

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 06/24/1999**



**State of Oregon
Department of
Environmental
Quality**

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AGENDA

ENVIRONMENTAL QUALITY COMMISSION MEETING

June 24 - 25, 1999

Oxford Suites

1050 N First

Hermiston, Oregon

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

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday 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 Commission will tour McNary Dam and the Umatilla Chemical Depot before the meeting

Thursday, June 24, 1999

5:00 – 6:30 p.m. Meet with Local Officials

Friday, June 25, 1999 **Beginning at 8:30 a.m.**

The Environmental Quality Commission will hold an executive session at 8:00 a.m. The Commission will be consulting with legal counsel regarding G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159). The executive session is to be held pursuant to ORS 192.600 (1)(f) and ORS 192.660 (1)(h). Representatives of the media will not be allowed to report on any of the deliberations during the session.

A. Approval of Minutes

B. Informational Item: Update on the Umatilla Agent Disposal Facility

C. Action Item: Appeal of Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129

D. Temporary Rule Adoption: Designate Methane Generated from Solid Waste Landfills, in Certain Circumstances, as a Hazardous Substance, Pursuant to ORS 465.400

E. †Rule Adoption: Title V Permitting Fees and Rule Housekeeping

F. Approval of Tax Credits

G. Informational Item: Green Permit Program

H. Commissioners' Reports

I. Director's Report

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

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

The Commission has set aside August 12-13, 1999, for their next meeting. The meeting will be in Klamath Falls, Oregon.

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

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

June 4, 1999

McNary Dam Profile and History

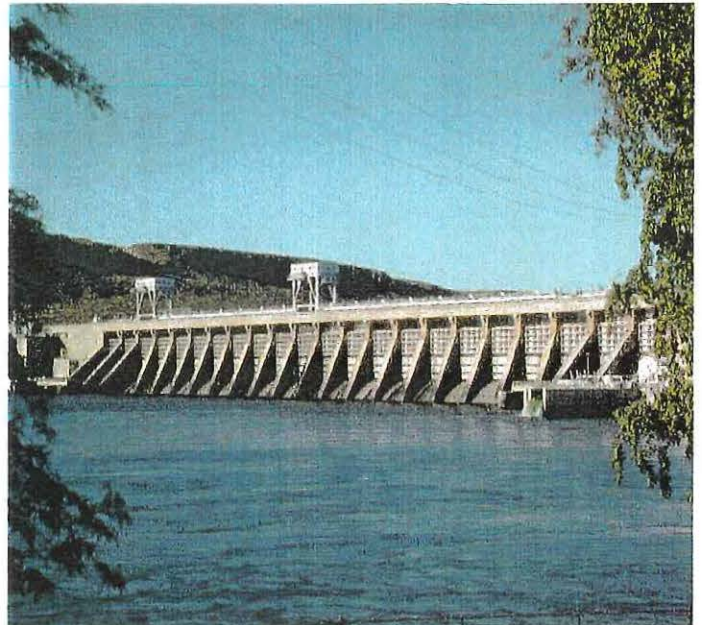


Project Description

- *Sub-basin:* Lower Columbia
- *Stream:* Columbia River
- *Location:* Umatilla, Oregon
- *Owner:* Corps of Engineers, Walla Walla District: McNary
- *Type of Project:* Run-of-river
- *Authorized Purpose:* Power, Navigation
- *Other Uses:* Fishery, Recreation, Irrigation, Water Quality

Hydrologic Data

- *Drainage area* = 214,000 sq mi
- *Maximum historical peak discharge:*
 - Unregulated = 1,240,000 cfs (1894)
 - Regulated = 668,000 cfs (1894)
- *Maximum rate of change per hour :*
150,000 cfs
- *Lake Elevation*
 - Maximum pool = 357.0 ft
 - Normal full pool = 340.0 ft
 - Minimum pool = 335.0 ft



Powerhouse

- Number of units.....14
- Nameplate capacity.....980 MW
- Overload capacity.....1,127 MW
- Hydraulic capacity.....232,000 cfs

Physical Elements of the Dam

The principal features of the main structure consist of a single-lift navigation lock, 86 feet wide by 683 feet long, located on the Washington shore; a gate controlled spillway dam, 1,310 feet long, located in the north river channel; and a 14-unit powerhouse, 1,348 feet long, located in the Oregon or south channel. Concrete gravity nonoverflow sections connect the powerhouse and spillway dam and the spillway dam and the navigation lock. Appurtenances include flanking earth embankments 1,560 feet long on the Washington shore and 2,465 feet long on the Oregon shore, upstream and downstream lock approaches, and fish passage facilities. The effective height of the dam is 92 feet and the total length of the complete structure is 7,365 feet.

The levee system, with its complete drainage and pumping plant facilities, is designed to protect the heavily developed areas of low-lying land near Pasco, Kennewick, and Richland from the backwater reaches of the pool. There are 17 miles of levee system in the upper reaches of the pool. Those sections protecting urban areas generally have a top elevation 8 feet above the calculated backwater stage for the maximum flood of record (1894). Those protecting rural areas have a top elevation 5 feet above this stage.

Lake Wallula, at normal operating pool stage (elevation 340 mean sea level (msl)), is 61.6 miles long. The pool extends 1 mile up the Walla Walla River, 9.7 miles up the Snake River to Ice Harbor Dam, and 6 miles up the Yakima River. The reservoir lies in Umatilla County, Oregon; and Walla Walla, Benton, and Franklin Counties, Washington. Offshore slopes, other than in the extensive shallow areas along the left bank between the Snake and Walla Walla Rivers are, for the most part, moderately steep, with 15 feet or more of water depth close to shore. Maximum pool depth near the dam is about 120 feet.

Except for the 11-mile section just upstream from Wallula Gap, the shape of the reservoir along the Columbia and Snake Rivers varies little from that of the original river water areas. Large areas of land along the lower Walla Walla River and on the left bank of the Columbia River (between Wallula and Burbank), including the area of the Burbank Slough, were below elevation 340 and have been flooded. Here, the pool reaches its greatest width of 2½ miles. Downstream from the Gap, it is about 1 mile wide and, above the mouth of the Snake River, it is less than ½ mile wide.

McNary is a "run-of-the-river" project. It has no flood control storage, no irrigation storage, and only limited short-term power-peaking functions. Therefore, the pool level is relatively stable, with small daily fluctuations

occurring normally from power peaking. In the upper reaches of the pool, greater fluctuations occur seasonally from the backwater effect of variations in riverflows.

At the dam, the project is physically capable of drawdown from full pool level (340 msl) to minimum pool level (335 msl), a total of 5 feet. Presently, however, normal drawdown does not exceed 3 feet. "In general, the pool builds to a maximum elevation at about 8 a.m. daily and is steadily drawn down all day as power is generated. It reaches a low at about 10 p.m., after which it rebuilds to its daily maximum. The daily range in elevation depends on natural riverflows and power demands, but a two or three-foot fluctuation at the forebay is not uncommon" (Corps, 1976).

These in-built fluctuations in pool level impact firmly on irrigation withdrawals, industrial use, recreational use, and wildlife habitat protection. Facilities and activities must be designed, constructed, arranged, and timed to accommodate and fit with the rate and magnitude of changes in pool level as governed by power demands, project operation and maintenance needs, and changes in riverflows.

History of the Dam

"So far as known, the first suggestion for the development of hydroelectric power at Umatilla Rapids was made by Mr. S.V. Winslow, Captain of a Government drill boat operating on the Columbia River, at a meeting of the Open River Association held in Pendleton, Oregon some ten or twelve years ago (about 1912 or 1914) and to him should be given the credit for initiating the idea. Ever since the Winslow address, the development of the Umatilla Rapids project has been urged by a few individuals and by the *East Oregonian*, Pendleton's daily newspaper. At a mass meeting called at Umatilla, Oregon, in 1920 which was attended by prominent citizens, engineers, and representatives of railroad and power interests of Oregon, Washington, and Idaho, the Umatilla Rapids Association was formed, the territory represented by membership comprising the states of Oregon, Washington, and Idaho. Since its organization, the Association has actively urged the investigation of this project..." (USBR, 1923).

A preliminary examination and report on the possibilities of the project was made by the engineering firm of Lewis and Clark of Portland in 1921. The United States Reclamation Service (now Bureau of Reclamation) made an investigation and prepared an engineering report in 1923-24. This was supplemented by an economic report prepared in 1926. The first investigation by the Corps of Engineers that included this project was made from 1928 through 1931. The resultant report, published as House Document 103, 73d Congress, First Session,

recommended construction of a navigation-power dam at the Umatilla Rapids site. Another investigation was made in connection with the Review Report printed in 1938 as House Document 704, 75th Congress, Third Session. It was on the basis of this latter document that the construction of the project was authorized on 2 March 1945 (Public Law Number 14, 79th Congress, First Session). The late Senator Charles L. McNary of Oregon was a leading proponent of the project, and the dam is named in his memory. The pool formed by the dam was officially designated Lake Wallula in 1958 by the Board of Geographic Names.

While the authorization for this project specifies the primary purposes as being navigation, power development, and irrigation, other legislation provides that federal water resource projects shall be developed and operated for public recreation, wildlife, and other purposes.

McNary Lock and Dam were constructed primarily for the development of power and the improvement of navigation on the Columbia River. The project drowns out some of the most difficult rapids on the Columbia River, and provides a major link in the authorized 464-mile inland navigable waterway that extends from the mouth of the Columbia River to Lewiston, Idaho, on the Snake River. Project power production of 980,000 kilowatts is part of the vast Pacific Northwest power pool. Irrigation of as much as 365,000 acres of arable lands on both sides of the Columbia River is possible by pumping from the reservoir.

