CARB), that product shall be granted an exemption under this rule provided:~~
~~(a) The CARB Innovative Product exemption is valid as of February 20, 1995;~~
~~(b) The manufacturer submits to the Department an Executive Order relating to Innovative Products granted by CARB under Section 94511, Title 17, California Code of Regulations, together with information required by section (4) of this rule prior to the applicable compliance date;~~

(c) The manufacturer complies with the terms and conditions established in the CARB Innovative Product exemption; and

(d) The manufacturer notifies the Department in writing within 30 days of any changes in the terms and conditions of the exemption.

(9) For any product for which an exemption has been approved pursuant to this rule, the manufacturer shall notify the Department in writing within 30 days prior to any change in the product's formulation or directions for use, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.

(10) If VOC standards are lowered for a product category through adoption of subsequent regulations, all innovative product exemptions granted for products in the product category, except as provided in this section, shall have no force and effect as of the effective date of the modified VOC standard. This section shall not apply to those innovative products which have VOC emissions less than the appropriate new VOC standard, and for which a written notification of the product's VOC emissions compared to the appropriate new VOC standard has been submitted to and approved by the Department at least 60 days before the effective date of such standard.

(11) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in section (1) of this rule, the Department may modify or revoke the exemption as necessary to ensure that the product will meet these criteria. The Department shall notify the applicant in writing if an exemption is modified or revoked under this section.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 22-1996, f. & cert. ef. 10-22-96

340-022-0850

Recordkeeping and Reporting Requirements

(1) Recordkeeping

(a) Manufacturers subject to OAR 340-022-0830 shall maintain the following records for at least 2 years after a product is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA:

(A) Records, based upon testing or chemical composition records as set forth in OAR 340-022-0860, which document the VOC content of consumer products;

(B) Records for use in determining compliance of charcoal lighter materials with OAR 340-022-0820 including, but not limited to, emissions testing results, physical property data, and formulation data;

(C) An explanation of any code indicating the date of manufacture of any consumer products other than consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, § 136);

(D) Documentation of information provided to distributors under OAR 340-022-0830(1)(c);

(E) Information used to substantiate an application for an innovative product exemption under OAR 340-022-0840;

(F) Information used to substantiate an application for a compliance extension OAR 340-022-1110;

(b) Distributors shall maintain documentation of information provided to them under OAR 340-022-0830(1)(c) and 340-022-0830(2)(b) for at least 2 years after a product is no longer sold, offered for sale, supplied or distributed by the distributor, directly or indirectly, to a retail outlet in the Portland AQMA.

(2) Reporting. Following a request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.

(3) Product Registration. Manufacturers subject to OAR 340-022-0830 shall submit product registration information to the Department.

(a) At a minimum, product registration information shall include the following:

(A) Manufacturer's name, address and telephone number;

(B) A complete list, by product category, of names, trademarks or other identifiers of the manufacturer's products subject to OAR 340-022-0820;

(C) Identification of complying and non-complying products or a statement that only complying products are manufactured; and

(D) The dated signature of an authorized representative of the manufacturer.

(b) Product registration information shall be submitted by the later of:

(A) January 1, 1996;

(B) January 1, 1997 for consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, § 136 et seq.); or

(C) For products introduced by previously unregistered manufacturers, the date products subject to OAR340-022-0820 are initially sold, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA.

(c) Product registration information shall be updated and resubmitted:

(A) Upon introduction by the manufacturer of a new noncomplying product since the last registration information submittal; and

(B) Within a reasonable period of time following request by the Department.

(4) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures in OAR340-022-1120.

Stat. Auth.: ORS 468.020 & 468A.035

Stats. Implemented: ORS 468A.035

Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-0860

Inspection and Testing Requirements

(1) The owner or operator of a facility subject to OAR 340-022-0800 through 340-022-0860 shall, at any reasonable time, make the facility available for inspection by the Department.

(2) Upon request of the Department, any person subject to OAR 340-022-0800 through 340-022-0860 shall furnish samples of consumer products selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-022-0820.

(3) Testing to determine compliance with OAR 340-022-0820 shall be performed using one or more of the following methods:

(a) **Method 24-24A, 40 CFR Part 60 (July 1, 1994);**

(b) **Method 18, Federal Register 48, no 202, October 18, 1983;**

(c) **Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984;**

(d) **EPA Method 8240 "GC/MS Method for Volatile Organics," September 1986;**

(e) For charcoal lighter materials, the procedure specified in the **South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991)** or other methods which are approved by the Department and are shown to provide equivalent results;

(f) Calculation of the VOC content from the records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents; or

(g) Alternative methods which are shown to accurately determine the concentration of volatile organic compounds (VOCs) in a subject product or its emissions upon approval of the Department.

~~(4) If a method specified in section (3) of this rule to measure VOC also measure exempt compounds, the exempt compounds may be excluded from the VOC content if the amount of such compounds is accurately quantified. The Department may require a manufacturer to provide methods and results demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the product or the product's emissions.~~

~~(5) Testing to determine whether a product is a liquid or solid shall be performed using **ASTM D4359-90 (May 25, 1990)**, which is incorporated by reference herein.~~

~~(6) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using **ASTM D86-90 (September 28, 1990)**, which is incorporated by reference herein.~~

~~Stat. Auth.: ORS 468.020 & 468A.035~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

Architectural Coatings

340-022-1000
Applicability
OAR 340-022-1000 through 340-022-1050 apply to any manufacturer, distributor, retailer, or commercial applicator of architectural coatings for sale or use in the Portland AQMA.
Stat. Auth.: ORS 468.020 & 468A.035
Stats. Implemented: ORS 468A.035
Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95

340-022-1010
Definitions
As used in OAR 340-022-1000 through 340-022-1050:
(1) "AAMA" means the American Architectural Manufacturers Association.
(2) "Alkali Resistant Primers" mean high performance primers formulated to resist reaction with alkaline materials including, but not limited to, lime, cement, and soap.
(3) "Antenna Coatings" mean coatings formulated and recommended for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.
(4) "Anti-Fouling Coatings" mean high performance coatings formulated and recommended for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms, including, but not limited to, coatings registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.) and nontoxic foul-release coatings.
(5) "Anti-Graffiti Coatings" mean clear or opaque high performance coatings specifically labeled as anti-graffiti coatings and both formulated and recommended for application to graffiti-prone surfaces to deter adhesion of graffiti and to facilitate graffiti removal.
(6) "Appurtenance" means an accessory to a stationary structure, whether installed or detached at the proximate site of installation, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating, air conditioning, or other fixed mechanical equipment or large stationary tools; lamp posts; partitions; piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks and fire escapes; and window screens.
(7) "Architectural Coatings" mean coatings formulated and recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs.
(8) "ASTM" means the American Society for Testing and Materials.
(9) "Below-Ground Wood Preservatives" mean coatings formulated and recommended to protect below-ground wood from decay or insect attack which are registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.).
(10) "Bituminous Coatings and Mastics" mean coatings and mastics formulated and recommended for roofing, pavement sealing, or waterproofing that incorporate bitumens as a principal component. Bitumens are black or brownish materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude petroleum or low grades of coal. Bitumens include asphalt, tar, pitch and asphaltite.
(11) "Bond Breakers" mean coatings formulated and recommended for application to concrete to prevent the formation of a bond to a subsequently placed concrete layer.
(12) "Chalkboard Resurfacers" mean coatings formulated and recommended for application to chalkboards to restore a suitable surface for writing with chalk.
(13) "Clear Coating" means a coating that when dry allows light to pass so the substrate may be distinctly seen.

~~(14) "Clear & Semitransparent Stains" mean transparent or translucent coatings formulated and recommended for application to wood based substrates to impart a desired color without completely concealing the surface or its natural texture or grain pattern.~~

~~(15) "Clear & Semitransparent Wood Preservatives" mean coatings formulated and recommended to protect exposed wood from decay or insect attack, registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.), that may change the color of the substrate but do not completely conceal the substrate.~~

~~(16) "Clear Waterproofing Sealers & Treatments" mean coatings which are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which do not alter the surface appearance or texture.~~

~~(17) "Coating Category" means the applicable category which best describes the coating as listed in this rule.~~

~~(18) "Colorant" means a concentrated pigment dispersion of water, solvent, or binder that is added to an architectural coating or tint base after the coating or tint base has been shipped from its place of manufacture.~~

~~(19) "Commercial Applicator" means any person who purchases, hires, acquires, applies or contracts for the application of architectural coatings for commercial, industrial or institutional uses, or any person who applies architectural coatings for compensation.~~

~~(20) "Complying Architectural Coating" means a coating which complies with the VOC content limits of OAR 340-022-1020.~~

~~(21) "Concrete Curing Compounds" mean coatings formulated and recommended for application to recently cast concrete to retard the evaporation of water.~~

~~(22) "Concrete Protective Coatings" mean high build coatings formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surface. These coatings are formulated to be primerless, one coat systems which can be applied over form release compounds or uncured concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long term protection from water and chloride ion intrusion.~~

~~(23) "Department" means the Oregon Department of Environmental Quality.~~

~~(24) "Distributor" means any person who sells or supplies architectural coating for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies products directly to a retail outlet. "Distributor" does not include consumers.~~

~~(25) "Dry Fog Coatings" mean coatings formulated and recommended only for circumstances in which overspray droplets are desired to dry before contacting incidental surfaces in the vicinity of a surface coating activity.~~

~~(26) "Environmental Protection Agency", or "EPA" means the United States Environmental Protection Agency.~~

~~(27) "Exempt compounds" mean compounds of carbon excluded from the definition of VOC.~~

~~(28) "Exterior Coatings" mean coatings formulated and recommended for use in conditions exposed to the weather.~~

~~(29) "Extreme High Durability Coatings" mean air dry flouropolymer based coatings formulated and recommended for the protection of architectural subsections and which meet the weathering requirements of **AAMA 605.2-1985 Section 7.9**.~~

~~(30) "Fire Retardant/Resistive Coatings" mean clear or opaque coatings formulated and recommended to retard ignition and flame spread, or to delay melting or structural weakening due to high heat, and which are fire tested and rated by a certified laboratory for use in bringing buildings or construction materials into compliance with building code requirements applicable to the place of use.~~

~~(31) "Flat Coatings" mean coatings which register gloss less than 15 on an 85° meter and less than 5 on a 60° meter according to *ASTM Method D 523, Standard Test Method for Specular Gloss.*~~

~~(32) "Floor Coatings" mean coatings formulated and recommended for application to flooring, including, but not limited to, decks, porches, and steps, and which have a high degree of abrasion resistance.~~

~~(33) "Flow Coatings" mean coating materials formulated and recommended to maintain the protective coating systems present on utility transformers.~~

~~(34) "Form Release Compounds" mean coatings formulated and recommended for application to concrete forms to prevent formation of a bond between the form and concrete cast within.~~

~~(35) "Graphic Arts Coatings" or "Sign Paints" mean coatings formulated and recommended for hand application either on site or in shop by artists using brush or roller techniques to indoor or outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, and copy blockers.~~

~~(36) "Heat Reactive Coatings" mean high performance phenolic based coatings requiring a minimum temperature of 191° Celsius (C) [375° Fahrenheit (F)] to 204° C (400° F) to obtain complete polymerization or cure. These coatings are formulated and recommended for commercial and industrial use to protect substrates from degradation and maintain product purity in which one or more of the following extreme conditions exist:~~

~~(a) Continuous or repeated immersion exposure to 90 to 98% sulfuric acid or oleum;~~

~~(b) Continuous or repeated immersion exposure to strong organic solvents;~~

~~(c) Continuous or repeated immersion exposure to petroleum processing at high temperatures and pressures; or,~~

~~(d) Continuous or repeated immersion exposure to food or pharmaceutical products which may or may not require high temperature sterilization.~~

~~(37) "High Temperature Coatings" mean high performance coatings formulated and recommended for application to substrates exposed continuously or intermittently to temperatures above 201° C (400° F).~~

~~(38) "Impacted Immersion Coatings" mean high performance maintenance coatings formulated and recommended for application to steel structures subject to immersion in turbulent, debris laden water. These coatings are specifically resistant to high energy impact damage caused by floating ice or debris.~~

~~(39) "Industrial Maintenance Coatings" mean high performance architectural coatings including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions:~~

~~(a) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;~~

~~(b) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, chemical mixtures or solutions;~~

~~(c) Repeated exposure to temperatures above 120° C (250° F);~~

~~(d) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or~~

~~(e) Exterior exposure of metal structures and structural components.~~

~~(40) "Interior Coatings" mean coatings formulated and recommended for use in conditions not exposed to natural weathering.~~

~~(41) "Interior Clear Wood Sealers" mean low viscosity coatings formulated and recommended for sealing and preparing porous wood by penetrating the wood and creating a uniform and smooth substrate for a finish coat of paint or varnish.~~

~~(42) "Lacquers" mean clear or opaque wood finishes, including lacquer sanding sealers, formulated with cellulosic or synthetic resins to cure by evaporation without chemical reaction, and to provide a solid, protective film.~~

~~(43) "Lacquer Stains" mean interior semi-transparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers.~~

~~(44) "Manufacturer" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.~~

~~(45) "Magnesite Cement Coatings" mean coatings formulated and recommended for application to magnesite cement decking to protect against water erosion.~~

~~(46) "Mastic Texture Coatings" mean coatings formulated and recommended for concealing holes, minor cracks, or surface irregularities, and which are applied in a single coat of at least 10 mils (0.010 inches) dry film thickness.~~

~~(47) "Metallic Pigmented Coatings" mean non-bituminous coatings containing at least 0.4 pounds of metallic pigment per gallon (0.048 kilograms per liter) of coating, including but not limited to zinc pigment.~~

~~(48) "Multi-Color Coatings" mean coatings that exhibit more than one color when applied and which are packaged in a single container.~~

~~(49) "Noncomplying Architectural Coating" means a coating which does not comply with the VOC content limits of OAR 340-022-1020.~~

~~(50) "Nonferrous Metal Lacquers & Surface Protectants" mean clear coatings formulated and recommended for application to ornamental architectural surfaces of bronze, stainless steel, copper, brass or anodized aluminum to prevent oxidation, corrosion, or surface degradation.~~

~~(51) "Non-Flat Coatings" mean coatings that register a gloss of 15 or greater on an 85° gloss meter, or 5 or greater on a 60° gloss meter.~~

~~(52) "Not Otherwise Specified" or "N.O.S." means not otherwise specified as a coating category.~~

~~(53) "Nuclear Power Plant Coatings" mean any protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to service life cumulative radiation exposure as determined by **ASTM D 4082-83**, relatively easy to decontaminate as determined by **ASTM D 4256-83**, and resistant to various chemicals to which the coatings are likely to be exposed as determined by **ASTM D 3912-80**. General protective requirements are outlined by the Department of Energy, formerly U.S. Atomic Energy Commission, **Regulatory Guide 1.54**).~~

~~(54) "Opaque Coating" means a coating producing a dry film that does not allow light to pass, so the substrate is concealed from view.~~

~~(55) "Opaque Stains" mean coatings labeled as stains that are recommended to hide a surface but not conceal its texture.~~

~~(56) "Opaque Waterproofing Sealers & Treatments" mean coatings with pigments that are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which alter the surface appearance and texture.~~

~~(57) "Opaque Wood Preservatives" mean coatings formulated and recommended to protect wood from decay or insect attack, and that are not classified as clear, semitransparent, or below-ground wood preservatives, and are registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 **USC 136 et seq.**).~~

~~(58) "Other Surfaces" mean paved parking areas (both publicly and privately owned), airport runways, airport taxiways, driveways, sidewalks, bikepaths and curbs.~~

~~(59) "Post-Consumer Coating" means a leftover architectural coating collected as a waste product from previous users that is employed as a raw material in the manufacture of a recycled coating product for reentry to the marketplace.~~

~~(60) "Portland Air Quality Maintenance Area" or "Portland AQMA" is defined in OAR 340-031-0500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)~~

~~(61) "Pre-treatment Wash Primers" mean primers which contain a minimum of 0.5 percent acid by weight, and that are applied directly to bare metal surfaces in thin films to provide corrosion resistance, and to promote adhesion of subsequent topcoats.~~

~~(62) "Primers" mean coatings formulated and recommended for application directly to substrates to provide a firm bond between the substrate and subsequent coats.~~

~~(63) "Public Streets & Highways" mean publicly owned surfaces used primarily for vehicular traffic such as streets, roads, and highways.~~

~~(64) "Quick-Dry Enamels" mean non-flat coatings that:~~

~~(a) Are capable of being applied directly from the container under normal conditions, with ambient temperatures between 19° Celsius (C) [60° Fahrenheit (F)] and 27°C (80°F); and~~

~~(b) When tested in accordance with **ASTM Method D 1640, Standard Test Method for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature**, are set to touch in two hours or less, are tack free in four hours or less, and dry hard in eight hours or less by the mechanical method.~~

~~(65) "Quick-Dry Primers, Sealers, and Undercoaters" mean primers, sealers and under-coaters which are dry to touch in one-half hour, and can be recoated in two hours, when tested in accordance with **ASTM D 1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature.**~~

~~(66) "Recycled Coating Product" means an architectural coating that contains post-consumer coating.~~

~~(67) "Repair and Maintenance Thermoplastic Coatings" mean industrial maintenance coatings with a primary resin of vinyl or chlorinated rubber which are formulated and recommended solely for the repair of existing coatings that also have a primary resin of vinyl or chlorinated rubber without the full removal of the existing coating system.~~

~~(68) "Retailer" means any person who sells, supplies, or offers architectural coating for sale directly to consumers or commercial applicators.~~

~~(69) "Retail Outlet" means any establishment where architectural coatings are sold, supplied, or offered for sale directly to consumers or commercial applicators.~~

~~(70) "Roof Coatings" mean non-bituminous and non-thermoplastic rubber coatings formulated and recommended for application to exterior roofs for the primary purpose of preventing penetration of the substrate by water, or reflecting heat and reflecting ultraviolet radiation.~~

~~(71) "Rust Preventive Coatings" mean coatings formulated and recommended for use in preventing the corrosion of ferrous metal surfaces.~~

~~(72) "Sanding Sealers" mean clear wood coatings formulated and recommended for application to bare wood to seal the wood and to provide a coating that can be sanded to create a smooth surface.~~

~~(73) "Sealers" means coatings formulated and recommended for application to substrates for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate; to prevent harm to subsequent coatings from materials in the substrate; to block stains, odors, or efflorescence; to seal water, smoke or fire damage; or to condition chalky surfaces.~~

~~(74) "Shellacs" mean clear or opaque coatings formulated solely with the resinous secretions of the lac beetle, (laciffer lacca), that are soluble in alcohol, and dry by evaporation without chemical reaction.~~

~~(75) "Solicit" means to require for use or to specify, by written or oral contract.~~

~~(76) "Swimming Pool Coatings" mean coatings formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.~~

~~(77) "Thermoplastic Rubber Coatings & Mastics" mean coatings and mastics formulated and recommended for application to roofing and other structural surfaces which incorporate no less than 40% thermoplastic rubbers by weight of the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.~~

~~(78) "Tint Base" means an architectural coating to which colorants are added after the coating has been shipped from its place of manufacture.~~

~~(79) "Topcoat" means a coating applied over any coating, for the purpose of appearance, identification, or protection.~~

~~(80) "Traffic Marking Paints" mean coatings formulated and recommended to be used for marking or striping streets, highways and other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots and airport runways.~~

~~(81) "Undercoaters" mean coatings formulated and recommended to provide a smooth surface for subsequent coats.~~

~~(82) "Varnishes" mean clear or semitransparent coatings which are not lacquers or shellacs, and which are formulated to provide a durable, solid protective film. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.~~

~~(83) "Volatile Organic Compound" or "VOC" means compounds of carbon defined in OAR 340-022-0102. For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-022-1050.~~

~~(84) "VOC Content" means the weight of VOCs contained in a volume of architectural coating. For products listed in OAR 340-022-1020(1) **Table G**, VOC content shall be determined on a "VOC Per Liter - Less Water Basis".~~

~~(85) "VOC Per Liter - Less Water Basis" means the weight of VOCs per combined volume of VOC and coating solids at the maximum thinning level recommended by the manufacturer, less water, less exempt compounds, and before the addition of colorants added to tint bases, and shall be calculated as follows:~~

~~$VOC\ Content = W_{VOC}/(V_M - V_{H2O} - V_{EC})$~~

~~Where:~~
~~W_{VOC} = weight of VOCs not consumed during curing, in grams.~~
~~V_M = volume of material prior to curing, in liters.~~
~~V_{H2O} = volume of water not consumed during curing, in liters.~~
~~V_{EC} = volume of exempt compounds not consumed during curing, in liters.~~

~~[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]~~
~~Stat. Auth.: ORS Ch. 468.020~~
~~Stats. Implemented: ORS Ch. 468A.025~~
~~Hist: DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 16-1996, f. & cert. ef. 8-14-96~~

~~340-022-1020~~
~~Standards~~

~~(1) Where required by OAR 340-022-1030, architectural coatings shall not exceed the VOC content limits listed in **Table G** on a "VOC Per Liter - Less Water Basis" as modified by the special conditions and exceptions in sections (2) and (3) of this rule:~~

~~Table G~~

~~ARCHITECTURAL COATING VOC CONTENT LIMITS~~

~~VOC Per Liter - Less Water Basis~~

~~Coating Category~~	~~VOC (g/l)~~
~~Alkali Resistant Primers~~	~~550~~

~~Antenna Coatings 500~~
~~Anti-Fouling Coatings 450~~
~~Anti-Graffiti Coating 600~~
~~Bituminous Coatings & Mastics 500~~
~~Bond Breakers 600~~
~~Chalkboard Resurfacers 450~~
~~Concrete Curing Compounds 350~~
~~Concrete Protective Coatings 400~~
~~Dry Fog Coatings 400~~
~~Extreme High Durability Coatings 800~~
~~Fire Retardant/Resistive Coatings:~~
~~Clear 850~~
~~Opaque 450~~
~~Flat Coatings N.O.S.:~~
~~Exterior 250~~
~~Interior 250~~
~~Floor Coatings 400~~
~~Flow Coatings 650~~
~~Form Release Compounds 450~~
~~Graphic Arts Coatings or Sign Paints 500~~
~~Heat Reactive Coatings 420~~
~~High Temperature Coatings 650~~
~~Impacted Immersion Coatings 780~~
~~Industrial Maintenance Coatings 450~~
~~Lacquers 680~~
~~Lacquer Stains 780~~
~~Magnesite Cement Coatings 600~~
~~Mastic Texture Coatings 300~~
~~Metallic Pigmented Coatings 500~~
~~Multi-Color Coatings 580~~
~~Nonferrous Metal Lacquers & Surface Protectants 870~~
~~Non-Flat Coatings N.O.S.:~~
~~Exterior 380~~
~~Interior 380~~
~~Nuclear Power Plant Coatings 450~~
~~Pretreatment Wash Primers 780~~
~~Primers & Undercoaters N.O.S. 350~~
~~Quick-Dry Coatings:~~
~~Enamels 450~~
~~Primers, Sealers & Undercoats 450~~
~~Repair & Maintenance Thermoplastic Coatings 650~~
~~Roof Coatings 250~~
~~Rust Preventative Coatings 400~~
~~Sanding Sealers (other than lacquer) 550~~
~~Sealers (including interior clear wood sealers) 400~~
~~Shellacs:~~
~~Clear 650~~
~~Opaque 550~~
~~Stains & Wood Preservatives:~~

~~Below Ground Wood Preservatives 550~~
~~Clear & Semitransparent 550~~
~~Opaque 350~~
~~Swimming Pool Coatings 850~~
~~Thermoplastic Rubber Coatings & Mastics 550~~
~~Traffic Marking Paints~~
~~Public Streets & Highways 150*~~
~~Other Surfaces 250~~
~~Varnishes 450~~
~~Waterproofing Sealers & Treatments:~~
~~Clear 600~~
~~Opaque 400~~

~~*Prior to Jan. 1, 1997, a VOC content limit of 250 grams per liter applies to Traffic Marking Paints for Public Streets & Highways.~~

~~(2) Special Conditions. The following conditions shall apply to architectural coatings subject to VOC content limits under section (1) of this rule:~~
~~(a) Notwithstanding the definition of coating category in *OAR 340-022-1010*, if anywhere on the coating container, or in any promotion of an architectural coating, any representation is made that the coating may be used as, or is suitable for use as a coating for which a lower VOC limit is specified in Section (1) of this rule, then the lower VOC limit shall apply. This requirement shall not apply to:~~
~~(A) High Temperature Coatings, which may be represented as metallic pigmented coatings for use consistent with the High Temperature Coating definition;~~
~~(B) Lacquer, which may be recommended for use as sanding sealers in conjunction with clear lacquer topcoats;~~
~~(C) Metallic Pigmented Coatings, which may be recommended for use as primers, sealers, undercoaters roof coatings, or industrial maintenance coatings;~~
~~(D) Shellacs;~~
~~(E) Fire Retardant/Resistive Coatings;~~
~~(F) Sanding sealers which may be represented as quick dry sealers; and,~~
~~(G) Varnish, which may be recommended for use as a floor coating.~~
~~(b) VOC Content of Recycled Coating Products.~~
~~(A) For coatings manufactured domestically containing post-consumer coating, compliance with the VOC limits of **Table G** of this rule shall be determined by the adjusted VOC content at the maximum thinning recommended by the manufacturer using the following equation:~~

~~$VOC_{Adjusted} = VOC_{Actual} * [1 - (Recycled\%/100)]$~~

~~Where:~~
~~$VOC_{Adjusted}$ = The adjusted VOC content of a recycled coating product expressed as grams VOC per liter, less water.~~
~~VOC_{Actual} = The VOCcontent of the recycled coating product as determined by procedures specified in OAR340-22-1050(3) with the exception that VOCs in colorants of post-consumer coatings shall not be excluded from the VOC determination.~~
~~Recycled % = The volume percent of the recycled coating product that is post-consumer coating as determined by paragraph (B) of this subsection.~~

~~(B) The percent recycled shall be determined using the following equation:~~

~~Recycled % = $VOL_{Post\ Cons}$ x 100/~~
~~($VOL_{Post\ Cons}$ + VOL_{Virgin})~~

~~Where:~~
~~$VOL_{Post\ Cons}$ = The volume of post-consumer coating per gallon used in the production of a recycled coating product.~~
~~VOL_{Virgin} = The volume of virgin coating materials used in the production of a recycled coating product.~~

~~(3) Exemptions. Section (1) of this rule shall not apply to:~~
~~(a) Colorants added to tintbases by a retailer or commercial applicator.~~
~~(b) Coatings that are sold in containers with a volume of not more than one quart (32 fluid ounce or 0.95 liter) or in non-refillable aerosol containers.~~
~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.035~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

~~**340-022-1030**~~
~~**Requirements for Manufacture, Sale and Use of Architectural Coating**~~
~~(1) Manufacturers. Except as provided in section (6) of this rule, any person who manufactures architectural coatings after July 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA shall:~~
~~(a) Manufacture complying architectural coatings for architectural coatings marketed in the Portland AQMA;~~
~~(b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:~~
~~(A) The date on which the product was manufactured, or a code indicating such date;~~
~~(B) The maximum VOC content of the coating, at the maximum thinning recommended by the manufacturer, expressed as grams of VOC per liter of coating, less water and exempt compounds, or distinguishing markings that identify the product's VOC content as described above, through reference to printed information that accompanies the product through distribution and is displayed at the point of sale;~~
~~(C) A statement of the manufacturer's maximum recommended thinning with diluents other than water, and, if thinning of the coating prior to use under normal environmental and application conditions is not necessary, a statement indicating the product is not to be thinned under normal circumstances; and~~
~~(D) For container of recycled coating products, the phrase "CONTAINS NOT LESS THAN ___ PERCENT POST-CONSUMER COATING" where the percent, by volume, of the recycled coating is inserted before the word "percent".~~
~~(c) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of this rule.~~
~~(2) Distributors. Except as provided in section (6) of this rule, any distributor of architectural coating manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Portland AQMA shall:~~
~~(a) Ensure that architectural coatings are labeled as required under subsection (1)(b) of this rule;~~
~~(b) Ensure that the VOC content indicated under subsection (1)(b)(B) of this rule does not exceed the VOC standard specified in OAR 340-022-1020; and~~
~~(c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of this rule.~~

~~(3) Retailers.~~

~~(a) Except as provided in section (6) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying architectural coating manufactured after July 1, 1996.~~

~~(b) Upon notification by the Department, a manufacturer, or distributor that any noncomplying architectural coating has been supplied, a retailer shall remove noncomplying architectural coatings from consumer accessible areas of retail outlets within the Portland AQMA.~~

~~(4) Commercial Applicators. Except as provided in section (6) of this rule:~~

~~(a) No commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying architectural coating manufactured after July 1, 1996;~~

~~(b) No commercial applicator shall, within the Portland AQMA, knowingly use any noncomplying architectural coating manufactured after July 1, 1996 in a manner inconsistent with the coating category for which the product is formulated and recommended;~~

~~(c) All VOC containing materials shall be stored in closed containers when not being accessed, filled, emptied, maintained, repaired or otherwise used.~~

~~(d) It is recommended that architectural coatings be applied under the conditions and with the application techniques recommended by the coating's manufacturer.~~

~~(5) Label Alteration. No person shall remove, alter, conceal or deface the information required in subsection (1)(b) of this rule prior to final sale of the product.~~

~~(6) Exceptions.~~

~~(a) Traffic marking paint seasonal requirements.~~

~~(A)Traffic marking paints which exceed the VOC content limits of OAR 340 022 1020(1) may be manufactured, distributed to retail outlets, offered for sale to commercial applicators, and sold to commercial applicators within the Portland AQMA if purchasers are provided with written information indicating that the product shall not be applied within the Portland AQMA during the period June 1 through August 31, and the labeling require ments of OAR 340 022 1030(1)(b)(A) and (B) are maintained.~~

~~(B) Traffic marking paints which exceed the VOC limits of OAR340 022 1020(1) may be purchased by commercial applicators for use within the Portland AQMA provided they shall not be applied during the period June 1 through August 31.~~

~~(b) For architectural coating which has been granted a compliance extension under OAR340 022 1110, this rule applies to coating manufactured after the date specified in the compliance extension.~~

~~Stat. Auth.: ORS 468.020 & 468A.035~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 13 1995, f. & cert. ef. 5 25 95~~

~~340 022 1040~~

~~Recordkeeping and Reporting Requirements~~

~~(1) Recordkeeping. Manufacturers subject to OAR 340 022 1030 shall maintain the following records for at least 2 years after an architectural coating is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA:~~

~~(a) VOC content records of architectural coatings based on methods provided in OAR 340 022 1050;~~

~~(b) An explanation of any code indicating the date of manufacture of any architectural coating; and~~

~~(c) Information used to substantiate an application for a compliance extension under OAR 340 022 1110.~~

~~(2) Reporting. Following request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.~~

~~(3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340 022 1120.~~

~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.035~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

~~340-022-1050~~
~~Inspection and Testing Requirements~~

~~(1) The owner or operator of a facility subject to OAR 340-022-1000 through 340-022-1050 shall, at any reasonable time, make the facility available for inspection by the Department.~~

~~(2) Upon request of the Department, any person subject to OAR 340-022-1000 through 340-022-1050 shall furnish samples of architectural coatings selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-022-1020.~~

~~(3) Except as provided in section (4) of this rule, testing to determine compliance with OAR 340-022-1020 shall be performed using:~~

~~(a) VOC Content. The VOC content of an architectural coating shall be determined by:~~

~~(A) Procedures set forth in EPA Test Method 24 (**40 CRF 60, Appendix A, July 1, 1994**); or~~

~~(B) Calculation of VOC content from records of amount of constituents used to manufacture the product and the chemical compositions of the individual product constituents.~~

~~(b) Exempt Compounds. If the method specified in paragraph (a)(A) of this section also measures compounds excluded from the definition of VOCs, those compounds may be excluded from the VOC content if the amount of such compounds can be accurately quantified. The Department may require a manufacturer to provided conclusive evidence (such as production records, formulation data and test results) demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the architectural coating or the coating's emissions.~~

~~(c) Specular gloss of flat and non-flat coatings shall be determined by **ASTMMethod D 523-89, March 31, 1989.**~~

~~(4) Alternative test methods which are shown to accurately determine the VOC content of architectural coatings may also be used if approved in writing by the EPA and the Department.~~

~~Stat. Auth.: ORS 468.020 & 468A.035~~
~~Stats. Implemented: ORS 468A.035~~
~~Hist.: DEQ 13-1995, f. & cert. ef. 5-25-95~~

340-022-0102
Definitions

(73) "Volatile organic compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. Excluded from the definition of VOC are those compounds which the U.S. Environmental Protection Agency classifies as ~~being of~~ having negligible photochemical reactivity in the formation of tropospheric ozone, including: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); ~~T~~trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (H~~C~~FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); HCFC 225ca and cb; HFC 43-10mee-; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate and perfluorocarbon compounds which fall into these classes:

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

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

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

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

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

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

Stat. Auth.: ORS Ch. 468.020 & 468A.025

Stats. Implemented: ORS Ch. 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 6-1996, f. & cert. ef. 3-29-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 20-1998, f. & cert. ef. 10-12-98

OAR 340-028-0110
Definitions

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

(a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HCFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); HCFC 225ca and cb; HFC 43-10mee; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate and perfluorocarbon compounds which fall into these classes:

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

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

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

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

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

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

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-0047.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-

83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. &cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-20-145, 340-20-225, 340-20-305, 340-20-355, 340-20-460 & 340-20-520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. ; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 437-002-0360
Last Date for Comment: 3-3-99
Summary: Federal OSHA has amended its standard regulating occupational exposure to methylene chloride (MC), (29 CFR 1910.1052) by adding a provision for temporary medical removal protection benefits for employees who are removed or transferred to another job because of a medical determination that exposure to methylene chloride may aggravate or contribute to the employee's existing skin, heart, liver, neurological disease. OSHA also amended the startup dates by which employers in certain identified application groups, i.e. who use MC in certain work operations, must achieve the 8-hour time-weighted-average permissible exposure limit and the dates by which they must achieve the short-term exposure limit by means of engineering controls.