McNary Dam was the third major Federal project of the basin development plan to be constructed, being preceded by Grand Coulee and Bonneville Dams on the main stem of the Columbia River. Construction of the project began with the awarding of the first construction contract on 11 April 1947, groundbreaking ceremonies on 15 April 1947, and first concrete poured on 15 December 1948. It was completed with reservoir impoundment to minimum pool (elevation 335) and first power online in November 1953, to full pool (elevation 340) in December 1953, official dedication by President Eisenhower on 23 September 1954, and the last of the 14 generators on line in February 1957. The total cost of the project, as of 30 September 1980, was \$311,302,000.

Additional Information

Further information on McNary dam may be obtained at:

<http://www.nww.usace.army.mil/html/offices/pl/er/mcnary/mcnarymp.htm>

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 Renfro, 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.

HARDY MYERS
Attorney General

FILE



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DAVID SCHUMAN
Deputy Attorney General

DEPARTMENT OF JUSTICE
TRIAL DIVISION

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

June 7, 1999

JUN 09 1999

HERMISTON OFFICE

Mr. Wayne Thomas
Department of Environmental Quality
403 E Hurlburt #117
Hermiston, OR 97838

Re: *G.A.S.P., et al. v. Environmental Quality Commission, et al.*
Multnomah County Circuit Court Case No. 9708-06159

Dear Wayne:

Enclosed are copies of the final judgment and Judge Marcus' opinion and order in the above case. Petitioners have 30 days from the date of entry of judgment to file a notice of appeal to the Oregon Court of Appeals. We think an appeal is likely.

Very truly yours,

Stephen K. Bushong
Attorney-in-Charge
Special Litigation Unit

TRI40899/SKB/tgh
Enclosures
cc: Larry Edelman

SND
RJS

99-0941
RECEIVED
JUN 04 1999

IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF MULTNOMAH Trial Division, Dept. of Justice
Salem, Oregon

G.A.S.P., SIERRA CLUB, OREGON
WILDLIFE FEDERATION, KARYN JONES,
SUSAN JONES, HEATHER BILLY,
DEBORAH BURNS, JANICE H. LOHMAN,
LEANDRA PHILLIPS, MERLE C. JONES,
CINDY BEATTY, ANDREA E. STINE,
DOROTHY IRISH, MARY BLOOM,
ROBERT J. PALZER, JANET NAGY,
LaDONNA KING, JOHN SPOMER,
CHRISTINE CLARK, STUART DICK, GAIL
HORNING, DAVID BURNS, PIUS A.
HORNING, KARLA STUCK, and MELANIE
BELTANE,

Plaintiffs

vs.

ENVIRONMENTAL QUALITY
COMMISSION of the STATE OF OREGON,
and DEPARTMENT OF ENVIRONMENTAL
QUALITY of the STATE OF OREGON,

Defendants

vs.

UNITED STATES ARMY,

Intervenor

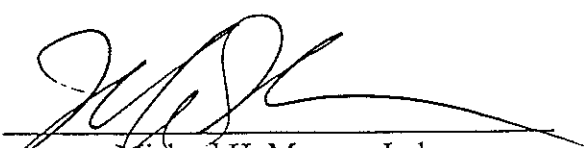
Case No. 9708-06159

JUDGMENT ON REVIEW
ORS 183.484(4)

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The orders of the Department of Environmental Quality and the Environmental
Quality Commission (DEQ/EQC) subject of this proceeding are AFFIRMED.

June 1, 1999


Michael H. Marcus, Judge

99-0942 X

RECEIVED

JUN 04 1999

Trial Division, Dept. of Justice
Salem, Oregon

IN THE CIRCUIT COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF MULTNOMAH

G.A.S.P., SIERRA CLUB, OREGON
WILDLIFE FEDERATION, KARYN JONES,
SUSAN JONES, HEATHER BILLY,
DEBORAH BURNS, JANICE H. LOHMAN,
LEANDRA PHILLIPS, MERLE C. JONES,
CINDY BEATTY, ANDREA E. STINE,
DOROTHY IRISH, MARY BLOOM,
ROBERT J. PALZER, JANET NAGY,
LaDONNA KING, JOHN SPOMER,
CHRISTINE CLARK, STUART DICK, GAIL
HORNING, DAVID BURNS, PIUS A.
HORNING, KARLA STUCK, and MELANIE
BELTANE,

Plaintiffs

vs.

ENVIRONMENTAL QUALITY
COMMISSION of the STATE OF OREGON,
and DEPARTMENT OF ENVIRONMENTAL
QUALITY of the STATE OF OREGON,

Defendants

vs.

UNITED STATES ARMY,

Intervenor

Case No. 9708-06159

OPINION AND ORDER
DENYING SUPPLEMENTAL
PETITIONS AND
FOR FINAL JUDGMENT

1 Defendants' motion for final judgment (in the form of a Supplemental Motion for
2 Summary Judgment) and petitioners' motions for leave to file a First and Second Petitions for review
3 came on for hearing June 1, 1999. Petitioners appeared through counsel Stuart A. Sugarman and (by
4 telephone) Richard E. Condit. Respondents appeared through counsel Stephen K. Bushong.

1 Intervenor appeared through counsel (by telephone) Mark Nitczynski. The matters were argued
2 and submitted for decision.

3 *Background*

4 On December 6, 1998, I concluded that the orders of the Department of Environmental
5 Quality and the Environmental Quality Commission (DEQ/EQC) granting permits to intervenor
6 United States Army (Army) for storage and treatment of hazardous waste and for discharge of air
7 contaminants in connection with the Army's construction and operation of the Umatilla Chemical
8 Agent Disposal Facility near Hermiston, Oregon were ambiguous in one respect only, and I
9 accordingly "remand[ed] these orders to the respondents to determine what role the PAS carbon
10 filters play in their analysis. On remand, Petitioners may choose to offer new evidence which
11 respondents may consider or decline to consider."

12 On December 14, 1998, petitioners' counsel wrote to respondents asserting that "[y]our task
13 is now to have a hearing to evaluate the use of Pollution Abatement System (PAS) carbon filters and
14 to decide whether they are a critical component (s most of the commission stated earlier) or merely
15 an 'extra safety precaution' as was claimed in circuit court." The letter proceeded to renew the
16 petitioners' request for a contested case proceeding, and to argue at some length that the
17 commissioners had already articulated that the filters were critical, that evidence (all or most of
18 which was not part of the record on which the original orders were based) suggested that the filters
19 added rather than reduced risks associated with operation of the proposed facility and militated in
20 favor of conclusions that the facility was not consistent with safety to the public or the environment
21 and did not represent the best available technology.

22 On February 4, 1999, the DEQ responded to the petitioners' letter with a brief letter stating

1 that the Commission would consider a revised order at its March 19, 1999, meeting, that the
2 Commission would accept written comments *on the revisions to the order*, and that “we are denying
3 your request for a contested case hearing on this matter.”

4 On March 19, 1999, the EQC issued an “Order Clarifying Permit Decision” reciting that it
5 had not relied on the PAS carbon filters in concluding that the facility would “not have any major
6 adverse effects on public health and safety, or the environment of adjacent lands” or that the facility
7 would use the “best available technology for destruction of agent at Umatilla.” The order further
8 recited that the EQC “has required inclusion of the PAS carbon filters” as “an additional measure
9 of safety.” In its post-remand submissions to this court, the respondents announced an intention to
10 hold at least one work session on June 24, 1999, “on PAS carbon filters” based on “new information
11 that has recently come to DEQ/EQC’s attention.”

12 Petitioners’ proposed First Supplemental Petition seeks review of the February 4, 1999,
13 response to their December 14, 1998 letter; the Second Supplemental Petition seeks review of the
14 March 19, 1999, “Order Clarifying Permit Decision.”

15 *Analysis*

16 Most, if not all, of the information the petitioners submitted to respondents and to this court
17 constitute evidence that was not part of the record that produced the permits. Although EQC was
18 free to consider that information before clarifying respondents’ original orders granting the permits,
19 it was free merely to clarify its order and separately to consider the new evidence. That EQC chose
20 to solicit comment does not change what happened on March 19, 1999, into something other than
21 a clarification of the original orders; petitioners’ letter in some part constitutes a comment on
22 precisely how the EQC should clarify its orders.

1 During the course of the hearing on these motions, counsel for respondents conferred with
2 representatives of the respondents and clarified that the scope of the June 24, 1999, will be limited
3 to the PAS carbon filters and new evidence concerning their fate. Counsel also revealed the
4 understandable interpretation of petitioners' December 14, 1998, letter as a repetition of arguments
5 that the original decision was wrong, rather than a demand for reexamination of the permits
6 themselves (in the form of a contested case hearing) in light of post-hearing evidence concerning the
7 Army's viability as operator of the proposed facility, the validity of the respondents' assessment of
8 risks to health, safety, and environment, and the accuracy of the respondents' conclusion that the
9 proposed facility would employ the "best available technology."

10 The letter is, however, also susceptible to its apparently intended interpretation - as a demand
11 for revocation of the permits and reconsideration based on new evidence. Counsel for respondents
12 again conferred with respondents' representatives and agreed that respondents would now consider
13 the letter as demanding:

- 14 a.Revocation of the permits based on new evidence,
- 15 b.Reconsideration based on new evidence, and
- 16 c.A contested case proceeding in the course of considering revocation and reconsideration.

17 Counsel for respondents also agreed that they would attempt to make a determination of how
18 they would respond to the letter so construed by mid August, by which time they should have new
19 information from the Army and from the National Research Council concerning the fate of several
20 important components which petitioners assert the Army already knows it cannot and will not
21 employ in the proposed facility as presented to respondents. Counsel for respondents and petitioners
22 may agree to a later response date in light of the tremendous amount of material involved.