Oregon OSHA proposes to adopt the federal amendments to the methylene chloride standard as published in the September 22, 1998, Federal Register. The amendments affect general industry, construction, and shipyard employment.
Rules Coordinator: Sue Joye
Address: 350 Winter St NE, Salem, OR 97310
Telephone: (503) 947-7447

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Department of Consumer and Business Services, Workers' Compensation Division
Chapter 436

Stat. Auth.: ORS 656.726(3)
Stats. Implemented: ORS656
Proposed Amendments: 436-030-0175
Last Date for Comment: 2-26-99
Summary: Amendment regarding attorney fees payable from increased compensation granted pursuant to a reconsideration order. OAR 436-030-0175(4) adopts the cap on attorney fees provided by the Worker's Compensation Board in OAR 438-0040(1) and (2) and OAR 438-015-0045 amended effective February 1, 1999.
Rules Coordinator: Marilyn Odell
Address: 350 Winter St. NE, Salem, OR 97310
Telephone: (503) 947-7717

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Department of Corrections
Chapter 291

Stat. Auth.: ORS 179.040, 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-131-0015, 291-131-0050
Last Date for Comment: 2-23-99
Summary: Amendment of OAR 291-131-0015 is necessary to clarify the department's policy, practice and procedure regarding the sending, receipt, transfer and possession of correspondence and other mail by inmates to or from their crime victims. Amendment of OAR 291-131-0050 is necessary to clarify the department's policy, practice and procedure regarding the availability of administrative review for rejection of publications in Department of Corrections facilities.
Rules Coordinator: Dave Schumacher
Address: 2575 Center St. NE, Salem, OR 97310-0470
Telephone: (503) 945-0933

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Stat. Auth.: ORS 137.310, 137.370, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.310, 137.370, 137.635, 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-100-0110
Last Date for Comment: 12-23-99
Summary: The rule amendments are necessary to clarify proper calculation of inmates sentenced under ORS 137.635.
Rules Coordinator: Dave Schumacher
Address: 2575 Center St. NE, Salem, OR 97310-0470
Telephone: (503) 945-0933

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Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-124-0095
Last Date for Comment: 12-30-98
Summary: Amendment of this rule is needed to establish the department's policy, practice and procedure regarding reimbursement of health care providers for inpatient and outpatient hospital services furnished to inmates assigned to Department of Corrections facilities.
Rules Coordinator: Dave Schumacher
Address: 2575 Center St. NE, Salem, OR 97310-0470
Telephone: (503) 945-0933

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Department of Environmental Quality
Chapter 340

Date:	Time:	Location:
2-18-99	1 p.m.	Rm. 3A, (3rd Flr.) DEQ, 811 SW 6th Ave., Portland

Hearing Officer: Gary Calaba
Stat. Auth.: ORS 466.015, ORS 466.020, ORS 466.025, ORS 466.070, ORS 466.075, ORS 466.086, ORS 466.095 & ORS 466.100
Stats. Implemented: ORS 466.015, ORS 466.020, ORS 466.025, ORS 466.070, ORS 466.075, ORS 466.086, ORS 466.095 & ORS 466.100
Proposed Adoptions: 340-101-0050
Proposed Amendments: 340-100-0002, 340-101-0004
Last Date for Comment: 2-22-99
Summary: Amend Oregon Administrative rules to permanently adopt new Lands Disposal Restriction for spent hazardous waste potliner and to adopt a number of other federal hazardous waste regulations with amendments. Most federal hazardous waste rules published through October 9, 1998 that are proposed for adoption (1) establish or revise concentration levels for hazardous constituents when they are disposed, including constituents in soils contaminated with hazardous wastes; (2) conditionally exclude from most hazardous waste regulations certain hazardous wastes that are recycled; and (3) establish new hazardous wastes. Proposed amendments to the rules remove (1) an exemption from new land disposal restrictions for zinc-containing fertilizers made from characteristic hazardous wastes; and (2) an existing federal and state exemption from any land disposal restrictions for zinc-containing fertilizers made from K061 hazardous waste dust from steel productions.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Susan Greco
Address: 811 SW 6th Ave., Portland, OR 97204
Telephone: (503) 229-5213

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Date:	Time:	Location:
2-25-99	4 p.m.	DEQ Headquarters - Rm. 11 811 SW 6th Ave. Portland, OR

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468.020 & 468A.025 or 468A.035
Stats. Implemented: ORS 468.020 & 468A.025 or 468A.035
Proposed Amendments: 340-020-0047, 340-022-0102, 340-022-0700, 340-022-0710, 340-022-0740, 340-022-0760, 340-028-0110
Proposed Repeals: 340-022-0720, 340-022-0730, 340-022-0750, 340-022-0800, 340-022-0810, 340-022-0820, 340-022-0830, 340-022-0840, 340-022-0850, 340-022-0860, 340-022-1000, 340-022-1010, 340-022-1020, 340-022-1030, 340-022-1040, 340-022-1050
Last Date for Comment: 3-2-99
Summary: The Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission repeal or revise Oregon's consumer and commercial product rules and modify the definitions of Volatile Organic Compound (VOC). These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

VOCs contribute to the formation of ground-level ozone - a pollutant under the Clean Air Act. Existing Oregon rules limit the amount of VOC used in Consumer (household) Products, Architectural Coatings, and Automobile Refinishing Coatings to reduce ozone concentrations in the Portland area. EPA recently adopted similar regulations that apply nationwide, and DEQ proposes to revise state rules to eliminate duplicate requirements. The proposal also exempts 17 compounds from the definition of VOC because they have been shown to have a negligible effect on the formation of ground level ozone.

Copies of the proposal are available for review at DEQ Headquarters, 11th Floor (address above) or by calling (503) 229-5359. Written comments may be submitted before the close of the

NOTICES OF PROPOSED RULEMAKING

comment period to the attention of Dave Nordberg - 11th Floor at the same address, or by Fax at (503)229-5675.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Susan M. Greco
Address: 811 SW 6th Ave., Portland, OR 97213
Telephone: (503) 229-5213

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Department of Fish and Wildlife
Chapter 635

Date:	Time:	Location:
2-19-99	8 a.m.	ODFW Commission Rm. 2501 SW 1st Ave. Portland, OR 97201

Hearing Officer: TBA
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.109 & 506.129
Proposed Amendments: 635-500-1664
Last Date for Comment: 2-19-99
Summary: Consider revisions to the commercial allocation portion of the Department's objectives for spring chinook in the mainstem Willamette River.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Jennell Hoehne
Address: 2501 SW 1st Ave., PO Box 59, Portland, OR 97201
Telephone: (503) 872-5272 - ext. 5447

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Date:	Time:	Location:
2-19-99	8 a.m.	ODFW Commission Rm., 2501 SW 1st Ave., Portland, OR

Hearing Officer: Jennell Hoehne
Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119
Stats. Implemented: ORS 496.162 & ORS 506.129
Proposed Amendments: Ch. 635 Divisions 017 & 023
Last Date for Comment: 2-19-99
Summary: Consider proposed amendments to 1999 sport fishing seasons and regulations for Willamette spring chinook in the Columbia and Willamette Rivers.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Jennell Hoehne
Address: 2501 SW 1st Ave., PO Box 59, Portland, OR 97207
Telephone: (503) 872-5272 ext. 5447

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Date:	Time:	Location:
2-19-99	8 a.m.	ODFW Commission Rm., 2501 SW 1st Ave., Portland, OR

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.012 & ORS 496.138
Stats. Implemented: ORS 496.012 & ORS 496.138
Proposed Adoptions: Chapter 635, Division 064
Last Date for Comment: 2-19-99
Summary: Adopt rules prohibiting the hunting of exotic and game mammals as defined in OAR 635, Division 056 and OAR 635, Division 045 respectively, obtained or held by private parties.
The purpose of these rules is to maintain the spirit of fair chase in hunting. Exotic and game mammals held by private parties could be slaughtered for production of meat, leather, or fur, or euthanized for health, scientific or other valid husbandry concerns.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Jennell Hoehne
Address: 2501 SW 1st Ave., PO Box 59, Portland, OR 97207
Telephone: (503) 872-5272 ext. 5447

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Department of Forestry
Chapter 629

Date:	Time:	Location:
2-24-99	7 p.m.	Auditorium, Power & Light Bldg, 1818 B St., Forest Grove
3-3-99	7 p.m.	Douglas Forest Protection Assoc. Office, 1758 NE Airport Rd. Roseburg
3-11-99	1 p.m.	Mid-Columbia Fire & Rescue, 1400 W 8th St., The Dalles

Hearing Officer: Rob Lundblad
Stat. Auth.: ORS 526.016(4)
Stats. Implemented: ORS 527.662
Proposed Adoptions: 629-606-0000–629-606-1000
Proposed Amendments: 629-672-0100
Last Date for Comment: 3-15-99
Summary: These rules implement stewardship agreements under the 1997 Senate Bill 109, codified as ORS 527.662. Stewardship agreement rules are designed to implement more efficiently the provisions of the Oregon Forest Practices Act in lieu of the traditional mechanisms of forest regulation. Stewardship agreements recognize responsible and knowledgeable forest landowners interested in planning and implementing long-term forest management strategies, and who want to commit to enhance and restore fish and wildlife habitat, water quality and other forest resources. A stewardship agreement is based on a stewardship plan for the landowner's forestland holdings. The stewardship plan, and operations conducted under the agreement, are subject to forest practice act compliance audits.
Questions specific to the proposed rules may be directed to Scott Hayes, 503-945-7475.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Gayle Jones
Address: 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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Date:	Time:	Location:
2-23-99	10 a.m.	Silver lake Fire Dept, Silver Lake, OR
2-23-99	3 p.m.	USFS/BLM Headquarters Office, Lakeview, OR
2-24-99	10 a.m.	Oregon Dept. of Forestry, John Day, OR
2-24-99	2 p.m.	Oregon Dept. of Forestry, Prineville, OR
2-25-99	10 a.m.	Oregon Dept. of Forestry, The Dalles, OR

Hearing Officer: Peter J Norkeveck
Stat. Auth.: ORS 477.225, ORS 377.640, ORS 477.655, ORS 477.665, ORS 477.980
Stats. Implemented: ORS 477.225, ORS 477.640, ORS 477.655, ORS 477.665, ORS 477.980
Proposed Amendments: 629-041-0515, 629-041-0535, 629-041-0540, 629-043-0025, 629-043-0030, 629-043-0036, 629-047-0010, 629-047-0020, 629-047-0030, 629-047-0040, 629-047-0060, 629-047-0100, 629-047-0120, 629-047-0150, 629-047-0160, 629-047-0190
Last Date for Comment: 2-26-99, 5 p.m.
Summary: Amends the ORS Chapter 477 enforcement policy to reflect changes made in the chapter by the 1997 Legislature, corrects printing errors and makes minor edit revisions. Clarifies the responsibility of a watchman to suppress fires they discover. Requires a more common size of firefighting shovel on operations. Sets forth the boundary of the Central Oregon Forest Protection District. Sets forth the boundary of the Klamath-Lake Forest Protection District.
Copies of the proposed rules are available from the Oregon Department of Forestry offices in Salem, Prineville, Lakeview and The Dalles.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Rick Gibson/Gayle Jones
Address: 2600 State St., Salem, OR 97310
Telephone: (503) 945-7440/ 945-7210

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Department of Human Resources, Adult and Family Services Division
Chapter 461

Date:	Time:	Location:
2-23-99	10 a.m.	Rm. 257, 500 Summer St. NE, Salem, OR

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Consumer & Commercial Product Rules Repeal/Revision,
and VOC Delisting

Fiscal and Economic Impact Statement

Introduction

Oregon has existing rules that limit the amount of Volatile Organic Compounds (VOC) that can be used in Consumer (household) Products, Architectural Coatings and Motor Vehicle Refinishing Coatings sold in the Portland area. This rulemaking proposes to repeal or revise these state rules in favor of comparable measures recently finalized by the U. S. EPA that will soon apply nationwide.

Because the two sets of rules are the same in most respects, the dominant fiscal and economic effect of this action will be no change from existing conditions. However, while the two groups of rules very similar, they are not identical. The differences are generally marginal, but some may have fiscal and economic effects as presented below.

The proposal also "delists" 17 compounds as VOCs, therefore increasing the number of "exempt VOCs" that will be available for use as solvents, refrigerants, aerosol propellants, fire extinguishants, and blowing agents. Economic benefits that might accrue from the new status of these compounds are speculative and therefore unable to be quantified.

General Public

Arch. Coatings: There will be no discernable fiscal or economic effect on the public.

Auto Refinishing: The federal rules exempt lacquer topcoats thereby allowing the older paint technology to again be available in the Portland area. Most auto manufacturers stopped using lacquer in the late 1950s, but General Motors continued its use until the company phased it out between the early 1970s and 1988. When lacquers are available, body panels originally painted with lacquer can be "spot repaired" rather than having to be completely stripped, reprimed and repainted with alternative coatings. Such a lacquer spot repair for a typical door panel would be expected to cost approximately $100 instead of an estimated cost of $375 for having to rework the complete panel. This would produce an net economic benefit of approximately $275 for a typical single-panel job. However, Portland area paint suppliers report they have no intention of stocking

lacquer products in the future. Therefore the most likely effect is that there will be no significant fiscal or economic effect from the proposed amendments.

Consumer Products: There will be no discernable fiscal or economic effect on the public.

VOC Definitions: Proposed amendments will have no noticeable effect.

Small Business

Arch. Coatings: Repeal of Oregon's architectural coatings rules for the Portland area will produce no significant fiscal or economic effect for small businesses. However, "Swedish floor finishes" and "concrete curing and sealing compounds" achieve the *no impact* status through circumstances that bear discussion:

Swedish finishes are a class of high-VOC wood floor coatings that have a strong following in the Pacific Northwest as a result of their appearance and reputation for durability. Many floor finishers in the area specialize in applying Swedish finishes exclusively. The two companies that produce these products were granted extensions of the date by which their products must comply under OAR 340-022-1110 to provide time for adequate substitutes to be developed (however reformulated versions are not expected to achieve the original product's level of performance). The industry continues to operate with the traditional products while development proceeds.

The final version of the EPA rules permits traditional Swedish finishes to continue as a new category of "conversion varnishes". In addition, industry representatives indicate that most Swedish floor finishers remain committed to the original product and would continue its use if necessary by buying the traditional product in one quart cans. At least one of the manufacturers is commited to providing its products in quarts at no increase in cost. For these reasons the industry will not have made any significant changes in their practices and will experience no fiscal or economic effects from repeal of the rules for the Portland area.

Under Oregon's current rules concrete curing compounds are subject to a VOC limit of 350 grams per liter or 350 g/l. Under cool or wet conditions the VOC compliant products require significantly longer to cure than traditional high VOC curing compounds, lengthening the time freshly placed concrete "flatwork" (slabs, sidewalks, etc.) is vulnerable to rain damage. As a result, much flatwork construction under marginal weather conditions would require the significant added expense of erecting temporary shelters for the work if only low VOC products were available.

This circumstance was never realized in the Portland area, however. Before the construction industry converted to low-VOC winter techniques, the department learned the future federal rule was likely to allow a new high-VOC category for "concrete curing and sealing compounds" that would let cool weather construction methods continue unchanged. Because the Oregon rules were only intended to apply during the period before EPA's federal rules were completed, and because VOC reductions address a warm weather problem, the department adopted a policy that deferred to the national regulation. Specifically, the department informed the industry it would

exercise its enforcement discretion and not take any enforcement actions against the sale or use of concrete curing and sealing compounds of 700 g/l VOC or less during the cool weather months of October through April.

As anticipated, the final EPA rules do allow a 700 g/l VOC limit for this category. Therefore, there will be no actual fiscal or economic impact resulting from repealing Oregon's rule in favor of the national regulations.

Auto Refinishing: The recordkeeping requirements of the Oregon rules will be removed for users and suppliers, but the records required are typically documents kept for other business reasons. Therefore, this change will have no economic effect.

Lacquer topcoats are exempted from the federal rules and will theoretically be available again after Portland's automotive coating rules are repealed. Area retailers indicate they do not intend to stock lacquers in the future, however, so there will be no economic effects on auto refinishers.

Consumer Products: Under the current Oregon rules, the primary burden of compliance is on product manufacturers. For retailers, the requirement is they shall not "knowingly sell" noncomplying products making their obligation essentially passive. Therefore, there should be no fiscal or economic effects from repeal of the rules.

VOC Definitions: Proposed amendments will have no noticeable effect.

Large Business

Arch. Coatings: Rescission of the measures for Portland will allow paint manufacturers to operate with greater confidence that they are not unwittingly violating minor differences between state and federal rules. Such a benefit is minor, however, and is not expected to produce any measurable economic effect.

Auto Refinishing: Paint manufacturers will again be allowed to produce lacquer for the Portland area. Suppliers indicate the federal exemption is unlikely to be used, however, so adoption of the proposed rules is unlikely to have any economic effects.

Consumer Products: Repeal of the rules for the Portland area would simplify the array of consumer product rules with which manufacturers must comply. However, the differences between the state and federal rules are too slight to produce significant effects.

VOC Definitions: At least one large chemical manufacturer is interested in marketing methyl acetate (one of the compounds to be "delisted") as a substitute for nonexempt VOCs. The proposed rule modification removes one obstacle to such use, and therefore provides a theoretical economic benefit. However, other state rules must also delist the compound before it can be sold as an exempt VOC nationwide, and the potential benefit to the company is unknown. For these reasons the likely fiscal impact cannot be determined.

Local Governments

The proposed rule rescissions or amendments will have no fiscal or economic impacts on local governments.

State Agencies

Anticipating that repeal of Oregon's consumer and commercial products rules would be repealed when comparable federal measures were finalized, the rules were implemented with a temporary (grant) funding source. Those funds have been depleted and the proposed rule rescission or amendment removes a need for future funding. The remaining consumer and commercial product requirements (for aerosol Spray Paint and the use of HVLP spray guns and gun cleaners in auto refinishing) will continue to be implemented as part of the general duties of the department's Air Quality and Complaint staff at the Northwest Region office. Therefore, there will be no fiscal or economic effect on the department from this proposal.

The repeal of the consumer and commercial product rules will have no fiscal effect on other state agencies.

Changes to the VOC definitions will have no fiscal or economic effect on either the Department of Environmental Quality or other state agencies.

Assumptions

Fiscal impacts were determined by comparing existing circumstances (under Oregon's consumer and commercial product rules) with the anticipated future circumstances when only the federal rules will apply.

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
Consumer and Commercial Product Rules Repeal/Revision
and Delisting of VOCs

Land Use Evaluation Statement

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

Oregon has existing rules that limit the amount of solvent in "consumer and commercial products" sold in the Portland area. EPA recently finalized equivalent rules for Consumer (household) Products, Architectural Coatings and Automobile Refinishing Coatings that will provide the same environmental benefit nationwide. This rulemaking proposal repeals or modifies Oregon's rules that are now duplicated at the federal level.

The proposal also modifies Oregon's definitions of Volatile Organic Compounds (VOC) to exclude 17 compounds found by the EPA to have negligible photochemical reactivity.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? __ Yes X No**

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

   b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? N/A Yes ___ No (if no, explain):**

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

The existing state rules enhance Portland Air Quality by reducing the emission of ozone precursors and therefore support statewide goal six. Following the repeal of consumer and commercial product rules that are now duplicated, the same statewide goal will be supported by equivalent federal measures.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on
   a. resources, objectives or areas identified in the statewide planning goals, or
   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:
- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

These rules apply to the formulation of products available to consumers in the Portland AQMA. By applying the above criteria it has been determined that the rules do not significantly 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.

Does not apply.

Dave Nordberg
Division

Intergovernmental Coordinator

1/6/99
Date

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

Consumer & Commercial Products Rules Repeal and Revision

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

Yes. On September 11, 1998 the U.S. Environmental Protection Agency finalized regulations for Consumer Products, Architectural Coatings and Auto Refinishing that closely parallel Oregon's consumer and commercial product rules for the Portland area.

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

Both the state and federal rules are technology based.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

The state and federal measures are highly similar and most of the product standards are identical. However, the Clean Air Act only authorizes EPA to regulate product manufacturers (not the sellers or users). Therefore the federal rules cannot include requirements for auto refinishers to use solvent-saving equipment such as HighVolume/Low Pressure spray guns and spray gun cleaning machinery. Because this equipment provides both economic and environmental benefits, those features of the state requirements are being retained.

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. Repealing or revising Oregon's rules in favor of federal measures will slightly simplify compliance of the regulated community by eliminating redundant state requirements.

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

Because the federal rules only regulate product manufacturing, Oregon's restrictions on the distribution and sale of noncomplying products must be maintained for a period after the federal rules have gone into effect. This will assure that complying products have time to move through distribution channnels and enter widespread use. Therefore, the repeal or revision of the rules will be filed with the Oregon Secretary of State so they take effect six months after the compliance dates of the comparable federal regulations.

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

Not applicable. The proposed rulemaking repeals or revises Oregon's rules in favor of federal measures.

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

Not applicable. The proposed rulemaking repeals or revises Oregon's rules in favor of federal measures.

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

Not applicable. The proposed rulemaking repeals or revises Oregon's rules in favor of federal measures.

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

Not applicable. The proposed rulemaking repeals or revises Oregon's rules in favor of federal measures.

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

Not applicable. The proposed rulemaking repeals or revises Oregon's rules in favor of federal measures.

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

Yes. Modifying or repealing state consumer and commercial product rules in favor of the federal regulations should produce the same environmental benefit in a more cost-effective manner.

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

Date: January 21, 1999

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Repeal of Rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions.

This memorandum describes a proposal by the Department of Environmental Quality (department) to rescind and revise the "Consumer and Commercial Product" rules adopted for the Portland area. These rules limit the amount of solvents (Volatile Organic Compounds) that can be used in Consumer (household) Products, Architectural Coatings, and Motor Vehicle Refinishing Coatings. The regulations are proposed for repeal because comparable measures recently adopted by EPA nationwide will produce the same environmental benefit. The proposal also contains housekeeping amendments that update the definition of Volatile Organic Compounds or "VOC".

These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act. Pursuant to ORS 183.335, this memorandum provides information about the Environmental Quality Commission's intended action to amend Oregon Administrative Rules.

The department has the statutory authority to address the consumer and commercial products issues under ORS 468.020 and 468A.035 and to address the definition of VOCs under ORS 468.020 and 468A.025. The repeal and amendment of the consumer products rules implement ORS 468A.035 referring to the state's comprehensive air quality plan. The amendments to the VOC rules implement ORS 468.020 concerning rules and standards, and 468A.025 regarding air quality standards.

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.
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 Index of proposed rule amendments. Persons interested in the general provisions and effects of the proposed amendments should refer to the documents in this packet. Those wishing copies of actual rule language should contact the department at (503) 229-5359 or (800) 452-4011.

Hearing Process Details

The department is conducting a public hearing at which comments will be accepted either orally or in writing. The hearing will be held as follows:

Date: February 25, 1999
Time: 4:00 P.M.
Place: Conference Room 11 (Eleventh Floor)
Oregon Department of Environmental Quality
811 S.W. Sixth Ave.,
Portland, OR 97204

Deadline for submittal of Written Comments: March 2, 1999 at 5:00 P.M.

A department staff representative will serve as the Presiding Officer at the hearing.

Written comments can be presented at the hearing or to the department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Dave Nordberg – 11th Floor, 811 S.W. Sixth Avenue, Portland, Oregon 97204-1390.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Therefore, if you wish your comments to be considered by the department in the development of these rules, they 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.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report. The public hearing will be tape recorded, but the tape will not be transcribed.

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

The EQC will consider the department's recommendation for rule amendment during one of the commission's regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is May 7, 1999. 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 ask that your name be placed on the relevant "interested person" mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

Under the Clean Air Act, EPA establishes standards for the amount of ground-level ozone pollution (smog) allowed in the nation's air. Ground level ozone is not emitted directly as a pollutant, but is created from Volatile Organic Compounds (VOC) reacting in sunlight with oxides of nitrogen (NOx). Therefore, ozone levels can only be reduced by limiting the emission of these ozone "precursors".

In the past, the Portland area failed to meet the ozone standard, but in 1992 the Governor appointed the Governor's Task Force on Motor Vehicle Emissions to select the strategies that would be used to maintain the standard. One strategy chosen by the Governor's Task Force was to reduce VOCs from consumer and commercial products. National rules were required to be developed by EPA under Section 183(e) of the Clean Air Act. EPA's rules were expected to regulate the emission of VOCs nationwide by 1995. When those rules were delayed beyond the time that VOC reductions were needed to meet Portland's emission targets, the department developed local rules similar to the measures EPA was eventually expected to issue.

The rules adopted for Portland apply to Consumer Products, Architectural Coatings, Aerosol Spray Paint and Motor Vehicle Refinishing. The Consumer Product rules establish limits for the amount of VOC that can be used in a variety of household products such as hair sprays, air fresheners, cleaners and antiperspirants. Oregon's rules for Architectural Coatings limit the amount of solvent used to paint all "stationary structures" (houses, industrial equipment, traffic striping, etc.). The rules for Spray Paint limit the VOC content of paint sold in aerosol cans. Finally, the rules for Motor Vehicle Refinishing in Portland set limits for the amount of VOC in automotive coatings and also require painters to use efficient spray guns and gun cleaning equipment to further reduce solvent emissions.

In September 1998, EPA finalized national rules applying to three of these rule categories: Consumer Products, Architectural Coatings and Auto Refinishing. EPA's rules for spray paint

will not be finalized for several more years.

The requirements of the state and national rules are the same in most respects although differences do exist. The basic difference between them is that EPA is authorized to regulate consumer and commercial products only at the manufacturing level. Therefore, EPA's rules do not address distributors, retailers or users of products and the Auto Refinishing rules do not set requirements for the kind of equipment used by auto painters. In cases where the state and federal rule requirements are not the same, the federal measures are generally somewhat less restrictive. Differences between the rules are outlined below:

Architectural Coatings:

- Of the 61 product categories in EPA's rules, the federal VOC limits are more stringent in four cases (alkali resistant primers, swimming pool coatings, opaque below ground wood preservatives and lacquer stains) and DEQ's limits are more stringent in nine cases (antenna coatings, calcimine recoaters, clear shellacs, concrete curing & sealing compounds, concrete surface retarders, conversion varnishes, faux finishes, stain controllers and zone marking coatings). Most of the differences concern small volume specialty categories.
- EPA's rules allow manufacturers to produce high VOC coatings if they pay an "exceedance fee". DEQ rules do not share this feature, but economic disincentives are expected to keep use of the exceedance fee relatively small.
- EPA's rules differ from DEQ's in that the federal rules allow each manufacturer to exempt the VOC used in small volume products. The exemption begins at twenty-five tons per year for each manufacturer but decreases to ten tons in 2002. EPA indicates this provision will weaken VOC reductions generated by two percent or less.

Consumer Products:

- The VOC limit for Windshield Washer Fluid is susbstantially relaxed in the federal rule (35 percent versus DEQ's 23.5 percent). The higher VOC limit will allow freezing protection to –25°F whereas products that comply with Oregon's rule only protect to 0°F. Windshield Washer Fluid is manufactured and sold in a diverse, decentralized manner, and an ongoing implementation effort would be required to maintain substantial compliance if the 23.5 percent limit were to be locally retained.
- The federal VOC limit for Nail Polish Remover is 85 percent versus the state limit of 75 percent. The effect on VOC emissions is insignificant.

Auto Refinishing:

- EPA's rule does not require the use of HVLP guns and spray gun cleaners. These provisions of the state regulations will be retained.

- EPA's rule exempts lacquer topcoats, noting these coatings comprise a small and decreasing segment of the market. DEQ's rules for automotive refinishing coatings are proposed for repeal in favor of the federal rules.

As a result, most of Oregon's rules will soon be redundant, and provisions that essentially duplicate federal measures are proposed for elimination. More specifically, Oregon's rules for Consumer Products, Architectural Coatings, and the provisions that apply to coatings for Motor Vehicle Refinishing are proposed for repeal. The requirements in Oregon's rules for refinishers in the Portland area to use High-Volume/Low-Pressure spray guns and mechanical spray gun cleaning equipment will be retained. These actions will simplify the landscape of regulations that apply to manufacturers of consumer and commercial products.

This proposal also contains rule revisions that remove compounds from the state definitions of VOCs. On, August 25, 1997 and April 4, 1998 EPA modified the federal definition of VOC when they published findings in the Federal Register that a total of 17 additional compounds were found to have negligible photochemical reactivity. This rulemaking action will make the state and federal definitions of VOC consistent and continues the department's policy of removing such compounds from the VOC definitions when EPA determines that they will not significantly contribute to the formation of ground-level ozone.

The proposed VOC definitions also include a technical correction of the definitions' wording. Many compounds cited in the VOC definition as having "negligible photochemical reactivity" are chloroflurocarbons (CFCs) that participate in ozone depleting reactions in the stratosphere. Therefore, the wording of the VOC definitions is changed to specify that the "negligible photochemical reactivity" applies only to the formation of tropospheric ozone.

How was the rule developed?

The rule amendments stem from advisory committee recommendations made when Oregon's consumer and commercial product rules were originally developed. In 1994 and 1995, two committees were formed to advise the department: the Consumer Products – Architectural Coatings Advisory Committee and the Auto Refinishing Task Force. Both committees agreed that when comparable federal measures were implemented the duplicated provisions of Oregon's rules should be rescinded.

The rules finalized by EPA in 1998 parallel Oregon's rules for Architectural Coatings, Consumer Products and the portions of the Motor Vehicle Refinishing rules that apply to automotive paint products. The provisions of Oregon's rules that apply to these areas are being proposed for repeal, but other requirements are being retained. The portions being retained apply to aerosol spray paint (for which EPA is not scheduled to adopt rules until 2003), and the auto refinishing requirements for the use of High Volume Low Pressure (HVLP) spray guns and spray gun cleaning equipment.

During the advisory committee process the Auto Refinishing Task Force chose the use of spray gun cleaners as one of the methods needed to achieve a VOC reduction target of 40 percent. In addition, the committee recommended that the rules mandate the use of HVLP spray guns. This recommendation was made with the knowledge that VOC reductions produced by HVLP spray guns could not be used in DEQ's airshed planning calculations because the amount of VOC they save cannot be reliably quantified. The committee noted that both techniques produce economic savings as well as environmental benefits. The department informed the committee that similar equipment requirements would not be part of the federal auto refinishing rules and that the equipment requirements for the Portland area would likely be retained after EPA's rules were finalized.

Following EPA's adoption of federal rules in 1998, the department notified interested parties of its intention to revise Oregon's rules to achieve the Governor's Task Force's original intent of reducing VOCs from consumer and commercial products by relying on federal rules. The notice indicated that the agency planned to proceed directly to the rulemaking process and specifically requested comments on any need for further advisory committee discussion. No further need was identified.

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. Sixth Avenue, Portland, Oregon. These include the federal Consumer and Commercial Products rules published September 11, 1998 at Federal Register pages 48806 through 48887, and the Environmental Quality Commission adoption staff report for Agenda Item D of May 18, 1995. Please contact Linda Fernandez at (503) 229-5359 for times when the documents are available for review.

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

Repealing Oregon's consumer and commercial product rules and relying instead on comparable federal measures constitutes a more efficient method of achieving the same environmental result. When rules are applied only to a local area (as are the rules proposed for repeal) it is necessary to prevent noncomplying products from "leaking" in from the surrounding uncontrolled area. Therefore, Oregon's rules set requirements for all parties involved: product manufacturers, distributors, retailers, and commercial users. (The rules essentially require those involved to produce, distribute, sell or use VOC-compliant products within the Portland area.) Because the federal rules apply nationwide they need to apply only to manufacturers to be effective. Therefore, distributors, and retailers, plus (in case of architectural and auto refinishing coatings) commercial users that serve the Portland area will be relieved of their current obligations.

An additional small effect of this action is that the manufacturers of architectural coatings, auto refinishing coatings and consumer products will not need to concern themselves with the relatively small differences between the Oregon and national requirements.