1 If respondents decide not to conduct further proceedings in response to petitioner's demands,
2 petitioners may seek redress in the manner contemplated by ORS 183.490. If respondents consider
3 petitioners' material but reach a decision petitioners find unsatisfactory, petitioners can seek further
4 relief from this court in the manner contemplated by ORS 183.484. But nothing suggested by the
5 petitioners calls for interrupting the appropriate process, whereby it is respondents that have the
6 responsibility to consider the new evidence and to exercise their discretion in the manner delegated
7 to them by law, and the courts have only the limited role accorded to them under the Administrative
8 Procedures Act.

9 Petitioners do identify one issue that is theoretically ripe for review, whether the EQC's
10 finding that the PAS carbon filters provide "an additional measure of safety" is adequately supported
11 by the record which closed in 1997. Because the significance of that issue is so slight in light of the
12 respondents' proposed consideration of new evidence concerning those filters, I find unpersuasive
13 any suggestion that I should exercise my discretion to allow a supplemental petition for that inquiry.
14 Any interest in judicial efficiency can be adequately served by any party notifying the presiding
15 court, in the likely event of a new petition, that this court has familiarity with the administrative
16 record and the issues in this case.

17 Counsel for respondents has agreed on the record, however, that petitioners shall have 60
18 days from the date of this order in which timely to file a separate petition for judicial review on any
19 of the subjects contemplated by either or both of their proposed supplemental petitions.

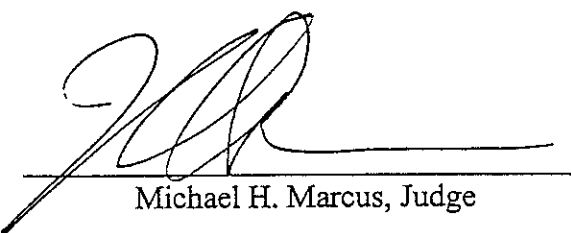
20 With respect to respondents' request for entry of judgment, I find that the March 19, 1999,
21 "Order Clarifying Permit Decision" resolves the one ambiguity I identified in my previous
22 OPINION AND ORDER on CROSS MOTIONS FOR SUMMARY JUDGMENT, and that

1 respondents are entitled to final judgment in their favor for the reasons stated in that Order and
2 Opinion. June 1, 1999. Accordingly,

3 IT IS HEREBY ORDERED:

- 4 1. Respondents' "Supplemental Motion for Summary Judgment," considered as a
5 motion for entry of final judgment, is GRANTED;
- 6 2. Petitioners motions to file supplemental petitions for review are DENIED;
- 7 3. Petitioners shall have 60 days from the date of this order in which to file a separate
8 petition or petitions for judicial review on any of the subjects contemplated by either or both
9 of their proposed supplemental petitions.

10
June 1, 1999


Michael H. Marcus, Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY
MULTNOMAH COUNTY COURTHOUSE
1021 SW 4th Portland, Oregon 97204
(503) 248-3022

99-0942
SXB

RECEIVED
JUN 04 1999

Bar#: 85130
Trial Division, Dept. of Justice
Salem, Oregon

STEPHEN K BUSHONG
Attorney at Law
DEPARTMENT OF JUSTICE
1162 COURT STREET NE, ROOM 100
SALEM OR 97310-0506

GASP/Environmental Quality Commi
Case#: 970806159 C Civil Other

NOTICE OF ENTRY OF JUDGMENT
NOT DOCKETED

A Judgment was entered in the register of the Court in the above-noted case on June 2, 1999.

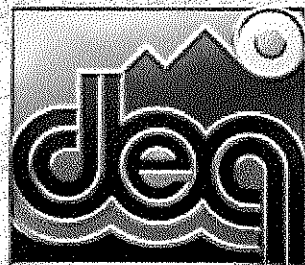
Judgment on Review
was NOT docketed in the Court judgment docket.

This notice is sent in accordance with ORCP 70B.

Note: Entering a judgment in the case register does NOT create a lien on real property.

Client(s) of Addressee:
ENVIRONMENTAL QUALITY COMMISSI
DEPARTMENT OF ENVIRONMENTAL QU

CC:
STUART A SUGARMAN
LESLIE JAUANNA WESTPHAL



Umatilla Chemical Depot and Umatilla Chemical Agent Disposal Facility

**Environmental Quality Commission
June 25, 1999**

**Presented by Wayne C. Thomas, Program Manager,
Umatilla Chemical Agent Disposal Program**

Umatilla Program Status

- Permit Management and Modification
- Communication
- Public Outreach
- Current Issues
 - Dunnage Incinerator
 - Carbon Filter System
 - Construction Schedule
 - Storage Permit Application

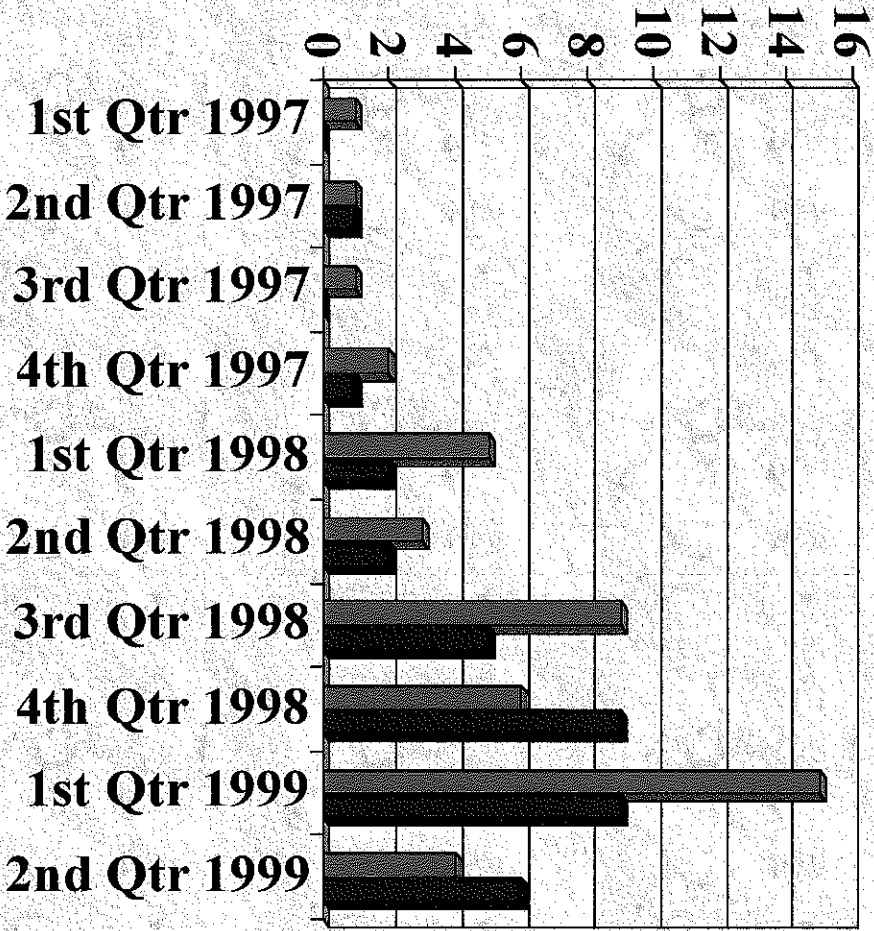
Permit Modifications

47 modifications received since the Permit was issued in February 1997.

36 have been approved.

26 modifications scheduled for submittal by end of Third quarter 1999.

Permit Modifications by Calendar Quarter



Received
 Approved

Total Received: 47
Total Approved: 36

Permit Modifications

<i>Date DEQ Received</i>	<i>Modification Request</i>	<i>Request No</i>	<i>Modification Class</i>	<i>Approval Date</i>	<i>Change Pages Issued</i>	<i>Public Notice Due</i>	<i>Received Public Notice</i>	<i>Date Public Notice Received</i>	<i>Completed</i>
05/12/1997	Closure Plan Soil Sampling	UMCDF-97-001-CLOS(1R)	1	05/21/1997	06/02/1997	08/19/1997	<input checked="" type="checkbox"/>	08/19/1997	<input checked="" type="checkbox"/>
03/31/1997	Adding Raytheon as Co-Permittee	UMCDF-97-002-RDC(3E)	3	01/09/1998	01/29/1999	04/04/1997	<input checked="" type="checkbox"/>	04/04/1997	<input checked="" type="checkbox"/>
08/07/1997	Operational Limitations Due to Severe Weather	UMCDF-97-003-MISC(2)	2	11/24/1998	11/24/1998	08/15/1997	<input checked="" type="checkbox"/>	08/15/1997	<input checked="" type="checkbox"/>
10/28/1997	Container Handling Building Secondary Containment Area Double Wall Piping	UMCDF-97-004-CHB-(1N)	1	10/28/1997	12/03/1997	01/26/1998	<input checked="" type="checkbox"/>	01/26/1998	<input checked="" type="checkbox"/>
11/19/1997	Carbon PAS	UMCDF-97-005-PAS(2TA)	2	11/17/1998	04/05/1999	11/26/1997	<input checked="" type="checkbox"/>	11/18/1997	<input checked="" type="checkbox"/>
01/07/1998	Implementation of Staggered ACAMS on the Common Stack	UMCDF-97-006-MON(1R)	1	05/03/1999		08/03/1999	<input type="checkbox"/>		<input type="checkbox"/>
01/28/1998	Extension of Deadline for MDB/Lab Filter System Secondary Containment	UMCDF-98-001-HVC(1R)	1	03/05/1998	11/23/1998	06/03/1998	<input checked="" type="checkbox"/>	05/28/1998	<input checked="" type="checkbox"/>
02/19/1998	Post-Trial Burn Risk Assessment	UMCDF-98-002-MISC(1R)	1	07/01/1998	07/01/1998	09/29/1998	<input checked="" type="checkbox"/>	09/29/1998	<input checked="" type="checkbox"/>
02/19/1998	Addition of Agent Purity Language	UMCDF-98-003-WAP(1R)	1	04/23/1998	02/10/1999	07/22/1998	<input checked="" type="checkbox"/>	05/28/1998	<input checked="" type="checkbox"/>
02/27/1998	Background Soils Sampling	UMCDF-98-004-MISC(1R)	1	07/01/1998	07/07/1998	09/29/1998	<input checked="" type="checkbox"/>	09/29/1998	<input checked="" type="checkbox"/>
04/20/1998	Extension of Deadline for the Incorporation of the 40 CFR 264 Subpart CC	UMCDF-98-005-MISC(1R)	1	04/20/1998	11/23/1998	07/20/1998	<input checked="" type="checkbox"/>	05/28/1998	<input checked="" type="checkbox"/>