Modifying the definitions of VOC to exempt compounds found by EPA to have negligible photochemical reactivity will remove one obstacle that prevents manufacturers of the compounds in question from marketing the 17 chemicals nationwide.

None of the modifications proposed in this rulelmaking will have a discernable affect on the public.

How will the rule be implemented?

The portions of Oregon's rules that are retained (aerosol spray paint rules and equipment requirements for auto refinishers) will be implemented as part of the general duties of NWR Air Quality and Complaint staff. Only minimal in-house training is needed to continue these measures. Changes to the VOC definitions will be implemented as slight modifications to the department's ongoing air quality programs.

Are there time constraints?

The federal Consumer and Commercial product regulations go in effect over a nine month period. The Consumer Products rules apply after December 10, 1998; Auto Refinishing rules take effect January 11, 1999; Architectural Coatings rules go into effect September 11, 1999. Because the federal rules affect only product manufacturers, additional time must be allowed to let complying products move through the distribution stream and produce local benefits. Therefore, the proposed changes to Oregon's Consumer and Commercial product rules will be filed with the Oregon Secretary of State to take effect six months after the effective dates of the related EPA rules.

Contact for More Information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Dave Nordberg – 11th Floor,
Department of Environmental Quality
811 S.W. Sixth Ave.,
Portland, OR 97204-1390
(503) 229-5519

State of Oregon
Department of Environmental Quality Memorandum

Date: March 3, 1999

To: Environmental Quality Commission

From: Dave Nordberg, DEQ Staff

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 25, 1999, beginning at 4:00 pm
Hearing Location: Oregon DEQ – Conference Room 11
811 SW Sixth Ave.,
Portland, OR 97204

Title of Proposal: Repeal of Rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions.

The rulemaking hearing on the above titled proposal convened at 4:00 pm. The sole attendant was asked to sign a witness registration form before presenting testimony. He was also advised that the hearing would be recorded and informed of the procedures to be followed.

Prior to receiving testimony, I briefly explained the specific rulemaking proposal, the reason for the proposal, and asked if there were any questions from the audience. Learning there were no questions, Mr. John Powell delivered his testimony.

Summary of Oral Testimony

John Powell spoke on behalf of the Cosmetic, Toiletry, and Fragrance Association or CTFA. He stated the CTFA supports the proposed repeal of Oregon's Consumer Product rules noting that since EPA finalized essentially the same regulations nationally, the state's measures are duplicative. Mr. Powell added that repeal of the Consumer Product rules would allow the department to use its resources more effectively to address other environmental concerns.

Written Testimony

No written comments written comments were submitted at the hearing. Written comments submitted to the department during the public comment period (but not at the hearing) are addressed in Attachment D "Summary of Public Comment".

The hearing was held open for half an hour to allow possible late arrivals additional time to appear. No further people attended and the hearing was closed at 4:30 pm.

Summary of Public Comment

Revision/Repeal of Rules for Consumer Products, Architectural Coatings, and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions

This document provides:
- Index of Public Comments
- Department's Evaluation of Public Comments
- Detailed Changes Made in Response to Comments

Index of Written Public Comments:

Name	Affiliation	Comment
Madelyn K. Harding	Sherwin-Williams Co.	S-W supports the proposed repeal of Architectural Coatings rules.
Barry R. Ziman	Chemical Specialties Manufacturers Assoc.	CSMA supports the proposed repeal of Consumer Product rules.
Doug Raymond	Sherwin-Williams Diversified Brands, Inc.	S-W DB supports the proposed repeal of Consumer Product rules.
Barry A. Jenkin	Benjamin Moore & Co.	B. Moore supports the repeal of Oregon's rules and revision of VOC definitions as proposed.
Catherine C. Beckley	Cosmetic, Toiletry and Fragrance Association	CTFA supports the proposed repeal of Consumer Products rules.
Jim Sell	National Paint and Coatings Association	NPCA supports the repeal of Oregon's rules as proposed.

Index of Verbal Comments:

Name	Affiliation	Comment
John Powell	Cosmetic, Toiletry and Fragrance Association	CTFA supports the proposed repeal of Consumer Products rules.

Department's Evaluation of Public Comments:

All comments expressed support for the repeal of Oregon's rules for Consumer Products, Architectural Coatings, or Motor Vehicle Refinishing Coatings. Explanations put forward reflected the department's position that these rules became unnecessary when comparable national regulations were finalized.

Detailed Changes Made in Response to Public Comment:

No changes to the proposal were suggested by official comments and no substantive modifications were made. However, an unofficial verbal comment revealed that the definitions of Volatile Organic Compound (VOC) included several typographical errors. The VOC definitions proposed for adoption by the Environmental Quality Commission were corrected to the compound identifications used in the federal VOC definition listed in 40 CFR Part 51.100(s).

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☒ Information Item

Agenda Item D
May 7, 1999 Meeting

Title:

Update on DEQ Technical Advisory Committee on Control of Erosion from Small Construction Sites and Storm Water Task Force.

Summary:

In 1996, DEQ made a commitment in The Oregon Plan to form a technical advisory committee (TAC) to make recommendations to DEQ and the EQC on a program for controlling erosion at small construction sites. Agenda Item D serves as an update on the TAC's progress as well further recognizing additional work completed by the DEQ Storm Water Task Force convened in July 1998.

The TAC developed draft recommendations in March 1998. The recommendations raised immediate concerns with local government and developers, and the report was never finalized. Concerns focused on the ability of local jurisdictions to implement certain aspects of the proposal, the legal issues surrounding a state mandate (recommendation to regulate disturbances below the federal requirement), and the priority of this particular issue in the context of an overall approach to storm water management and other water quality regulation.

To address the concerns raised by the TAC and the need for a statewide comprehensive strategy, the Department formed the Storm Water Task Force. The mission of the Task Force was to develop a policy framework for storm water management that would also address federal regulation. The Task Force was asked to initially develop the erosion prevention and sediment control piece that would address the policy issues that could not be resolved by the TAC.

Department Recommendation:

This report is intended to update the Commission on erosion and sediment control program efforts. It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Ranei Nomura	Michael Llewelyn	Langdon Marsh
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: April 19, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item D
Update on DEQ Technical Advisory Committee on Control of Erosion from Small Construction Sites and Storm Water Task Force
EQC Meeting May 7, 1999

Statement of Purpose

In 1996, DEQ made a commitment in The Oregon Plan to form a technical advisory committee (TAC) to make recommendations to DEQ and the EQC on a program for controlling erosion at small construction sites. Agenda Item D serves as an update on the TAC's progress as well as recognizing additional work completed by the DEQ Storm Water Task Force convened in July 1998.

Background

Note: A majority of this background information is taken from the DEQ Storm Water Task Force report, Attachment A. For more detailed information about storm water impacts and the federal regulations summarized in this section see Attachment B.

Erosion Prevention and Sediment Control Program Efforts

Storm water runoff can affect the hydrology of surface waters as well as decrease water quality by elevating pollutant concentrations. This is particularly true for areas modified by human activities. Erosion at construction sites has come under increasing scrutiny because sediment-laden runoff to surface waters can cause a variety of water quality impacts. In addition to siltation caused by sediment, other pollutants may be attached to sediment particles, including nutrients, metals and organic compounds.

In April 1996, the Oregon Department of Environmental Quality (DEQ) formed the Technical Advisory Committee on Control of Erosion from Small Construction Sites (TAC). The TAC was asked to make recommendations to the Environmental Quality Commission (EQC or Commission) on prevention and control of erosion and sediment from construction activities to address two sets of federal requirements: the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), and the National Pollutant Discharge Elimination System (NPDES) Phase I and proposed Phase II storm water regulations.

CZARA requires coastal states such as Oregon to have enforceable measures to control erosion from small construction sites as well as from other nonpoint pollution problems in the coastal zone. CZARA recommends that construction activities disturbing at least 5,000 square feet, excluding construction of a single family home on a site of ½ acre or more, be regulated in lieu of a justifiable alternative. For more detailed information, see Attachment A. Oregon's Coastal Nonpoint Pollution Control Program (CNPCP) was submitted to the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) to address this legislation and received conditional approval in 1998. Final approval of Oregon's CNPCP will require that management measures are implemented at the state level. In addition, the DEQ committed to the implementation of the CNPCP and the formation of the TAC as part of The Oregon Plan for Salmon and Watersheds. The Oregon Plan is Governor Kitzhaber's initiative to coordinate agency programs and community action to "conserve and restore crucial elements of natural systems that support fish, wildlife and people."

The NPDES storm water program authorized by the Clean Water Act also regulates construction activities. Current Phase I regulations require NPDES permits for construction activities that disturb five or more acres. Proposed Phase II regulations are expected to reduce that threshold to one acre. In addition, the proposed Phase II regulations require NPDES permits for small municipalities located within an "urbanized area." For small municipalities outside urbanized areas with populations greater than 10,000 and population densities of more than 1,000 people per square mile, the state will be required to determine if an NPDES permit is needed. Small municipalities required to have NPDES permits will need to include an erosion prevention and sediment control program as an element of their storm water management program.

In anticipation of the CNPCP and upcoming changes to the NPDES storm water program, the TAC completed a draft of its recommendations in March 1998 (see Attachment C for a summary). The recommendations laid out a plan to prevent or reduce erosion, sedimentation and other pollution from small construction sites. Concerns were raised about the ability of local jurisdictions to implement some of the recommendations, the legal issues surrounding a state mandate, and the priority of this particular issue in the context of an overall approach to storm water management and other water quality regulation. Due to these concerns, the TAC report was never finalized and an update to the Commission could not be made.

In response to these concerns and new issues raised by the identification of water quality limited streams and endangered species listings of salmonids across the state, DEQ convened the Storm Water Task Force. The Task Force was directed to develop recommendations for DEQ on a strategic direction for storm water management in the state. The strategy needed to integrate approaches to meeting the requirements of NPDES Phase II storm water regulations, section 6217 of CZARA, The Oregon Plan (Endangered Species Act issues), and the Clean Water Act's Total Maximum Daily Load (TMDL) program for addressing waters that are not meeting state water quality standards. The Task Force was asked to initially focus on erosion

prevention and sediment control to address the policy issues that could not be resolved by the TAC. The Task Force completed this portion of their storm water management strategy in March 1999.

Erosion Prevention and Sediment Control Policy Framework
The policy framework developed by the Task Force recommends that DEQ develop a statewide risk-based program to prevent or reduce erosion, sedimentation and other pollution from construction sites (Attachment A). Risk factors to be considered in developing such a program include, but are not limited to, soil type, degree of slope, size of site disturbance, time of year, proximity to sensitive waters, and/or presence of sensitive species. The Task Force believes that a program based on a full range of risk factors can more effectively address erosion prevention and sediment control concerns than a program based on a size disturbance threshold. The Department agrees with this recommendation.

As a first step in the program, the Task Force is recommending that DEQ develop model management strategies based on risks to waters in various areas of the state. The program would also include the development of standards for construction activities and the education and training components necessary for successful implementation of such a program. To comply with federal regulations, DEQ would continue to require NPDES permits for owners and operators of construction activities that disturb more than the current NPDES Phase I threshold of five acres. When the NPDES Phase II regulations are finalized, construction activities disturbing the Phase II threshold acreage, which is proposed to be one acre, would be included in the NPDES permit.

Those jurisdictions required by the NPDES regulations to address construction activities as part of their overall NPDES storm water management program would implement applicable components of the state's Erosion Prevention and Sediment Control (ESPC) program or develop an equivalent program. Small municipalities outside urbanized areas, that have been determined by the state to need an NPDES permit, would also implement applicable components of the state's EPSC program. Jurisdictions that are not required by NPDES regulations to develop storm water management programs would be encouraged to implement a program based on the state model. These jurisdictions may wish to have such a program in place to address TMDL program requirements, threatened or endangered species concerns, or local environmental and nuisance problems.

The Task Force is also recommending that the state audit its program within five years to assess the program's effectiveness in preventing erosion and negative impacts from sediment to water bodies. Based on the audit, recommendations could be made to adjust risk factors, extend local implementation of the program, or suggest other modifications to the program. If the initial state program is not fully effective, additional modifications may be necessary to ensure compliance with federal requirements under the NPDES program, CZARA, the Endangered Species Act, and the TMDL program.

The Task Force has expressed interest in continuing the development of a comprehensive statewide storm water management strategy by building on the erosion prevention and sediment control framework to address additional urban storm water management issues. Task Force members are concerned, however, that their initial recommendations may not be implemented, and are reluctant to proceed until the Department and EQC give some concurrence with their efforts to date.

Intended Future Actions

Based on TAC recommendations and the recommendation of the Task Force to build on the erosion prevention and sediment control framework by addressing additional issues, the Department will continue to work with the Task Force. Once NPDES Phase II storm water regulations are final and the current legislative session ends, the Department will have more information to determine future actions.

Department Recommendation

This report is intended to update the Commission on erosion and sediment control program efforts. It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

A. *Erosion Prevention and Sediment Control from Construction Activities Policy Framework*, Oregon DEQ Storm Water Task Force, March 1999.
B. *Overview of Storm Water Impacts and Federal Regulations*, Oregon DEQ Staff, April 1999.
C. *Technical Advisory Committee Recommendations to ODEQ Regarding Control of Erosion From Small Construction Sites*, Summary of Recommendations, Oregon DEQ TAC, Draft March 1998.

Reference Documents (available upon request)

See list provided in Attachment A.

Approved:

Section:

Janice M. Renfroe, Manager
Policy and Program Development
Water Quality Division

Division:

Michael Llewelyn, Division Administrator
Water Quality Division

Report Prepared By: Ranei Nomura
Phone: (503) 229-5657

Date Prepared: April 19, 1999

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Attachment A

DEQ Storm Water Task Force

Erosion Prevention and Sediment Control From Construction Activities Policy Framework

Oregon DEQ Storm Water Task Force

Erosion Prevention and Sediment Control from Construction Activities

Policy Framework

March 1999

Storm Water Task Force Members

Associated Oregon Industries – Lynne Perry, Miller, Nash, Wiener, Hager & Carlsen / Katy Westersund, SECOR International Inc. (alternate)
Association of Oregon Counties – Russ Hursh, Malheur County / Mike Propes, Polk County / Art Schlack (alternate)
The Confederated Tribes of the Warm Springs Reservation of Oregon – Chris Gannon
Governor's Natural Resource Office – Ken Bierly
League of Oregon Cities – Mary Christian, City of Corvallis / Forrest Soth, City of Beaverton / William Tiffany (alternate)
Oregon Association of Clean Water Agencies – Mark Yeager, City of Albany / Susie Smith, City of Springfield (alternate) / Janet Gillaspie (alternate)
Oregon Building Industry Association – Dennis Derby, Double D Development
Oregon Coastal Zone Management Association – Onno Husing
Oregon Department of Land Conservation and Development – Amanda Punton
Oregon Department of Transportation – Paul Wirfs
Oregon Environmental Council – Kasandra Griffin
Sierra Club – Lyn Mattei / Scott Chapman (alternate)
Special Districts Association of Oregon – Kent Squires, Oak Lodge Sanitary District / Kendra Smith, Unified Sewerage Agency (alternate)
National Federation of Independent Businesses – Ben Williams, WRG Design Inc.

DEQ Staff

Michael Llewelyn, Water Quality Division
Jan Renfroe, Water Quality Division
Ranei Nomura, Water Quality Division

Meeting Facilitators

Karen Hannan, Hallmark Pacific Group, LLC
Elaine Hallmark, Hallmark Pacific Group, LLC

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ACCESSIBILITY INFORMATION

This information is available in alternate format (e.g., large type, Braille) by calling DEQ Public Affairs at (503) 229-5766 or 1-800-452-4011, toll-free inside Oregon. People with hearing impairments can call DEQ's TDD number at (503) 229-6993.

Oregon DEQ Storm Water Task Force

Erosion Prevention and Sediment Control from Construction Activities

Policy Framework

TABLE OF CONTENTS

Oregon DEQ Storm Water Task Force

Erosion Prevention and Sediment Control from Construction Activities

Policy Framework

I. BACKGROUND

In April of 1996, the Oregon Department of Environmental Quality (DEQ) formed the Technical Advisory Committee on Control of Erosion from Small Construction Sites (TAC). The TAC was asked to make recommendations to the Environmental Quality Commission (EQC) on prevention and control of erosion and sediment from construction activities to address two sets of federal requirements: the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), and the National Pollutant Discharge Elimination System (NPDES) Phase I and proposed Phase II storm water regulations.

CZARA requires coastal states such as Oregon to have enforceable measures to control erosion from small construction sites as well as other nonpoint pollution problems in the coastal zone. Oregon's Coastal Nonpoint Pollution Control Program (CNPCP) was submitted to the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration to address this legislation and received conditional approval. Final approval of Oregon's CNPCP will require that management measures are implemented at the state level. In addition, the DEQ committed to the implementation of the CNPCP and formation of the TAC as part of The Oregon Plan for Salmon and Watersheds.

The NPDES storm water program authorized by the Clean Water Act also regulates construction activities. Under this program, the regulated threshold of disturbance is higher than that required by CZARA. Current Phase I regulations require NPDES permits for construction activities that disturb five or more acres. Proposed Phase II regulations are expected to reduce that threshold to one acre. In addition, the proposed Phase II regulations require NPDES permits for small municipalities located within an "urbanized area." (See Appendix A for affected jurisdictions.) For small municipalities outside urbanized areas with populations greater than 10,000 and population densities of more than 1,000 people per square mile, the state will be required to determine if an NPDES permit is needed. Small municipalities required to have NPDES permits will need to include an erosion prevention and sediment control program as an element of their storm water management program (see Appendix A for evaluation communities).

In anticipation of the CNPCP and upcoming changes to the NPDES storm water program, the TAC completed a draft of its recommendations in March 1998. The recommendations laid out a plan to prevent or reduce erosion, sedimentation and other pollution from small construction sites. Concerns were raised about the ability of local jurisdictions to

implement some of the recommendations, the legal issues surrounding a state mandate, and the priority of this particular issue in the context of an overall approach to storm water management and other water quality regulation.

In response to these concerns and new issues raised by the identification of water quality limited streams and endangered species listings of salmonids across the state, DEQ created the Storm Water Task Force to develop recommendations for DEQ on a strategic direction for storm water management in the state. The strategy should integrate approaches to meeting the requirements of NPDES Phase II storm water regulations, section 6217 of CZARA, The Oregon Plan (Endangered Species Act issues), and the Clean Water Act's Total Maximum Daily Load (TMDL) program for addressing waters that are not meeting state water quality standards. DEQ's continued obligation to report to the EQC on a program for prevention of erosion and sediment loss from small construction sites necessitated that the Storm Water Task Force prioritize policy considerations in this area over other elements of storm water management. This policy framework is expected to fulfill the DEQ's obligation to report to the EQC on the status of the TAC report and future state direction of erosion prevention and sediment control from construction activities.

The Task Force recommends building on this framework by addressing additional urban storm water management issues to develop an integrated statewide management strategy.

II. PURPOSE

At DEQ's request, the Storm Water Task Force has proposed the following policy outline for a statewide erosion prevention and sediment control (EPSC) program as the first element of a strategic direction for reducing or preventing negative impacts to water quality as a result of storm water runoff in urban areas.

There is agreement on the Task Force that erosion and sediment loss from small construction sites (below five acres) in urban areas can be harmful to water quality. As stated in the TAC March 25, 1998, draft report:

"Though some erosion occurs naturally, construction activity which removes vegetation and disturbs the surface of the land can greatly accelerate erosion and resulting sedimentation. Movement of soil by wind and water from construction sites to adjacent sites and nearby drainage systems can cause a variety of adverse impacts on both the human and natural environment. These include unwanted soil deposition on public streets or on neighboring public or private properties. Sediment reaching streams can damage salmon spawning and rearing habitat and increase turbidity. Turbidity can interfere with aquatic life and increase the costs of municipal water treatment. Additionally, other pollutants -- such as fertilizers, pesticides, and oil -- may adhere to sediment particles and be carried into the water along with the sediment, increasing pollution impacts."

In addition, population growth pressures combined with the state's concern for preserving resource lands and open space result in the increased demand for development on sites that are difficult to control for erosion and sediment loss. The Task Force recognizes the need for an ESPC program that acknowledges the challenges and realities of development constraints inherent at these difficult sites.

III. APPROACH

The Task Force envisions a statewide program to prevent or reduce erosion, sedimentation and other pollution from construction sites. The Storm Water Task Force recommends that the program's management approach addresses the risk that construction sites present as a source of pollutants. The primary pollutant of concern is sediment from erosion. However, other pollutants may be attached to sediment or be brought onto the site during construction (e.g., fuel, paint, nutrients, metals, etc.). Construction sites will vary in the level of risk they pose. Risk factors to be considered in developing a program include, but are not limited to soil type, degree of slope, size of site disturbance, time of year, proximity to sensitive surface waters, or presence of sensitive species (Endangered Species Act listings).

As a first step in the program, DEQ will develop model management strategies based on risks to waters in various areas of the state. The program will also include the development of standards for construction activities and the education and training components necessary for successful implementation of such a program. To comply with federal regulations, DEQ will continue to require NPDES permits for owners and operators of construction activities that disturb more than the current NPDES threshold of five acres. When the Phase II regulations are finalized, construction activities disturbing the Phase II threshold acreage (which is expected to be one acre) will be included in the NPDES permit program.

Those jurisdictions required by the NPDES regulations to address construction activities as part of their overall storm water management program will implement applicable components of the state's EPSC program or develop an equivalent program. Small municipalities outside urbanized areas, that have been determined by the state to need an NPDES permit, will also implement applicable components of the state's EPSC program.

Jurisdictions that are not required by NPDES regulations to develop storm water management programs will be encouraged to voluntarily implement an EPSC program unless otherwise regulated. Construction sites in the coastal zone that pose significant risk (and are below the NPDES threshold) also will be encouraged to participate in the state EPSC program. Specific roles and responsibilities for the state and local government are discussed in Section IV, Two-Level System.

The Task Force believes that a program based on a full range of risk factors can more effectively address erosion prevention and sediment control concerns than a program based on a size disturbance threshold. Although the initial approach does not meet the CZARA guidelines for a size disturbance threshold and address concerns that EPSC

programs often are more effectively implemented at local levels, the state program would provide for an audit to evaluate the program relative to the water quality objectives of CZARA and assess the program's effectiveness in preventing erosion and negative impacts from sediment to water bodies. The audit will be performed within five years of the EQC's approval of this policy. Based on this audit, recommendations could be made to adjust risk factors, extend local implementation of the program, or suggest other modifications to the program.

If the initial state program is not fully effective, additional modifications may be necessary to ensure compliance with federal requirements under the NPDES program, CZARA, the Endangered Species Act, and the TMDL program.

IV. TWO-LEVEL SYSTEM

The Task Force recommends a two-level program to address both local and statewide needs for erosion prevention and sediment control. In general, the state should be responsible for proposing management strategies based on risks to waters in various areas of the state and for providing support to local communities in their development of programs and implementation of strategies. The state should provide technical assistance to local jurisdictions that are interested in or required to develop an EPSC program. Where federal regulations allow discretion, enforcement of programs should be shared between state and local jurisdictions.

A. State roles and responsibilities
The state, in cooperation with local jurisdictions and interested parties, should develop a statewide-integrated EPSC program that will include the following elements:
1. Definition of recommended risk factors to be addressed in an EPSC program.
2. Identification of local jurisdictions (including coordination between potentially affected parties) that will be required to have an EPSC program under NPDES storm water regulations and/or other federally mandated programs.
3. Identification of performance-based standards and/or prescriptive narrative standards and/or best management practice standards for construction activities.
4. Development and maintenance of a local EPSC program model with implementation and enforcement mechanism options for local jurisdictions to choose from in developing their local programs.
5. Development and maintenance of model ordinances for adoption by local jurisdictions, including suggestions for standardized permitting for entities that cross-jurisdictional boundaries.
6. Development and maintenance of best management practices (such as are in the TAC report) to meet standards for use in local programs.
7. Education for policy makers and the public on the need for an EPSC program, with an initial focus on the coastal zone.
8. Regional technical training for public agency staff and the development community to encourage consistency in the development of programs and use of erosion prevention and sediment control tools.

9. Determine and respond to the need for appropriate certification programs in erosion prevention and sediment control.
10. Timelines for implementation reflecting federal requirements.
11. Performance audit of the implementation and effectiveness of local and state EPSC programs.
12. Integration of existing programs in developing the state program.
13. Statewide implementation of the NPDES permit program for construction activities as required by EPA.

B. Local roles and responsibilities
Local jurisdictions should provide:
1. Implementation of local EPSC programs to meet state standards, where required, and consideration of program implementation where not required.
2. A system for enforcement and coordination with DEQ.
3. Participation in development of timelines, certification programs, and training.

V. ENFORCEMENT

Enforcement roles should be shared between state and local jurisdictions as follows:

A. State roles and responsibilities
1. Continue to develop agreements between the state and local jurisdictions to allow local EPSC programs to manage delegated aspects of NPDES permits.
2. Audit (e.g., on-site inspections, meetings with local staff, etc.) implementation and enforcement of state and local option EPSC programs and report to the EQC on effectiveness of both federally mandated and voluntary programs.
3. Continue to enforce NPDES permits through civil penalties and other existing legal remedies.
4. Investigate additional enforcement options (e.g., stop work orders, financial assurances, etc.) to enhance DEQ's enforcement of its state EPSC program.

B. Local roles and responsibilities
1. Ensure implementation of local EPSC programs and provide effective enforcement (e.g., administrative remedies, stop work orders, financial assurances, etc.).
2. Provide inspection of sites to enforce the program and encourage use of best management practices adopted in the local EPSC program.

VI. TIMELINE

A. The Task Force recommends the state prioritize the sequence in which various local jurisdictions develop and implement EPSC programs on the basis of several criteria, including: current federal regulations and programs, expected federal regulations, location within a watershed of a 303(d) listed stream or within a watershed of a water-dependent species of special concern (listed as sensitive, threatened, or endangered).

1. The Task Force recommends that DEQ develop an implementation schedule consistent with the priorities established for consideration of TMDLs including ESA listings and other statewide priorities.
2. The Task Force recommends that DEQ develop an implementation schedule for local EPSC programs in Phase II communities and "evaluation communities" through collaboration with local communities and interested parties that is consistent with the regional priorities developed to address TMDLs.

B. DEQ should commit to specific timelines for delivering the elements of the EPSC program described in Section IV.A - State Roles and Responsibilities.

C. Education, training, model program elements and technical assistance as described in Section IV.A must be provided to affected local jurisdictions prior to the time the local jurisdictions are expected to adopt and implement local EPSC programs.

D. Elements of local EPSC programs should be implemented within 24 months of DEQ completing development and delivery of the state EPSC program elements.

E. DEQ should complete a performance audit of the implementation and effectiveness of local and state EPSC programs within five years of the approval of this policy by the EQC. The audit should include information related to the potential need to: adjust program thresholds; revise standards extend local implementation, and provide additional technical assistance and program support. The audit should be summarized and recommendations (including the need for further audits) presented to the EQC.

VII. FUNDING

The Task Force recognizes that funds will be required to develop an effective statewide EPSC program. This is particularly true if education, training, model program elements and other assistance are to be provided to local jurisdictions prior to expectations of local implementation of EPSC programs being realized. Further, the issues surrounding funding are often complex and difficult to resolve especially when viewed in the broader context of competing priorities. Based on these concerns and to the extent that DEQ considers erosion and sediment control funding a priority, the Task Force makes the following recommendations:

A. Statewide EPSC program development
   1. DEQ should pursue grant and other internal and external funding to develop and implement the DEQ program and statewide model program elements for use by local jurisdictions.
   2. DEQ should fund their state program development in a manner that does not pass costs through to local jurisdictions.

B. DEQ EPSC program implementation

1. DEQ should develop its program to adequately and equitably assess fees for sites based on the risk posed by the planned construction activity and the actual cost of program implementation.
2. DEQ should continue partnering with local jurisdictions to allow for the sharing of NPDES permit fees where local jurisdictions agree to act as DEQ's agent.
3. Implementation of the state program may be funded by NPDES permit fees to cover state implementation of the NPDES program and oversight of locally implemented programs required by NPDES regulations.

C. Local ESPC program implementation
1. Local jurisdictions should develop their programs to adequately and equitably assess fees for sites based on the risk posed by the planned construction activity and the actual cost of program implementation.
2. Local permit and program fees should be limited to cover costs associated with the issuance of local permits and implementation of local programs.

APPENDIX A

NPDES Phase II Definition of "Urbanized Area"
Shortened from 55 Federal Register 42592, October 22, 1990: "An urbanized area comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people."

NPDES Phase II "Urbanized Areas" in Oregon
Proposed Phase II municipalities that need to have NPDES storm water permits. (Appendix 6 of Preamble, Federal Register Vol. 63, No. 6)

Eugene - Springfield Urbanized Area (the City of Eugene is currently under an NPDES storm water permit)

- Springfield
- Portion of Lane County

Salem - Keizer Urbanized Area (the City of Salem is currently under an NPDES storm water permit)

- Keizer
- Portion of Marion County
- Portion of Polk County

Medford Urbanized Area

- Medford
- Central Point
- Phoenix
- Portion of Jackson County

Longview - Kelso Urbanized Area

- Rainier
- Portion of Columbia County

Portland Metro (other municipalities in the Portland Metro area are currently under NPDES storm water permits, generally these include jurisdictions within the urban growth boundary of Multnomah, Washington, and Clackamas counties)

- Durham
- King City
- Maywood Park
- Troutdale
- Wood Village

NPDES Phase II Small Municipalities for Evaluation
Proposed Phase II municipalities outside urbanized areas, with populations greater than 10,000 and population density greater than 1,000 people per square mile that may need NPDES storm water permits. (Appendix 7 of Preamble, Federal Register, Vol. 63, No. 6)

- Albany
- Ashland
- Astoria
- Bend
- Coos Bay
- Corvallis
- Grants Pass
- Hermiston
- Klamath Falls
- La Grande
- Lebanon
- McMinnville
- Newberg
- Pendleton
- Roseburg
- Woodburn
- The Dalles

Phase II regulations also propose that the state evaluate municipalities outside of urbanized areas with a population of less than 10,000 or a density of less than 1,000 when petitioned to do so by any person.

APPENDIX B

Implementation Issues

The following are sets of issues that individual Task Force members have raised that will need to be addressed during implementation of the erosion prevention and sediment control (EPSC) program recommended in the policy framework. Failure to resolve one or more of these issues satisfactorily may result in withdrawal of support by one or more stakeholders (as represented by Task Force members) for the EPSC program that has been proposed.

1. Risk Factors
   Risk factors need to be exhaustive, including not only geological considerations, but also rate and proximity of other development, time of year, etc. There are concerns among some Task Force members that some important risk factors could be excluded.

   Some members believe risk factors should be implemented and utilized in the NPDES permit programs, in addition to the voluntary program described in the policy framework.

2. Enforcement Mechanisms
   Some members assert that model programs provided by the state to local jurisdictions need to include information about what enforcement mechanisms are currently available and their relative effectiveness. Many members would like to see innovative forms of enforcement and incentive-oriented elements in the model programs.

   Some members feel strongly that restoration of streams and other resources should be a part of the enforcement process in cases where a violation has occurred.

   There is controversy over the extent to which model ordinances should include enforcement mechanisms such as citizen suit or financial assurances. There have been suggestions that risk factors may help to guide the need for specific enforcement mechanisms.

3. Certification
   Many members accept the concept that two forms of certification are necessary -- one for those charged with enforcement and a different kind of certification for those who are actually responsible for carrying out the activities that will prevent or minimize erosion and sediment loss.

   Certification programs for those responsible for enforcement must be "do-able" for all jurisdictions, including remote, smaller communities. (Programs requiring advanced degrees simply can not be implemented.)

   Certification programs for those responsible for carrying out the erosion management activities will need to be updated over time as best management practices evolve. This kind of certification has been described as one indicating the holder of the certificate has had training in erosion prevention strategies and techniques.

Appendix B
continued

3. Certification continued

Some members have asserted that certification should be carried out at the state level due to the difficulties smaller communities may have in providing funding and personnel to develop and maintain such a program.

4. Timelines

Task Force members agree that implementation must be sequenced in such a way that the state makes available certain components of the state-wide EPSC program to local jurisdictions followed by a reasonable time frame in which local jurisdictions implement their local programs. It may be possible for the state to provide a portion of the program, such as model ordinances, prior to the offering of other portions.

Task Force members also agree that federal requirements for deadlines for implementation must be the guiding time frames for these programs. Local jurisdictions must also receive enough time and support from the state to ensure federal deadlines can be met.

Many Task Force members believe that prioritizing education of policy makers and the public (see section IV.A) will be critical to rapid implementation of the program across a wide number of jurisdictions.

5. Audit

Task Force members agree that the audit is a critical feature of the proposed policy. It must include a range of activities and areas of inquiry, including, but not limited to, onsite inspections, applicant submittals, local program review, evaluation of site plans, and enforcement capability at the local level. A key component of the audit must be directed at implementation success.