<i>Date DEQ Received</i>	<i>Modification Request</i>	<i>Request No</i>	<i>Modification Class</i>	<i>Approval Date</i>	<i>Change Pages Issued</i>	<i>Public Notice Due</i>	<i>Received Public Notice</i>	<i>Date Public Notice Received</i>	<i>Completed</i>
04/27/1998	Revising 24-Hour Requirement in Concrete Specification 03300	UMCDF-98-006-CONS(1R)	1	07/28/1998	12/29/1998	10/26/1998	<input checked="" type="checkbox"/>	09/29/1998	<input checked="" type="checkbox"/>
06/22/1998	Subpart X Engineering Drawings	UMCDF-98-007-BRA(1R)	1	08/04/1998	12/01/1998	11/02/1998	<input checked="" type="checkbox"/>	09/29/1998	<input checked="" type="checkbox"/>
08/05/1998	Specification 03300-Concrete for Building Construction and Other Work	UMCDF-98-008-CONS(1R)	1	12/22/1998	12/29/1998	03/22/1999	<input checked="" type="checkbox"/>	03/24/1999	<input checked="" type="checkbox"/>
08/05/1998	MDB and Laboratory Carbon Filter Secondary Containment Vestibules	UMCDF-98-009-HVC(2)	2	02/16/1999	04/15/1999	08/12/1998	<input checked="" type="checkbox"/>	08/12/1998	<input checked="" type="checkbox"/>
08/26/1998	Special Coating Systems Specification 09850	UMCDF-98-010-CONS(1R)	1	12/23/1998	12/29/1998	03/23/1999	<input checked="" type="checkbox"/>	03/24/1999	<input checked="" type="checkbox"/>
09/10/1998	UMCDF EPA Identification Number	UMCDF-98-011-MISC(1R)	1	01/20/1999	02/01/1999	04/20/1999	<input checked="" type="checkbox"/>	04/19/1999	<input checked="" type="checkbox"/>
09/10/1998	Modification to Specification 03200-Concrete Reinforcement	UMCDF-98-012-CONS(1R)	1	10/05/1998	10/30/1998	01/04/1999	<input checked="" type="checkbox"/>	12/22/1998	<input checked="" type="checkbox"/>
09/10/1998	Extension of Deadline for the Incorporation of the 40 CFR 264 Subpart CC	UMCDF-98-013-MISC(1R)	1	09/22/1998	12/07/1998	12/21/1998	<input checked="" type="checkbox"/>	12/22/1998	<input checked="" type="checkbox"/>
09/16/1998	Expansion Joints, Contraction Joints, and Waterstops Specification 03250	UMCDF-98-014-CONS(1R)	1	11/09/1998	12/07/1998	02/08/1999	<input checked="" type="checkbox"/>	02/09/1999	<input checked="" type="checkbox"/>
09/24/1998	Secondary Containment for the Subpart X Units in Section D-9, Misc Units	UMCDF-98-015-BRA(1R)	1	04/27/1999		07/27/1999	<input type="checkbox"/>		<input type="checkbox"/>
09/22/1998	Specification 03100-Structural Concrete Formwork	UMCDF-98-016-CONS(1R)	1	11/09/1998	12/01/1998	02/08/1999	<input checked="" type="checkbox"/>	12/22/1998	<input checked="" type="checkbox"/>
10/22/1998	Modification to Specification Section 13201-Pressure Vessels	UMCDF-98-017-CONS(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>

<i>Date DEQ Received</i>	<i>Modification Request</i>	<i>Request No</i>	<i>Modification Class</i>	<i>Approval Date</i>	<i>Change Pages Issued</i>	<i>Public Notice Due</i>	<i>Received Public Notice</i>	<i>Date Public Notice Received</i>	<i>Completed</i>
10/13/1998	Comprehensive Monitoring Program Workplan and Sampling and Analysis Plan	UMCDF-98-018-CMP(2)	2	04/30/1999		10/20/1998	<input checked="" type="checkbox"/>	10/20/1998	<input type="checkbox"/>
12/30/1998	UMCDF Permit Application Administrative Changes	UMCDF-98-019-MISC(1R)	1	03/04/1999	05/03/1999	06/02/1999	<input checked="" type="checkbox"/>	03/24/1999	<input checked="" type="checkbox"/>
12/03/1998	Modification to Specification Section 09900 - Painting, General	UMCDF-98-020-CONS(1R)	1	12/29/1998	01/05/1999	03/29/1999	<input checked="" type="checkbox"/>	03/24/1999	<input checked="" type="checkbox"/>
01/14/1999	Pollution Abatement System Strainer Deviation, UMCDF0122D	UMCDF-98-021-PAS(1R)	1	02/22/1999		05/24/1999	<input checked="" type="checkbox"/>	03/24/1999	<input type="checkbox"/>
12/09/1998	Removal of Request for Information ANN-00438 from Specification 03250	UMCDF-98-022-CONS(1R)	1	12/28/1998	12/29/1998	03/29/1999	<input checked="" type="checkbox"/>	03/24/1999	<input checked="" type="checkbox"/>
12/30/1998	Modification to Specification Section 15120 - Process Piping, General	UMCDF-98-023-CONS(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>
01/14/1999	Modification to Specification Section 13202 Tanks	UMCDF-99-001-CONS(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>
01/27/1999	Brine Surge Tank System (BRA)	UMCDF-99-002-BRA(2R)	2			02/03/1999	<input checked="" type="checkbox"/>	02/09/1999	<input type="checkbox"/>
01/21/1999	Modification to Specification Section 16641-Cathodic Protection System Tank	UMCDF-99-003-CONS(1R)	1	03/24/1999		06/24/1999	<input checked="" type="checkbox"/>	04/19/1999	<input type="checkbox"/>
01/28/1999	Specification Section 13215, Underground Storage Tank (Fiberglass-Reinforced Plastic) Systems	UMCDF-99-004-CONS(1R)	1	02/26/1999		05/27/1999	<input checked="" type="checkbox"/>	03/24/1999	<input type="checkbox"/>
02/25/1999	Modification to Specification Section 15160 - Pumps	UMCDF-99-005-CONS(1R)	1	03/24/1999		06/24/1999	<input checked="" type="checkbox"/>	04/19/1999	<input type="checkbox"/>
02/16/1999	Update the UMCDF RCRA Tank Assessment	UMCDF-99-006-MISC(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>

<i>Date DEQ Received</i>	<i>Modification Request</i>	<i>Request No</i>	<i>Modification Class</i>	<i>Approval Date</i>	<i>Change Pages Issued</i>	<i>Public Notice Due</i>	<i>Received Public Notice</i>	<i>Date Public Notice Received</i>	<i>Completed</i>
03/02/1999	Specification Section 05500, Miscellaneous Metal	UMCDF-99-007-CONS(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>
03/15/1999	Specification Section 02556, Bituminous Surface Course (Central Plant Hot-Mix)	UMCDF-99-008-CONS(1R)	1	03/26/1999		06/28/1999	<input checked="" type="checkbox"/>	04/19/1999	<input type="checkbox"/>
03/03/1999	Update the Umatilla Chemical Agent Disposal Facility Analytical Procedures	UMCDF-99-009-MISC(1R)	1	06/25/1999		09/25/1999	<input type="checkbox"/>		<input type="checkbox"/>
03/10/1999	Training as a Result of Instances of Noncompliance or Potential Noncompliance	UMCDF-99-010-MISC(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>
03/16/1999	On-Site Containers and Spray Tank Shipping/Overpack Containers as Secondary Containment	UMCDF-99-011-CHB(2)	2			03/25/1999	<input checked="" type="checkbox"/>	03/22/1999	<input type="checkbox"/>
03/15/1999	Extension to Compliance Deadline for Implementation of 40 CFR Subpart CC Air Emission Standards	UMCDF-99-012-MISC(1R)	1	03/22/1999	04/15/1999	06/22/1999	<input checked="" type="checkbox"/>	04/19/1999	<input checked="" type="checkbox"/>
03/23/1999	Specification Section 02512, Concrete Pavement	UMCDF-99-013-CONS(1R)	1	04/12/1999		07/12/1999	<input type="checkbox"/>		<input type="checkbox"/>
03/23/1999	Specification Section 02511, Concrete Sidewalks and Curbs and Gutters	UMCDF-99-014-CONS(1R)	1	04/02/1999		07/02/1999	<input checked="" type="checkbox"/>	04/19/1999	<input type="checkbox"/>
04/07/1999	Specification Section 02210, Earthwork	UMCDF-99-015-CONS(1R)	1	04/27/1999		07/27/1999	<input type="checkbox"/>		<input type="checkbox"/>
04/26/1999	Clarification on Receipt and Sending of Hazardous Waste to and from the Site	UMCDF-99-016-MISC(1R)	1				<input type="checkbox"/>		<input type="checkbox"/>
05/11/1999	Brine Reduction Area Subpart X Treatment Unit Performance Test	UMCDF-99-018-BRA(2)	2			05/11/1999	<input checked="" type="checkbox"/>	05/13/1999	<input type="checkbox"/>
05/18/1999	Permitting of the Munitions Demilitarization Building for the Storage of Munitions and Bulk Items	UMCDF-99-019-MDB(2)	2			05/19/1999	<input checked="" type="checkbox"/>	05/19/1999	<input type="checkbox"/>