Some members believe that the audit should take place on targeted dates (the first is recommended within 5 years of the EQC's approval of the policy) regardless of program status at the time. There is a sense that the audit will be valuable in determining if the program is on course, what future courses of action should be recommended, and what future audit cycles should be. Completed audit reports should be available to the public.

Some members of the Task Force believe it is important to clarify that the audit is intended to assess the effectiveness of state and local, federally mandated NPDES programs and local EPSC programs that have been initiated voluntarily.

Appendix B
continued

5. Audit continued
   There have been suggestions that benchmarks for the number of jurisdictions voluntarily participating should be set early in the program and that additional benchmarks for reduction of sediment load (for undetermined areas -- watershed, jurisdiction, or specific land mass) should also be considered. Some members believe it will be important for the audit to identify indicators for successful implementation, as well as the state program's effectiveness in facilitating implementation of local programs.

6. Model Ordinances
   Flexibility must be included in local ordinances. Some parties hold parallel NPDES permits and operate under approved erosion and sediment control programs. Local agencies should have the ability to allow these parties to operate within local jurisdictions using a streamlined approval process. Oregon Department of Transportation is an example of such an entity.

   Some Task Force members have emphasized that "flexibility" should not be considered a code word for "laxness" when considering an approval process. Concerns have also been raised about entities with a record of violations, and there have been suggestions that these parties should receive more intensive scrutiny in any approval process.

7. Funding
   Task Force members agree that DEQ should convene a small group of stakeholders to identify costs of developing and implementing EPSC program elements and explore innovative funding approaches.

8. NPDES
   Some Task Force members have asserted that NPDES permits should not apply to construction activities below the federal size disturbance.

9. Standards
   Task Force members' concerns are centered on two themes: that there should be some measurable standard that assesses whether sediment is, in fact, being kept on the site rather than eroded; and that there should be some clear performance standards, that if completely followed, protect contractors from penalty.

   Some task force members have suggested studying pending TMDL contributions in considering standards for acceptable sediment loss from sites.

10. Post-Development
    Post-development erosion and sediment control will need to be addressed in the overall storm water management strategy, of which erosion prevention and sediment control is just one part.

Attachment B

Overview of Storm Water Impacts and Federal Regulations

Table of Contents

Impacts and Quality of Storm Water Runoff

Storm water runoff can affect the hydrology of surface waters as well as decrease water quality by elevating pollutant concentrations. This is particularly true for areas modified by human activities. For example, in urban areas, impervious surfaces and channelization of runoff increase the volume and energy of storm water discharges to receiving streams. This increased energy often results in channel widening and scouring of the stream bank intensifying erosion. It may also wash out stream bottoms utilized for aquatic habitat and fish spawning. Storm water runoff may also directly cause water quality standards to be violated and threaten beneficial uses by containing high levels of contaminants, such as sediment, nutrients, heavy metals, pathogens, and oxygen-demanding substances.

There have been many studies assessing the impact of storm water discharges. One of the first studies to focus on urban storm water discharges was the Nationwide Urban Runoff Program (NURP) (Reference 0). NURP was the first national effort to better understand the nature of urban storm water runoff. The study included 28 projects across the nation, including one project in Eugene, Oregon that monitored storm water from 1978 to 1983. In general, the study made the following conclusions about urban storm water runoff:

- Copper, lead and zinc are the most prevalent of the heavy metals in urban runoff and their concentrations at the end-of-pipe often exceed EPA's water quality criteria and drinking water standards. (Exceedance of water quality criteria at the end-of-pipe does not automatically mean that a violation will occur within the receiving stream. Rather, the comparison to water quality criteria is used as a screening tool to identify those metals that are present in concentrations that warrant further consideration or prioritization.)

- Organic priority pollutants were detected less frequently and at lower concentrations than the heavy metals.

Attachment B

Overview of Storm Water Impacts and Federal Regulations

- Coliform bacteria are present in high levels and can be expected to exceed EPA water quality criteria in many surface waters during and immediately after storm events.

- Nutrients are generally present in urban runoff, but concentrations do not appear to be high in comparison with other possible discharges.

- Oxygen demanding substances are present at concentrations approximating those in secondary treatment plant discharges.

- Total suspended solids concentrations are fairly high in comparison with treatment plant discharges.

In addition to this national study, municipalities in Oregon have also been involved in characterizing their storm water runoff by land uses. In Oregon, the Cities of Eugene, Gresham, Portland, and Salem, Clackamas County, Unified Sewerage Agency, and the Oregon Department of Transportation have all been monitoring storm water runoff since 1990 as part of their National Pollutant Discharge Elimination System (NPDES) permit requirements for their storm sewer systems. An analysis of data collected from 1990 to 1996 conducted by URS Greiner Woodward-Clyde Consultants for the Association of Clean Water Agencies (ACWA), found the following (Reference B):

- The results for most parameters for the different land uses in Oregon were generally lower than in the NURP study.

- Copper and zinc consistently exceeded water quality criteria for a majority of land uses except for open space.

- Industrial and transportation land use stations had the highest percentage of exceedances for the most parameters; commercial and residential stations also had a relatively high percentage of exceedances for copper, lead and zinc.

The NURP and ACWA studies, and many others not referenced here, support the need to better manage urban storm water for both quantity and quality issues. The following sections describe efforts being undertaken by the Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA), and DEQ to regulate urban runoff.

NPDES Phase I Storm Water Regulation

DEQ's current storm water program is based on federal regulations developed by EPA through the NPDES permit program required by the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA). Initial efforts to improve water quality through the NPDES program focused on industrial wastewater discharges and municipal sewage, both point source

discharges that were easily identifiable and possible to control. Traditional nonpoint source pollution from diffuse sources such as urban and agricultural activities were managed through educational and voluntary programs rather than NPDES permits. In 1987, Congress recognized that urban storm water runoff, while diffuse in nature, was channeled through ditches or pipes and could be controlled, and thus amended the Clean Water Act to require that such discharges be addressed by the NPDES permit program. Agricultural runoff was not included in the amendment because agricultural activities are statutorily exempt from regulation under the NPDES program.

EPA's Phase I storm water program, adopted in 1990, requires NPDES permits for storm water run off from a selected group of activities (Reference C). These include primarily manufacturing and transportation related industrial activities, construction that disturbs five or more acres, and municipalities greater than 100,000 in population. The Phase I program requires that DEQ issue NPDES permits to these activities. However, these permits are quite different from the NPDES permits issued for wastewater discharges in that they do not contain effluent limitations. Instead, the permits focus on the implementation of best management practices (BMPs) to improve the quality of storm water discharges. This focus on BMPs is due to the variability inherent in storm water runoff. Pollutant concentrations in storm water discharges are highly variable and very difficult to determine due to the changing intensity and duration of storm events. EPA believes that focusing resources on BMP implementation rather than compliance sampling of storm water will provide for greater improvement in runoff quality. However, the permits do require some monitoring of storm water discharges. Industries are required to monitor runoff to determine if they are meeting numeric benchmarks or goals in the permit (unlike limitations, exceedance of a benchmark is not subject to enforcement action). Construction activities must visually monitor their discharges to prevent significant discharges of sediment to surface waters and municipalities monitor to further characterize their runoff.

In Oregon, approximately 1000 industrial activities and 400 construction sites operate under NPDES general permits. In addition, there are NPDES municipal storm sewer system permits for most of the cities within the urban growth boundaries of Clackamas, Multnomah and Washington Counties, the Cities of Salem and Eugene, and for the storm sewer systems maintained by ODOT within these jurisdictions.

NPDES Proposed Phase II Storm Water Regulation

Immediately after NPDES Phase I regulations were adopted, EPA began work on Phase II of the NPDES storm water program. Proposed Phase II regulations were published in January 1998 (Reference D). These regulations would exempt Phase I industries from regulation if there is no exposure of storm water to industrial activities at the site, and require permits for small municipalities and construction activities disturbing one or more acres of land. EPA is expected to finalize these regulations by the end of October 1999.

Attachment B

Overview of Storm Water Impacts and Federal Regulations

Smaller construction activities are of particular concern to EPA as the Phase I regulations provided no justification for the limiting permit requirement to those construction projects that disturb five or more acres. Erosion and sediment transport from construction activities can cause a variety of water quality impacts. In addition to siltation caused by sediment, other pollutants may be attached to sediment particles, including nutrients, metals and organic compounds. Further study has lead EPA to estimate that sediment yields from small construction sites are as high or higher than the 20 to 150 tons/acre/year measured from larger sites and should be regulated (Reference D, p.1542). Also, it is generally acknowledged that erosion rates from construction sites are much greater than from almost any other land use (Reference D, p.1540), further supporting the need for additional regulation of construction activities.

Under Phase II regulations, DEQ would be required to permit small municipalities located within "urbanized areas." Urbanized area is a term used by the U.S. Census Bureau to describe an area that is densely settled with a minimum population of 50,000 people and a density of 1,000 people per square mile. DEQ would also be required to evaluate cities outside of urbanized areas with a population of at least 10,000 and a population density of at least 1,000 people per square mile to determine if an NPDES permit is needed. Small municipalities required to have NPDES permits will need to develop storm water management plans for their jurisdiction. EPA has recommended that small municipalities have the following components in their plan: a public education program on storm water impacts and pollution prevention; an opportunity for public input on the plan; an illicit discharge detection and elimination program for illegal discharges into the storm sewer system; a program for water quality control during construction and after construction; and an internal housekeeping and pollution prevention approach to municipal activities such as maintenance of city vehicles.

The urbanized areas in Oregon include the Eugene-Springfield area, the Salem-Keizer area, the Medford area, and the Portland Metro area. In these areas, the following cities and counties would need an NPDES permit if the Phase II proposed rules are finalized: Springfield and a portion of Lane County; Keizer and portions of Marion and Polk Counties; Medford, Central Point, Phoenix and a portion of Jackson County; and Durham, King City, Maywood Park, Troutdale, and Wood Village. Rainier and a portion of Columbia County were also proposed as needing a permit because they are located within the Longview-Kelso urbanized area.

Municipalities outside of urbanized areas that DEQ must evaluate to determine if a permit is needed include: Albany, Ashland, Astoria, Bend, The Dalles, Coos Bay, Corvallis, Grants Pass, Hermiston, Klamath Falls, La Grande, Lebanon, McMinnville, Newberg, Pendleton, Roseburg, and Woodburn. EPA has recommended that states develop criteria to evaluate whether or not a city's storm water discharge would violate or has the potential to violate water quality standards, impair designated uses, or have any significant impact to habitat or biology of the receiving stream. Suggested evaluation criteria from EPA include: determining if storm water discharges to sensitive waters; if there is high growth, potential for high growth; or high population density; if the city is adjacent to an urbanized area; if the discharge is a

significant contributor of pollutants; and if other programs are ineffective at controlling water quality concerns.

CZARA

In addition to the NPDES storm water program, Oregon is faced with meeting the requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) administered jointly through EPA and NOAA. CZARA requires that coastal states develop and implement enforceable management measures to control storm water runoff from agricultural sources, forestry, marinas, and urban activities in coastal areas (Reference E). States must have their programs implemented within 15 years of receiving program approval (by 2013 for Oregon's program). In Oregon, the Oregon Department of Land Conservation and Development (DLCD) manages CZARA in partnership with DEQ. Together, both agencies have developed the state's Coastal Nonpoint Pollution Control Program (CNPCP) that received "conditional" approval in 1998. Of specific concern to EPA and NOAA is the lack of enforceable management measures to control certain urban activities. EPA guidance recommends that DLCD and DEQ, in lieu of a justifiable alternative, implement the following enforceable urban management measures for coastal areas (for a more complete list see Reference E):

- After development, reduce the average total suspended solids loading by 80%, or reduce postdevelopment loadings of total suspended solids so that annual loadings are no greater than predevelopment loadings.

- Maintain postdevelopment peak runoff rate and volume to levels that are similar to predevelopment levels to the extent practicable.

- Develop a watershed program to avoid conversion of areas to the extent practicable that are particularly susceptible to erosion and sediment loss, to preserve areas that provide important water quality benefits, and to develop sites to protect to the extent practicable the natural integrity of waterbodies.

- Plan, design and develop sites to protect areas that provide important water quality benefits or are susceptible to erosion and sediment loss, limit impervious area, limit land disturbance activities, and limit disturbance of natural drainage features and vegetation.

- Prepare and implement an approved erosion and sediment control plan to reduce erosion and, to the extent practicable, retain sediment on site during and after construction for projects that disturb over 5,000 square feet of land, excluding construction of a single family home on a site of ½ acre or more.

- Implement pollution prevention and education programs to reduce nonpoint source pollutants.

Attachment B

Overview of Storm Water Impacts and Federal Regulations

While CZARA promotes an ambitious agenda, it is not as well funded as other federal environmental programs. Further, CZARA does not mandate the urban management measures program to local government. This differs from the NPDES program, which does require municipalities to obtain permits and manage storm water. The Coastal Zone Act enforcement authority is also very different from the NPDES program. Failure to implement CZARA's requirements would result in a loss of funding for the state. Persons responsible for the regulated activities under CZARA do not face any penalties. This is in contrast to the NPDES program that subjects persons to third party suit for failure to obtain a permit. At the state level, failure to implement the NPDES storm water program would also jeopardize DEQ's NPDES permitting program for other types of discharges such as industrial wastewater and municipal sewage.

References

A. *Results of the Nationwide Urban Runoff Program Executive Summary*, EPA Water Planning Division, December 1983.
B. *Analysis of Oregon Urban Runoff Quality Monitoring Data Collected from 1990 to 1996*, Association of Clean Water Agencies, June 1997.
C. Title 40 Code of Federal Regulation §122.26 Storm Water Discharges.
D. *Proposed Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Proposed Rule* Vol. 63, No. 6, Federal Register, January 9, 1998.
E. *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, U.S. EPA, Office of Water, January 1993.

Attachment C

DEQ Technical Advisory Committee
Draft Summary of Recommendations

The Technical Advisory Committee's recommendations for an erosion and sediment control program are summarized below. The recommendations, and the TAC's reasoning for them, are discussed more fully following this summary.

***1*:** The TAC recommends that the mission and goals of the program be broadly focused on preventing or reducing erosion and other pollution from small construction sites, retaining sediment on site, and preventing offsite impacts.

2: The TAC recommends a two-level program to address local and statewide needs for erosion prevention and sediment control: (1) individual programs developed and controlled at the local level with implementation, facilitation, plan review, regulatory, fee, incentive, and enforcement components, and (2)state-level activities to assure and facilitate the use of erosion prevention and sediment control measures to meet state and federal laws and regulations. .

3: The TAC recommends that the geographic applicability of the erosion prevention and sediment control programs be focused on the coastal zone and lands west of the Cascade Range, with future consideration of erosion control needs east of the Cascades.

4: The TAC recommends that statewide erosion prevention and sediment control for sites of five or more acres be combined with the proposed program for smaller sites, and that construction activities in rural and urban areas be included in the program.

5: The TAC recommends that specific thresholds and triggers be used to determine when local erosion prevention and sediment control programs are required.

6: The TAC recommends that the state establish criteria for use in development of local erosion prevention and sediment control plans and ordinances.

7: The TAC recommends that local erosion prevention and sediment control programs include minimum monitoring and inspection requirements.

8: The TAC recommends that local jurisdictions be authorized to collect sufficient fees to cover all expenses of the local erosion prevention and sediment control programs. The TAC further recommends that local jurisdictions implement a fee structure that includes incentives for practices which prevent erosion.

9: The TAC recommends that local erosion prevention and sediment control programs contain minimum enforcement and penalty provisions consistent with those in place at the state level.

Appendix C

DEQ Technical Advisory Committee
Draft Summary of Recommendations

10: The TAC recommends that programs and technical guidelines currently in use or under consideration by local jurisdictions be reviewed for preparation of one or more model ordinances and model guidelines.

11: The TAC recommends that DEQ establish criteria for training programs and establish minimum levels of training for individuals involved in implementing local erosion prevention and sediment control programs.

12: The TAC recommends that DEQ take necessary budgetary steps to ensure funding and staffing for those portions of the program which must remain at the state level to ensure consistency in results and conformity with state and federal laws.

13: The TAC recommends that local jurisdictions be allowed the flexibility to either implement erosion prevention and sediment control programs themselves or to contract with other jurisdictions or private entities to provide such implementation services.

14: The TAC recommends that DEQ review and certify whether local erosion prevention and sediment control programs meet minimum performance standards designed to assure equity and effectiveness across jurisdictional boundaries.

15: The TAC recommends that the EQC require that local erosion prevention and sediment control programs be implemented within 18 months of the adoption of rules regarding small construction sites; that the DEQ measure program effectiveness; and that the EQC review program performance, both at the state and local levels, every five years.