Communication between DEQ and Permittee

- **Monthly executive meeting with site managers:** DEQ, PMCSD, RDC, UMCD
- **Raytheon Project meetings:** Monday, Wednesday and Friday
- **Monthly meeting:** DEQ, PMCSD, UMCD, RDC, Corps of Engineers
- **Bi-weekly Engineering Change Proposal meetings:** DEQ, PMCSD, RDC
- **Bi-monthly Public Affairs meeting:** DEQ, UMCD/PMCSD, RDC, Outreach office, Umatilla County, Morrow County, Benton County, Washington Emergency Management, Oregon Emergency Management, FEMA
- **Issue specific meetings:** as needed

PUBLIC OUTREACH

- **The Umatilla Program will be previewing its new website on the DEQ intranet by late August. There will be links on this page to status reports and the permit, other related sites, and to contact the Hermiston office directly. The website will be linked from the DEQ home page to the web in the near future.**
- **The Umatilla Program recently implemented its new Public Involvement Plan to focus and direct efforts of public outreach.**
- **The Permittee has developed a Department approved Public Awareness Plan. The Plan will inform the public about plant systems testing and any visible emissions from UMCDF prior to Hazardous Waste Operations. The Plan includes:**
 - **A Toll free number for information**
 - **Public Service Announcements**
 - **Public Meetings**
 - **Display Ads**



Umatilla Chemical Agent Disposal Program

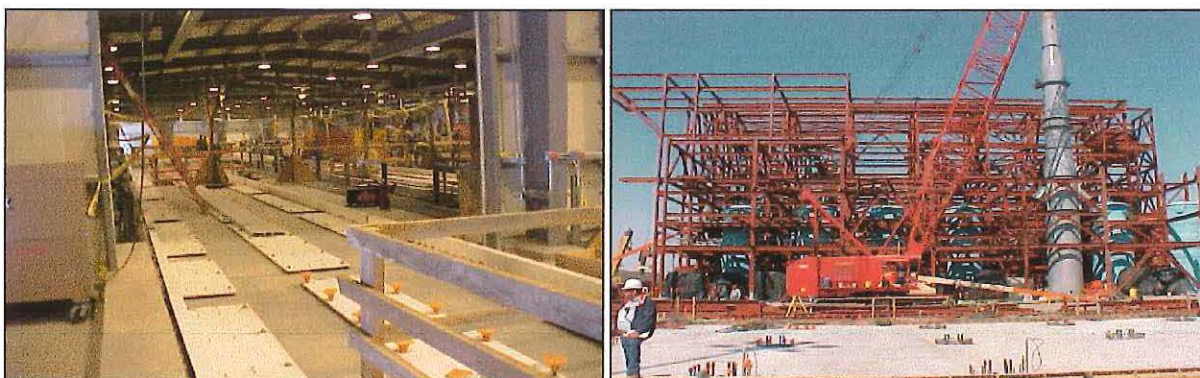
Hermiston, OR



Our Mission: To protect people and the environment by overseeing the safe destruction o

The Umatilla Chemical Depot near Hermiston, Oregon, is the site for the Umatilla Chemical Agent Disposal Facility(UMCDF). The Oregon DEQ and the EPA issued environmental permits to the U.S. Army and Raytheon Demilitarization Company to construct, operate, and ultimately close down UMCDF.

This permit, and the DEQ staff at Hermiston assigned specifically to this project, regulate and monitor the construction and activity at the incineration facility.



[Click here to be added to or removed from our mailing list](#)

- [ABOUT THE STAFF](#)
- [PROJECT HISTORY](#)
- [RISK ASSESSMENT](#)
- [UMCDF COMPLIANCE HISTORY](#)
- [PROGRAM STATUS REPORT](#)
- [PUBLIC PARTICIPATION](#)
- [PERMIT MODIFICATIONS](#)
- [RCRA Hazardous Waste Treatment and Storage Permit](#)

Links to related sites:

- [RETURN to DEQ HOME PAGE](#)
- [Chemical Demilitarization Citizen's Advisory Commission](#)
- [Program Manager for Chemical Demilitarization](#)
- [Chemical and Biological Defense Command](#)

CURRENT PROGRAM ISSUES

DUNNAGE INCINERATOR AND SECONDARY WASTE:

- Army is currently reviewing technologies for the treatment of secondary wastes. The DUNNAGE Incinerator is on hold.
- Army expects to have decision by July/August 1999.
- Army decision will likely result in a CLASS 3 Permit Modification which will require EQC Approval.

CURRENT PROGRAM ISSUES

CARBON FILTER SYSTEM:

- The National Research Council will release a report studying carbon filter systems at the end of June or early July. On August 19, 1999, a representative from the NRC will attend an Oregon Chemical Demilitarization Citizens Advisory Commission meeting to brief the Commission on the results and answer questions.

RESPONSE TO LEGAL PROCEEDINGS

- The Department will treat the petitioners' letter dated December 14, 1998 as effectively requesting reconsideration and/or revocation of the permits based on new evidence.
- The Department will be decided by mid August 1999 whether or not to consider new evidence offered by the petitioners and (assuming that such evidence will be considered) will proceed to address petitioners request for reconsideration/revocation under established statutory and regulatory guidelines.

CURRENT PROGRAM ISSUES

CONSTRUCTION SCHEDULE:

- The Army is currently reviewing a revised construction and systemization schedule that was submitted by Raytheon.
- Construction is approximately 50% complete.
- Plant system testing is scheduled to begin in early October. The first tests will involve activation of the boilers which will produce visible emissions.
- Once boilers are fired they will operate for the life of the project.
- Plant System Testing does not involve chemical agents or surrogate agents.

CURRENT PROGRAM ISSUES

STORAGE PERMIT APPLICATION:

- **UMCD submitted a RCRA Part B Hazardous Waste Storage Permit Application in March 1999 and is currently under review. An initial Notice of Deficiency was issued on May 24, 1999, and a response is required by July 26, 1999. The Department is scheduling a public information meeting in August/September to provide information and listen to public concerns prior to developing a draft permit.**

ISSUES FOR EQC

- The Department recommends the EQC request the Army provide a briefing at August Commission meeting on Dunnage Incinerator/Secondary Waste issues.
- Future presentation by NRC on Carbon Filter Report.
- Schedule Carbon Filter Work Session.
- The Department will provide results of the compilation and review of exhibits from the legal proceedings.



Garton & Associates Realtors

440 S.W. FIRST • PENDLETON, OREGON 97801 • PHONE (541) 276-0931
FAX (541) 276-2459 • <http://www.ucinet.com/~gartonar>

DATE: June 22, 1999
TO: DEQ
FROM: Calvin B. Garton
RE: Meeting

I apologize for not being able to make this afternoons meeting, I'm leaving for a family reunion in Arkansas. In my absence, Mr. Val Toronto will be taking my place.

Thank you,

Kalvin B. Garton ALC, GRI, ARC
Broker/Owner



"Where Real Estate is a Profession"



FACTS AND EVIDENCE

The URGC met with the Department, beginning in 1994, to discuss the opening of a composting operation. At no time were we given any encouragement or aided by staff to achieve our goal of undertaking a Demonstration for Recycling, Composting and Land Reclamation. ORS 459.015.

ORS-459.025 (1) and ORS-459.035 (2) and ORS 459.045 (A), (a), (b), (4)

We met each added requirement as required, by the County and DEQ, and still were never issued a permit. In Vera Simonton's letter of February 22, 1996 she asks why we are being asked to submit even more detailed information than what was agreed to at the meeting in The Dalles, February 8, 1996.

We formally asked Stephanie Hallock for an Independent Environmental Assessment and received NO response.

The County lost our LUCS application when we would not sign off on the 120 day limit for issuing a LUCS. After 120 days it should have been automatically issued. That is the State law.

The URGC attempted to adapt their facility to DEQ's ever changing requirements. The Department admits their own confusion on rules. Stephanie Hallock tells us we can use wood chips and manure with no permit required. Gerry Preston notifies us that every wood chip has to be removed as he "sees fit". Joni Hammond tells our attorney, Sean Donahue, that she doesn't see a problem with wood chips and manure.

The Department admits in their own publication, Waste Management & Cleanup Division, December 1996, "That the existing Solid Waste rules can not easily be applied to composting operations. This has resulted in inconsistencies in interpretation and application of existing rules at the 45 composting facilities around the state. Only six of the facilities currently have solid waste disposal site permits...". We could find NO permits for composting only, they are also for Solid Waste.

Clearly our organization has been singled out for alleged violations. To be cited for 1 tire, a sheet of visquine, and a small amount of fiberglass insulation borders on the ridiculous.

On August 8, 1995, the day after we had taken DEQ to our proposed site, we were issued a Non-Compliance citation for an old State of Oregon waste pile. It had been used by the State for more than 50 years and showed no evidence of any storm drainage into the adjacent gully. This proved there was no possible risk of runoff.

Please refer to the photos taken by Glen Diehl of the Sheriff's

office, Gerry Preston and John Dadoly of DEQ. There is no pernicious putrescible waste visible. There is no evidence of burying or burning the waste, excluding the warming fire for the workers who were sorting materials. There is no evidence of the URG deliberately hiding or mis-using any of the recyclables.

The photos clearly show materials being hand sorted and stacked. The metal, plastic, the tire and the fiberglass insulation were removed in a timely fashion.

The photos also show there is no possibility of surface water contamination. The wood chips were manufactured from 50 year old dried, cured, untreated waste wood from the Harris Pine Mill. They contained no contaminants, no paint or preservatives.