Department of Environmental Quality
Memorandum

DATE: May 7, 1999

TO: Environmental Quality Commission

FROM: Langdon Marsh

RE: Director's Report

Sucker-Grayback watershed approved for TMDL: DEQ received approval of TMDL for the upper portion of the Sucker-Grayback watershed early this month. The approval covers all perennial streams which flow through Federal lands managed by the US Forest Service and US Bureau of Land Management within the Sucker-Grayback watershed, Illinois River sub-basin, Roger River Basin upstream of river mile 10.4 of Sucker Creek.

New Carissa Update: Work on the stern of the New Carissa continues. The ship owner ceased on-board oil recovery operations and tank assessments on the stern in mid-April, due to their decision that working conditions were unsafe. The Coast Guard (CG) has since been conducting safety and tank assessments, and continuing with efforts to remove the oil.

The team led by the CG has opened and air sparged a total of 16 tanks, and removed more than 3,400 gallons of a mixture of oils. They are continuing to remove oil using sorbent pads and will be using hot and cold pressure washing to remove any residual oil. If needed, they will use a surface cleaner (upon state and RRT approval) to remove the oil clinging to the sides of the engine room. The responsible party is cooperating by handling the storage, transportation and disposal of oil once it is removed.

The Unified Command met Wednesday with wildlife resource trustees to discuss issues pertaining to snowy plover habitats and the continued monitoring of impacted beaches. In addition, a communication plan was developed to provide response and NRDA with weekly summaries of information.

Portland Harbor Draft Plan Out for Review: The draft Portland Harbor Sediment Management Plan is out for public review through May 19. DEQ is conducting a community involvement and outreach effort to solicit comments on the draft. In addition, we have also provided a $10,000 grant to Northwest Environmental Advocates (NWEA) to run a parallel community outreach process interpreting the plan for lay audiences. This approach is similar to Technical Assistance Grants EPA provides within the Superfund process. To date, turn out for the NWEA meetings has been very light. We were also very concerned with the negative positions taken in some of the materials NWEA produced. However, we must remind ourselves the grant's intent was to generate dialog and potentially improve our final product. The NWEA material does raise good questions and probably reflects some broader public perceptions.

Once the public comment period closes, we will compile all comments, including those from other agencies and Natural Resource Trustees, and revise the plan accordingly. A final draft will go to EPA in Seattle by mid June. The Regional Decision Team meets June 29 to decide whether or not the Portland Harbor area should be added to the National Priorities List for cleanup. As you know, the state is asking EPA to not list the area and allow the state to lead the cleanup.

Ross Island Assessment Agreements Moving Forward: The Port of Portland has submitted a draft work plan describing work they will do to assess their confined, in-water disposals at Ross Island. We will be sending that document out for public review by early June and will hold a public meeting June 8 to provide information about the document. We are also working with Ross Island Sand and Gravel to develop a similar assessment work plan to address disposal and potential contamination issues throughout the remaining upland and in-water areas of the facility.

I expect to have signed agreements soon with both the Port and Ross Island regarding these assessments.

DEQ has issued a $31,707 penalty against Ross Island Sand and Gravel for disposal of solid wastes without a permit. We will discuss the possibility of a Supplemental Environmental Project with the company. They have proposed contributing a portion of their final penalty amount to a watershed enhancement project within southeast Portland.

KUDOS:

DEQ Wins Family Friendly Award: On May 6th, DEQ was honored with a 1999 "Families in Good Company Award" for our efforts at making DEQ a family-friendly workplace--offering telecommuting, flexible work hours, and job sharing to employees. The awards ceremony took place at the Oregon Zoo.

DEQ Awarded Gold Star Certificate: DAS awarded DEQ the 1998 State Controller's Gold Star Certificate for providing "accurate and complete fiscal year end information in a timely manner." DEQ's *Dolores Passarelle* was commended in particular for her contributions to the agency and the State.

Environmental Awards: The 1999 winners of DEQ's and the Association of Oregon Recyclers' Waste Reduction Awareness Program (WRAP) Awards are Kelly Creek Elementary, Banks Elementary, and Western View Middle School.

STAFF NOTES:

Merlyn L. Hough, Western Region Tanks Manager, recently passed the 25 year mark at DEQ. Merlyn received a Bachelor of Science degree in fisheries science in 1973 from Oregon State University and a Master of Science degree in civil engineering from the University of Portland in 1990. Hough has been registered as a professional engineer in Oregon since 1982 (civil and environmental engineering), and has been a Diplomat of the American Academy of Environmental Engineers (air pollution control) since 1984. He has 25 years' experience in the environmental field as biologist, engineer, and manager.

Congratulations to *Keith Andersen*, *John Borden, Gil Hargreaves and Kerri Nelson*, all of DEQ's Western Region. Together with their EPA counterparts Kevin Rochlin, Joan Shirley and Kathy Massimino, they received a Region X EPA Award for *Excellence in Teaming*. The group has been working on complex regulatory and environmental issues at the Wah Chang facility in Albany and has successfully focused the regulatory process and achieved significant environmental gains. The group was honored at a brunch in Seattle on April 21st.

May 6, 1999

Waste Management and Cleanup Division
Addendum to the Director's Informational Report to the EQC

1. **Portland Harbor Cleanup**: Public review of the draft Portland Harbor Sediments Management Plan currently ongoing - April 19 through May 19. Final Plan should be available in mid June.
   We are doing extensive public involvement during this review period.
   - Open House on April 22, flyers sent to 7,000 addresses surrounding Portland Harbor. About 50 attended.
   - NOAA, USFW, USACOE and key environmental groups invited to attend open house.
   - Provided a $10,000 "grant" to NWEA to help facilitate public involvement and understanding of the plan during the review period.
   - Making focused effort to reach tribes and other interest groups during the review period.

   Continue to update EPA with information about funding, enforcement, and public involvement strategies for plan implementation.
   Working with PHG on a funding strategy that will identify additional sources of funding. Also meeting with PHG to discuss funding agreement.
   Working with Natural Resources trustees on a funding and participation agreement.

2. **SB5544 – Rural Gas Stations**: The Governor, Senate President Adams and House Speaker Snodgrass signed this bill on April 29. This means that at least 7 rural communities will have fuel availability that otherwise would not.
   Crane – Harney Co.
   Wagontire – Harney Co.
   Beatty – Klamath Co.
   Days Creek – Douglas Co.
   Curtin – Douglas Co.
   Netarts – Tillamook Co.
   Pine Grove – Wasco Co.
   The Department is proceeding with grant applications and approvals for these projects. It will be a tight schedule to complete the projects by the June 30 deadline, but it looks like we will be successful in doing this.

3. **New Carissa Stern**: Contracts will be signed any day with a salvage company to remove the stern of the new Carissa from the beach.

Approved ✓
Approved with Corrections____

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Seventy-Fifth Meeting

May 7, 1999
Regular Meeting

On May 7, 1999, the Environmental Quality Commission met for their regular meeting at the Public Service Building Auditorium, 155 N First Ave, Hillsboro, Oregon. The following Environmental Quality Commission members were present:

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

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality (DEQ); and other staff from DEQ.

Note: The 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.

The EQC meeting was preceded by a bus tour of several sites in the Tualatin River Basin. The objective of the tour was to provide examples of agricultural and urban best management practices for reducing pollutants in runoff. The first site visited was Licorice Lane Dairy Farm, where owner/operator Heike Fry gave an overview of the operation and issues relating to water quality. Dean Moberg of the USDA Natural Resources Conservation Service also explained the challenges and accomplishments of dairy farms in the basin. Following the agricultural portion of the tour, Lori Faha of the Unified Sewerage Agency led the group on a tour of several urban sites in the basin. The sites included discussion of water quality facilities (WQFs), stream buffers, and the challenges of reducing pollutants from existing urban areas.

Vice Chair Eden called the regular meeting to order at 11:05 a.m.

A. Informational Item: Update on the June 1998 Tualatin River Basin DMA Compliance Order

A presentation was made to the Commission by Andy Schaedel, DEQ Manager of Technical Services, Northwest Region, and Rob Burkhart, DEQ Tualatin Basin Coordinator.

Staff updated the Commission on activities related to the June 1998 EQC "Tualatin Basin DMA Implementation and Compliance Order," provided an update on the development of new TMDLs for the basin, and gave an overview of the background to the compliance order and the TMDLs in the basin. The commission was briefed on the status of the two new tasks (Task 5 and Task 6) of the June 1998 Compliance Order, and provided an update on the Tualatin Basin TMDL development. Tasks 5 and 6 required that draft and final reports be submitted to DEQ by the designated management agencies (DMAs) on the status of TMDL compliance. The draft reports were submitted by the DMAs as required;

DEQ reviewed the reports to determine if the reports, when finalized, would satisfy the intent of Tasks 5 and 6 of the June 1998 order; and the results of these reviews have been provided to the DMAs.

Staff gave an update on the development of new and revised TMDLs by DEQ. TMDLs are being developed for 7 parameters and 31 stream segments in the basin. The schedule for the development of the TMDLs was discussed. The schedule presented did not coincide with the schedule presented to the EQC in June 1998. The initial schedule was overly optimistic and could not be met. The new schedule is felt to be much more realistic and achievable, and includes a possible action item in the future if any modifications of the rules are required by the new TMDLs.

B. Approval of Minutes

The following corrections were made: On page 1, section B, second paragraph, the second line "Commissioner *Eden* asked why." and on page 3, section C, last paragraph, the first line should read "Commissioner Van Vliet made a motion to *adopt the proposed findings to support* the waiver ..." Commissioner Van Vliet made a motion to approve the minutes as corrected. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

Public Comment:

John Jackson and Jan Miller of Unified Sewerage Agency, Ela Whelan of Clackamas County, Donna Hempstead and Jim Kincaid of Multnomah County, and Elizabeth Buchanan of West Linn presented testimony concerning the Tualatin River Basin.

C. Rule Adoption: Repeal of Rules for Consumer Products, Architectural Coatings and Motor Vehicle Refinishing Coatings; Revision of VOC Definitions

Greg Green, Air Quality Division Administrator, and Dave Nordberg, DEQ staff, explained the proposed rule amendments. The national program cited in the staff report is implemented entirely by EPA. Industry worked closely with EPA to produce a mutually acceptable product, and because EPA's rules apply only at the manufacturing level, the rules can be efficiently implemented on a national scale. When asked why the federal rules were not being adopted by the state by reference, staff responded that the Department could create its own implementation program, but there was no requirement to do so, and little or no added benefit. Commissioner Reeve asked how other air quality rules that limit the solvent content of paint relate to rules in the proposal. Staff replied that the other paint rules apply only to industrial sources while the rules currently being considered apply more broadly to "area sources."

Commissioner Reeve made a motion to repeal/amend the rules regarding consumer products, architectural coatings and motor vehicle refinishing as proposed in the staff report. Commissioner McMahan seconded the motion. Vice-chair Eden amended the motion to add "that the rule amendments as contained in attachment A with the effective dates as provided in the staff report and to amend the State Implementation Plan as provided in the staff report." Commissioners Reeve and McMahan approved the amendment to the motion. The amended motion carried with four "yes" votes.

D. Informational Item: Erosion Prevention and Sediment Control from Construction Activities Policy Framework Component of Statewide Strategy to Manage Stormwater

Jan Renfroe, Water Quality Policy and Program Development Manager, and Ranei Nomura, Policy Analyst, presented this item.

A review of the agency's commitment in The Oregon Plan to form a technical advisory committee (TAC) to make recommendations to DEQ and EQC on a program for controlling erosion was given. The draft recommendations from the TAC raised concerns with local government and developers. To address these concerns and the need for a comprehensive strategy to address federal regulation of storm water,

the Department formed the Storm Water Task Force. The Task Force was asked to initially develop the erosion prevention and sediment control piece of this strategy. Members of the Task Force include representatives from state and local government, industry, developers, and environmental groups.

More detailed information about storm water management efforts by the federal government and the Department, was given by staff. The draft TAC recommendations caused concern because they proposed that local government be required to implement an erosion prevention and sediment control program for construction and that these programs regulate disturbances below the federal mandate. The Task Force has recommended that DEQ develop a statewide risk-based program to prevent or reduce erosion, sedimentation, and other pollution from construction sites, rather than a program based solely on a size disturbance threshold. The Department would develop erosion prevention and sediment control requirements dependent on the risk presented by construction in a particular area. Risk factors to be considered in such a program include, but are not limited to, soil type, slope, size, time of year, proximity to sensitive waters, etc. Local governments would not be required by the state to implement these requirements unless already required to do so by federal regulations. In the absence of local implementation, DEQ would carry out the program. The Task Force also expressed an interest in continuing the development of a comprehensive management strategy for storm water by building on their erosion prevention and sediment control framework. Future efforts by the Department are contingent on National Pollutant Discharge Elimination System (NPDES) Phase II storm water regulations to be finalized by EPA at the end of October, and House Bill 2881-3's proposal to require a legislative committee to study storm water issues. The bill was introduced at the request of the Oregon Builders Industry Association.

Staff clarified that the Department's efforts have not been tied into Metro's Title 3 (buffer requirements, stream setbacks, etc.), and that larger communities currently implementing storm water management plans are very willing to share what they have learned with smaller jurisdictions that may be regulated in the future.

E. Commissioners' Reports

There were no reports from the Commission.

F. Director's Report

DEQ received approval of the TMDL for the upper portion of the Sucker-Grayback watershed. The approval covers all perennial streams which flow through Federal lands managed by the US Forest Service and US Bureau of Land Management within the Sucker-Grayback watershed, Illinois River Sub-basin, and Roger River Basin upstream of river mile 10.4 of Sucker Creek.

Work on the stern of the New Carissa continues. The ship owner ceased on-board oil recovery operations and tank assessments on the stern in mid-April. The Coast Guard (CG) has since been conducting safety and tank assessments, and continuing with efforts to remove the oil. The team led by the CG has opened and air sparged a total of 16 tanks, and removed more than 3,400 gallons of a mixture of oils. The responsible party is cooperating by handling the storage, transportation and disposal of oil once it is removed. The Unified Command has met with wildlife resource trustees to discuss issues pertaining to snowy plover habitats and the continued monitoring of impacted beaches.

The draft Portland Harbor Sediment Management Plan is out for public review. Once the public comment period closes, comments will be compiled, including those from other agencies and Natural Resource Trustees; and the plan will be revised accordingly. A final draft will go to EPA in Seattle by mid-June. The Regional Decision Team will meet June 29 to decide whether or not the Portland Harbor area should be added to the National Priorities List for cleanup. The state is asking EPA to not list the area and allow the state to lead the cleanup.

The Port of Portland has submitted a draft work plan describing work they will do to assess their confined, in-water disposals at Ross Island. The Department is working with Ross Island Sand and Gravel to develop a similar assessment work plan to address disposal and potential contamination issues

throughout the remaining upland and in-water areas of the facility. DEQ has issued a $31,707 penalty against Ross Island Sand and Gravel for disposal of solid wastes without a permit.

The Department and its staff have been recognized in the following ways:

On May 6th, DEQ was honored with a 1999 "Families in Good Company Award" for our efforts at making DEQ a family-friendly workplace--offering telecommuting, flexible work hours, and job sharing to employees. The awards ceremony took place at the Oregon Zoo.

The Department of Administrative Services awarded DEQ the 1998 State Controller's Gold Star Certificate for providing "accurate and complete fiscal year-end information in a timely manner." DEQ's *Dolores Passarelle* was commended in particular for her contributions to the agency and the State.

The 1999 winners of DEQ's and the Association of Oregon Recyclers' Waste Reduction Awareness Program (WRAP) Awards are Kelly Creek Elementary, Banks Elementary, and Western View Middle School.

Merlyn L. Hough, Western Region Tanks Manager, recently passed the 25 year mark at DEQ. He received a Bachelor of Science degree in fisheries science in 1973 from Oregon State University, and a Master of Science degree in civil engineering from the University of Portland in 1990. Hough has been registered as a professional engineer in Oregon since 1982 (civil and environmental engineering), and has been a Diplomat of the American Academy of Environmental Engineers (air pollution control) since 1984. He has 25 years of experience in the environmental field as biologist, engineer, and manager.

Keith Andersen, John Borden, Gil Hargreaves and Kerri Nelson, all of DEQ's Western Region, together with their EPA counterparts Kevin Rochlin, Joan Shirley, and Kathy Massimino, received a Region X EPA Award for *Excellence in Teaming*. The group has been working on complex regulatory and environmental issues at the Wah Chang facility in Albany and has successfully focused the regulatory process and achieved significant environmental gains. The group was honored at a brunch in Seattle on April 21st.

There being no further business, the meeting was adjourned at 2:40 p.m.