Our soils report, by Val Toronto P.E, Soils Expert, to DEQ showed there was no possibility of runoff. The URG also constructed 2 dikes, where the road crossed the gully, to contain any potential water runoff.

Mike Johnson, the hauler, was notified many times, by telephone, letters and by our attorney to stop hauling. As the generator of the waste he should be contacted by DEQ. OAR 340-90-010

URGC'S first notification of Non-Compliance was the front page article in the East Oregonian newspaper. We received the official notification April 21 or April 22, 1996.

Goal 2 of the Oregon State Integrated Resource & Solid Waste Management Plan 1995-2005, insures all residents of the state are provided the opportunity to recycle

We contend DEQ has not met the recycling goals for Oregon as directed by Legislation in 1991 (ORS-459). Umatilla County has not met the recycling goals mandated, in fact they reduced the goals as they cannot be met. Our environment is clearly getting trashed by the DEQ's support of flow control, monopolistic, no competition, budget driven policies.

This is truly environmental management by F-Troop. The DEQ's \$100 fee for a Transfer Station permit and the \$10,000 fee for recycling/resource recovery and composting operations clearly shows that the Department encourages more refuse going into landfills, where they get paid by the ton disposed of!

The Umatilla Recycling Group received NO economic benefit. As a registered Non-Profit Corporation this was not an option.

The URG met with DEQ and asked for an extension of time for disposing of the contested construction/demolition debris.

We also contend the magnitude of the violation, if any, has been greatly exaggerated. The complaint should only cover those

materials on site at the time of the Notice of Non-Compliance. These materials as per the NONC were clearly all clean wood materials and already source separated recyclables. We never received another NONC for Mr. Johnson's additional materials.

Members of the URG made formal complaints to John Dadoly in the Pendleton office, of the City of Pendleton's Patawa Creek unpermitted dump site. The waste was buried with no fine. The City Attorney and the City Planner were both aware it was an illegal operation. DEQ in Pendleton was furnished with/and made available over 400 photos of various illegal dumpsites in and near Pendleton and they took NO action. Many of these putrescible solid waste dump sites were located in watershed areas situated in the Umatilla River Basin.

Our problems with DEQ began with individual personalities and their interpretation of rules and regulations. There is too much confusion within the Department concerning rules governing composting operations, such as the one we tried to get approval for, that it was impossible to obtain clear answers to our questions.

Our goal was to provide a sanitary landfill and attain the 50% recycling goal established in State Statutes, State Planning Goals, County Land Use Planning, County Solid Waste Management Plan and County Ordinance 90-07.

The principle objectives of the Agri-Co-Op are set out in ORS 459.015 (1994,95,96).

We therefore ask that the DEQ be reprimanded for forcing us to dispose of our recyclable property and any and all fines or penalties be dismissed.

Umatilla Refuse Group Co-op
441 S.W. Court Ave.
Pendleton, Oregon 97801

Re-submitted December 13, 1998



Karl Garton
Legal Representative



Vera Simonton
Legal Representative

July 17, 1998

Dear Mr. Smith,

Attached please find our Exhibits Index Lists and Exhibits that apply to each subpoenaed party.

This case is as simple as the definition of Solid Waste vs. Clean Wood Chips (Recyclables) OR.

It is far more complex because we have proved DEQ erred.

Our case cannot be presented as one piece, it has too many factors: Conspiracy, Flow Control, Environmental Degradation by the DEQ, Harassment, Discrimination, Restriction of Trade, Anti-Trust and Inter-State Commerce.

The facts begin in April 1994 when a group strongly objected to the siting of a Transfer Station-Recycling Center in a residential neighborhood.

Mr. Tim Davison, DEQ, stated the landfill needed to close because FAA would not allow it to remain open near the Airport because of the possibility of bird strike. The regulation was mis-stated and this was not true. He continues to make these mis-statements in July 1997.

A letter from Fred Hanson stated DEQ never ordered the landfill to close and a later letter from John Dadoly stated it was closed by Pendleton Sanitary Service "because of financial reasons they (DEQ) were not privy to".

A letter from Harold Handke, FAA, said they had never given any closure orders.

The information we gathered indicated DEQ was not assisting small communities to keep their landfills open, and were not reporting latest EPA regulations, RCRA and the latest Sub Title D rules.

DEQ is not reducing the amount of useable compostable material going into landfills. It is in fact going up and these composting/recycling programs in Oregon are a failure.

State law from the Senate states Reduce, Reuse and Recycle, these are clearly not being followed by this budget driven agency.

The Umatilla Refuse Group applied to the County for a landfill and the application was lost by them. Our requirements could not be completed because we could never get DEQ's promised

approval.

We have pointed all these DEQ myths out repeatedly to the City, County, and State officials. Mr. Preston said this agency "can do anything he sees fit".

We had DEQ written approval to take clean wood chips. Then they illegally made us move them. They were clearly protecting their franchise/monopoly.

The Oregon Cattlemen's Association and Oregon Farm Bureau is very interested in the Agencies arrogant attitude to classifying animal bedding materials, compostable wood chips and soil amendments as Solid Wastes "as they see fit". August 22, 1996 letter from Mr. Preston.

The County tells us we must have DEQ permission first to locate a landfill.

We tore down all of Harris Pine Mills in Pendleton and recycled the lumber in the buildings. See photo.

Because of time constraints the office building and the Harris Pine Yard building was chipped on site.

Mike Johnson, of Kennewick, who did the hauling was fined \$189 after dumping about 5% of the total hauled in solid waste.

We attended an informal hearing with Stephanie Hallock and were told we could use wood chips.

Appeared before the Pendleton Sanitary Regulatory Board and had them change their franchise ordinance to allow Recycling/Composting without a franchise.

Franchise fees collected amount to bribes of 5% of gross so the City, County and State Government want higher rates.

Illegal dumping complaints in Umatilla County skyrocket.

There have been numerous landfill closures but no new openings.

Total flow control creates a monopoly. Please see Carbone decision by Supreme Court. Interstate Commerce was affected as Mike Johnson/WalMart were from out of state.

Locally the Woodfeathers case is against Flow Control-see decisions.

The bottom line is DEQ gave us permission to use wood chips. All other law suits were dropped immediately. They are still in our face and the County refuses to proceed.

STATEMENT OF FACTS

Submitted by J. Val Toronto, P.E., General Manager of Umatilla Refuse Group

If the Commission had allowed the presentation of all correspondence, records, engineering reports and conferences during the period of mid 1994 through 1996, there would be an unanimous opinion in support of the Agricultural Co-Op's 3 year attempt to implement Federal, State, County and City Solid Waste Reduction goals, set out as follows:

- 1) 40 Code of Federal Regulations 257 and 258.
- 2) Senate Bill 66-1991, which became ORS 459.015, which the DEQ on February 9, 1996, in The Dalles, agreed to support and to provide the Co-Op with a "Permit to Operate".
- 3) State and County Solid Waste Management Plans from 1974 through 1997 prioritized reduction of the Solid Waste Stream through recycling.
The above referenced and approved Statutes, Rules, Ordinances, Plans and Goals exempted production of fertilizer, soil amendments, soil additions, soil conditioners, including production of similar agricultural products and by-products for garden use, landscaping, soil erosion and LAND RECLAMATION. (Reference ORS 459.015-1991-1995).
- 4) While the Salem Region had, by 1997, formally approved over 400 permits for recycling, the Pendleton area, under direction of the Bend Eastern office had not approved a single similar permit for recycling, by a non-franchised garbage hauler. Or had they "Permitted" the use of hay, straw, manure, paper, brush, lawn clippings, wood chips sawdust for any of the above described uses.
- 5) The Co-Op manager, J. Val Toronto, provided the Pendleton office with three photo albums of Solid Waste Pollution in the Umatilla River Basin, with punitive enforcement action in ONLY ONE of the submittals.
- 6) The Co-Op manager provided the definitive locations of a dozen serious documented Solid Waste violations in the Umatilla Basin with NO enforcement action.
- 7) The President, Treasurer, and General Manager submitted formal complaints to the DEQ Pendleton for Solid Waste violations and violations of the Clean Water Act, NO penalty was assessed in any of the formal complaints filed.
- 8) The local DEQ office was shown numerous photos with dates and locations of Solid Waste violations by J. Val Toronto. No interest was expressed by the local DEQ office in the documented evidence of 400+ photos that he had collected and documented.
- 9) The Eastern Region verbally approves the Co-Op's Solid Waste Reduction Plan, if the plan as prepared by J. Val Toronto, P.E., is revised to include the production of composting in lieu of the above proposed fertilizer and soil amendment processes. Feb. 9, 1996.
- 10) The Co-Op agrees to importation of clean wood chips for a bedding preparation and clean timber for production of wood chips and for fine wood stored on a 1 acre site as set out in the Engineer's Report and approved by DEQ February 9, 1996 in The Dalles.
- 11) The DEQ initiates enforcement action soon after the producer and hauler of wood chips and clean timbers, Mike Johnson of the Harris Pine Mill project, deposits his materials on the Co-Op's

1.0 acre site.

12) Soon thereafter, and without knowledge of the Co-Op, the contractor, Mike Johnson, hauls illegal and nonuseable materials to unapproved locations and to locations that are not in the designated Co-Op's lessee

13) Mike Johnson, producer and hauler, is fined \$159 for the entire quantity of material hauled and deposited by his forces.

14) The Co-Op is fined \$18,750 for the entire unapproved quantity deposited at each unapproved location.

It is interesting to note that the Co-Op was asked to wait up to 3 months for a conference with Department representatives, while Gerry Preston was on the Co-Op site within 20 hours of notification and request by Pendleton Sanitary Service, the Solid Waste monopoly company of Pendleton.

The 8 page FAX to Mr. Langdon Marsh's office, outlining Mr. Toronto's testimony for the July 17, 1998 hearing was never delivered as promised by Mr. Marsh's secretary. Mr. Toronto made several phone calls following transmittal of the FAX and was told it had been received and was assured it would be delivered prior to the hearing. Several days later, Mr. Toronto was told that no such documentation was presented or entered into the hearing!!

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:)
)
Umatilla Refuse Group Co-Op) EXCEPTIONS TO HEARING
An Oregon Non-Profit)
Corporation) ORDER No. SW-ER-96-129
) UMATILLA

The following are the Exceptions that Umatilla Refuse Group Co-Op wants to present to the Environmental Quality Commission:

- 1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015, which mandates alternatives to solutions to Solid Waste Disposal.

State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, or altered through manufacturing is exempt as solid waste.

Statutes and County Ordinance 90-07 precludes all recyclable material, whose cost of collection, storage sale, etc., exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

- 2) Respondent Umatilla did request a "Demonstration" as per ORS 459-015.
- 3) Respondent Umatilla never opened a disposal site. We did not need a permit.
ORS 459.235
- 4) Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.
ORS 459.005(8)
- 5) Respondent Umatilla were not discarding our wood chips.
ORS 459.005(24)
- 6) There was no potential for adverse impact on any waters.
OAR 340-93-050 (e)
- 7) DEQ erred on ruling from Woodfeather's Inc. vs. Washington County, Oregon
1997 WL 31180 (D Or. March 31, 1997), No. 96-257-HA
- 8) DEQ erred and did not include INTER & INTRA State rulings and flow control of property
C & A Carbone Inc. vs. Town of Clarkston.,
511 US 383 (1994)
- 9) Mike Johnson as the generator of the solid waste is responsible until the final disposal.
The URG contacted him many times, by telephone, letter and through our attorney to stop hauling to our site.

OAR 340-90-110

December 12, 1998

Umatilla Refuse Group Co-Operative

Kal B. Garton

Vera Simonton

cc Susan Greco, Environmental Quality Commission

Gordon Smith, U.S. Senator

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF :)	
	)	HEARING ORDER
	)	DENYING
Umatilla Refuse Group Co-Op	)	CIVIL PENALTY
An Oregon Non-Profit Corporation	)	NO. SW-ER-96-129
	)	UMATILLA

BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, The Umatilla Refuse Group Cooperative appealed the notice of assessed penalty dated September 14, 1998 to the Environmental Quality Commission.

Respondent Umatilla was represented by it's president Kal Garton and Vera Simonton, who were appointed legal representatives.

The hearing record should have remained open until Umatilla County was forced to comply with our formal requests to furnish us with the illegal dumping complaints received. The Umatilla Refuse Group has made many requests to the County Commissioners of Umatilla County and the Sheriff's office and to this date, October 12, 1998, have not received the records of illegal dumping complaints.

DEQ erred on ruling from Woodfeathers Inc. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and did not include inter and INTRA state rulings and flow control of property. C&A Carbone Inc. v Town of Clarkston, 511 US 383 (1994).

ISSUES

1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015 which mandates alternatives to solutions to Solid Waste Disposal. State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, altered through manufacturing is exempt as solid waste. Statutes and County Ord. 90-07 precludes all recyclable material whose cost of collection, storage, sale, etc. exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

2) Some members of respondent Umatilla were part of a group that successfully kept a TRANSFER STATION out of a low-mid income

residential neighborhood.

Respondent Umatilla has not pursued Pendleton Sanitary Service, Inc., Umatilla County and the City of Pendleton in State Courts.

3) Affirmed

4) Affirmed

5) Respondent Umatilla did file a previous LUCS application with Umatilla County which they then lost! Our LUCS was refiled, then County would not act upon our application until the Notice of Non-Compliance was resolved with DEQ.

No violation on Respondent's part. DEQ failed to punish the producer/perpetrator (Mike Johnson) in accordance with State Statutes. Mike Johnson, contractor, was the producer and transporter and provided the disposal.

6) Respondent Umatilla did request a "Demonstration" as per ORS 459-015. They participated in numerous conferences, correspondence and prepared a 50+ page A/E report clearly outlining their recycling and land reclamation goals.

7) Affirmed

8) The "person" who complained to DEQ about Johnson's dumping was the owner of Pendleton Sanitary Service Inc. Please provide a second non-biased citizen complaint.

Respondent Umatilla did not advertise that it would take "Solid Waste" for recycling.

There were large piles of clean wood chips, with a minor amount of rocks. There were small amounts of asphalt shingles, metal and gypsum board that had been hand-sorted out into small piles.

Wood waste is not "Clean Fill", clean wood chips are property, classed as recyclables. Ref: Woodfeather's, or DEQ's own Solid Waste definition, HB 3456 ORS 459.005 Section 1, (24) (b).

Clean fill is classed as rocks, asphalt, etc..

9) affirmed. Previous correspondence beginning March 9, 1998 with Mike Johnson apprised him of DEQ regulations concerning clean wood chips.

10) Respondent Umatilla complied and removed the other wastes. We reaffirm that the wood chips did not have to be removed.

Respondent Umatilla received the Notice of Non-Compliance after it had seen a front page story in the local newspaper.

11) All charges were dropped by Umatilla County Sheriff's office. This is not relevant.

12) Affirmed. The Umatilla Refuse Group is still pursuing Mike Johnson for violating our contractual agreement. The URG fired

our last attorney because of his inaction toward Johnson. Why didn't DEQ go after his bond?

13) DEQ's manager's letter of August 21, 1996 said in his opinion the majority of wood waste on site was from a construction and demolition site and DEQ did not consider it clean fill and to remove it. Reference Woodfeather's: It's property and it is recyclable. Letter then said rock and concrete could remain because it was clean fill! The DEQ manager then required Umatilla to coordinate any removal with Umatilla County to provide receipts from an authorized dump site. This constitutes FLOW CONTROL. We should not have had to remove all of the clean, hand separated wood chips (90-95% of the material).

14) DEQ continued to require that all wood chips be removed. Warren Taylor, owner of Torco Ranches, estimated that over 90% was wood. Two hundred thirty tons of wood chips were disposed of at the transfer station, a conservative amount of clean fill would be a mere 5%.

ULTIMATE FINDINGS

Respondent Umatilla did not establish an unpermitted disposal site. Respondent did not bury, burn or in any way try to hide it's operations. We only tried to abide by Senate Bill 66 that wanted to Reduce, Reuse, and Recycle.

APPLICABLE LAW

ORS 459.235

Respondent Umatilla never opened a disposal site. We did not need a permit.

ORS 459.005(8)

Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.

ORS 459.005(24)

Respondent Umatilla were not discarding our wood chips.

OAR 340-93-050 states:

(e) There was no potential for adverse impact on any waters.

CONCLUSIONS AND REASONS

Respondent Umatilla reaffirms their argument that no disposal site was established on the Torco Ranch.

DEQ representative did give Umatilla permission to accept clean wood chips without a permit.

There is no proof of any painted wood being chipped. Photos

do not reveal any indication of paint.

Ninety to ninety five percent of the woodchips received were clean.

The April 5, 1996 contract with Mike Johnson stated clearly that only clean wood chips would be accepted at the Torco Ranch site.

Respondent Umatilla continues to allege selective enforcement. DEQ was never denied access to our site, nothing was burned or buried (as the City of Pendleton did and as the remaining buildings at the old mill site were). Umatilla cooperated in every way with the local DEQ.

Respondent Umatilla did not advertise as a receiver of waste. Mike Johnson was to deliver source separated wood chips: Recyclables..

Respondent Umatilla's repeated efforts to gain approval from DEQ clearly show our intent to adhere to regulations. Every avenue that was pursued was thwarted by DEQ, Umatilla County and the City of Pendleton to the financial benefit of Pendleton Sanitary Service Inc., and the franchise fees paid to the City, County and State governments.

DEQ clearly understood we would not need a LUCS to accept clean wood chips.

Respondent Umatilla believes the facts are very relevant concerning recycling and meeting the goals for year 2000. We are proving DEQ is failing to follow SB 66 and is trashing the environment. We forced them to move the approved transfer station from a low to mid income neighborhood. We also showed how City of Pendleton was continuing to dump illegally in their own unpermitted landfill, failing to enforce Untreated Infectious Medical waste regulations, letting the City turn contaminated sites into parks when they were "donated" to the City, and letting the City Police discard drug paraphenalia and evidence in a school dumpster. This is clearly selective (vindictive) enforcement. We have been lied to numerous times by the DEQ. They also misquoted regulations regularly.

Umatilla cited Woodfeathers, In. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) and C&A Carbone v Town of Clarkston, 511 US 383 (1994) to support their position that it does support our defense theory. Woodfeathers case is about Inter & INTRA state commerce which further defines "property and recyclables".

CIVIL PENALTY

Respondent Umatilla did not establish a disposal site. The materials under question were clean wood chips, for which we did not need a permit. There was no disposal.

Respondent Umatilla's alleged violation was not intentional. Umatilla cooperated with DEQ: site inspections, removal of material, no burning or burying, numerous correspondence and conferences. Stephanie Hallock, Region 5, did give her permission to accept clean wood chips.

The first contract was signed by Gail Balderson, General Manager for Mike Johnson on April 5, 1996. The DEQ's own regulations were faxed to Mr. Johnson on March 11, 1996 for his complete review.

The Civil Penalty is in error as only a very small fraction of the total was not clean wood chips or clean fill. Everything that was on site was recyclable. There was no environmental hazard created or any threat to any Oregon waters.

October 12, 1998

Umatilla Refuse Group Cooperative



Kal Garton



Vera Simonton

Designated legal representatives

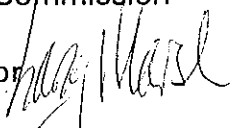
cc: Susan Greco, Environmental Quality Commission
Larry Cwik, DEQ

Re-submitted December 13, 1998

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 26, 1999

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item C, Appeal of Amended Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129, EQC Meeting: June 25, 1999

Statement of Purpose

The Department of Environmental Quality (hereinafter "Department") and Umatilla Refuse Group Cooperative (hereinafter "URGC") are both appealing from the Amended Hearing Order Assessing Civil Penalty, dated October 26, 1998. In that order, URGC was found to be in violation of ORS Chapter 459 for establishing an unpermitted disposal site. URGC was held liable for a civil penalty in the amount of \$4,800.

Background

In 1994, URGC was incorporated as a non-profit private corporation to provide recycling and sought to set up a recycling and composting center near Pendleton. At the same time, URGC entered into negotiations with the Department, Umatilla County and the City of Pendleton to receive a permit or authorization to establish a recycling and composting operation on a member's cattle ranch southeast of Pendleton called the Torco Ranch.

By letter dated October 13, 1995, the Department informed URGC that they could accept clean fill and/or source-separated material without a permit if it met the exemption in OAR 340-93-050. The Department also informed URGC that if it wanted to process more than those two materials, it would need a Solid Waste Letter of Authorization. In a letter dated December 28, 1995, the Department informed URGC that it would need a Solid Waste Letter of Authorization before accepting the materials listed in its application.

On February 28, 1996, the Department wrote to URGC stating that URGC needed to submit a Land Use Compatibility Statement from Umatilla County to complete its application. URGC never obtained the Land Use Compatibility Statement.

Memo To: Environmental Quality Commission

Agenda Item C, Appeal of Amended Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129, EQC Meeting: June 25, 1999

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In March 1996, URGC began negotiating a contract with Mike Johnson, Inc. for him to haul demolition debris from the site of the former Harris Pine Mills near Pendleton to the Torco Ranch. The site was being cleared for the construction of a Wal-Mart store. URGC signed a contract with Johnson on April 12, 1996 for disposal of construction debris. The contract provided that Johnson could only dispose of source-separated material and clean fill on the property. Around April 8, 1996, or earlier, Johnson began hauling the demolition debris to the Torco Ranch.

After the Department received complaints of the dumping of materials on the Torco Ranch, the Department inspected the Torco Ranch on April 9, 1996. URGC staff were present. Large piles of wood chips with rocks, asphalt shingles, wood planks, metal seams, insulation, gypsum board, and several filled 20-gallon plastic bags were seen on the property. The Department informed URGC during the inspection that the waste could not remain at the site and needed to be sent to a licensed solid waste disposal site.

On April 16, 1996, the Department mailed a Notice of Noncompliance to URGC. The Notice stated specific steps for corrective action, including taking no more waste and removal of waste.

On April 18, 1996, more waste was dumped on the Torco Ranch, and a Umatilla County Deputy Sheriff cited URGC for allowing an unpermitted waste disposal site on its property. On May 1, 1996, the Deputy Sheriff visited the Torco Ranch and observed the waste to still remain on the site, documenting it with a video camera.

On May 21 and 31, 1996, URGC wrote Johnson demanding removal of waste from the Torco Ranch since it could not be source separated. Johnson never removed the waste.

On June 7, 1996, the Department issued a Notice of Assessment of Civil Penalty to URGC, alleging URGC had created and was operating an unpermitted solid waste disposal site, in continuing violation of ORS 459.205(1) and OAR 340-93-050(1). The Department assessed a total civil penalty in the amount of \$18,750 for three of the cited days of violation.

On June 24, 1996, URGC appealed the Notice of Assessment of Civil Penalty and a hearing was held on July 22 and 23, 1998. The hearing officer issued a final order on September 14, 1998. On September 23, 1998, the

Memo To: Environmental Quality Commission

Agenda Item C, Appeal of Amended Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129, EQC Meeting: June 25, 1999

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Department requested the hearing officer to clarify his order regarding the number of violations. On October 26, 1998, an Amended Hearing Order Assessing Civil Penalty was issued. The Order held that URGC had established a solid waste disposal site without a solid waste disposal facility permit but that the Department had failed to establish that the violation occurred on three separate occasions. Under the laws in question, the violation is for establishing, operating or maintaining an illegal site and not for specific or individual dumpings. URGC was found to be liable for a civil penalty in the amount of \$4,800.

On November 12, 1998, URGC appealed the Order; the Department appealed on November 23, 1998.

Authority of the Commission with Respect to the Issue

The Commission has the authority to hear this appeal under OAR 340-11-132.

Alternatives

The Commission can:

- (1) Uphold the order, finding URGC liable for one violation of ORS 459.205 and OAR 340-93-050 and for a civil penalty in the amount of \$4,800;
- (2) Accept the Department's exceptions to the order and find URGC liable for three violations of ORS 459.205 and OAR 340-93-050, and for a civil penalty in the amount of \$14,400 for the three violations; or
- (3) Accept URGC exceptions to the order and dismiss the assessment of civil penalty.

Attachments

- A. Letter dated May 20, 1999 from Susan Greco
- B. Letter dated March 29, 1999 from Susan Greco
- C. URGC's Reply to the Department's Answering Brief, dated February 10, 1999
- D. Department's Exceptions and Brief, dated January 14, 1999
- E. Letter dated December 15, 1998 from Susan Greco
- F. URGC's Exceptions and Brief, dated December 13, 1998
- G. Department's Notice of Appeal, dated November 23, 1998
- H. Letter dated November 19, 1998 from Susan Greco
- I. URGC's Notice of Appeal, dated November 12, 1998
- J. Letter dated November 3, 1998 from Susan Greco
- K. Amended Hearing Order Assessing Civil Penalty, dated October 26, 1998
- L. Letter dated October 22, 1998 from Susan Greco

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- M. URGC's Exceptions, dated October 12, 1998
- N. Letter dated September 29, 1998 from Susan Greco
- O. URGC's Notice of Appeal, dated September 24, 1998
- P. Petition for Clarification, dated September 23, 1998
- Q. Hearing Order Assessing Civil Penalty, dated September 14, 1998
- R. Reply to URGC's Brief, dated August 28, 1998
- S. URGC's Hearing Memorandum, dated August 14, 1998
- T. Department's Supplemental Memorandum, dated August 6, 1998
- U. Department's Hearing Memorandum, dated August 4, 1998
- V. Exhibits from July 1998 hearing, as follows:
 - 1. Notice of Assessment of Civil Penalty, dated June 7, 1996
 - 2. Notice of Hearing, dated May 4, 1998
 - 3. Letter dated June 25, 1998 from Rebecca J. Osborne
 - 4. URGC's Answer, dated June 26, 1996
 - 5. Letter from J. Val Toronto, dated June 26, 1996
 - 6. Letter from Calvin B. Garton, dated June 24, 1996
 - 7. Letter from Dennis A. Hachler, dated May 31, 1996
 - 8. Letter from URGC, dated July 17, 1998
 - 9. Letter from Stephanie Hallock, dated October 13, 1995
 - 10. Letter from Stephanie Hallock, dated October 13, 1995
 - 11. Letter from Stephanie Hallock, dated December 28, 1995
 - 12. Letter from Stephanie Hallock, dated February 28, 1996
 - 13. Letter from Stephanie Hallock, dated March 13, 1996
 - 14. Letter from Sean Donahue, dated December 19, 1996
 - 15. Affidavit of Glen Diehl, dated July 9, 1998
 - 16. Photographs
 - 17. Umatilla County Ordinance Violation, dated April 18, 1996
 - 18. Letter from John P. Dadoly, dated November 30, 1994
 - 19. Letter from John P. Dadoly, dated August 8, 1995
 - 20. Letter from John P. Dadoly, dated February 22, 1996
 - 21. Letter from John P. Dadoly, dated March 25, 1996
 - 22. Notice of Noncompliance, dated April 16, 1996
 - 23. Photographs
 - 24. Photographs
 - 25. Notice of Noncompliance, dated May 31, 1996
 - 26. Agreement for Construction Demolition Material, dated April 11, 1996
 - 27. Email from Michael Hyde, dated January 19, 1994
 - 28. Letter from Gerry T. Preston, dated September 18, 1995
 - 29. Letter from Gerry T. Preston, dated August 21, 1996

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30. Letter from Gerry T. Preston, dated August 22, 1996
31. Letter from Richard C. Duval, dated April 11, 1991
32. Letter from Warren A. Taylor, dated September 29, 1996
33. Beyond Waste Newsletter
34. Letter from Warren A. Taylor, dated February 24, 1997
35. Article, dated April 19, 1996
36. Letter from J. Val Toronto, dated May 21, 1996
37. Application and Proposed Project Approval Documentation, dated February 1996
38. Miscellaneous Legal Documents submitted by URGC
39. Letter from Calvin B. Garton, dated June 24, 1996
41. Photographs
43. Article dated May 16, 1996
44. Letter from J. Val Toronto, dated June 26, 1996
45. Letter from J. Val Toronto, dated June 5, 1996
46. Testimony of John R. Broadway before House Committee on Small Business, dated September 13, 1995
47. House Action Report, dated January 30, 1996
48. URGC's Answer, dated June 26, 1996
49. Notice of Assessment of Civil Penalty, dated June 7, 1996
- W. URGC's Answer, dated June 26, 1996
- X. Notice of Assessment of Civil Penalty, dated June 7, 1996

Reference Documents (available upon request)

Videotape of Umatilla Refuse Group site, dated May 11, 1996
OAR Chapter 340, Division 11 and 93; ORS Chapter 459

Report Prepared By: Susan M. Greco
Phone: (503) 229-5213
Date Prepared: May 26, 1999



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

May 20, 1999

Via Certified Mail

Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

Larry Edelman
Department of Justice
1515 S.W. 5th Avenue, Suite 400
Portland OR 97201

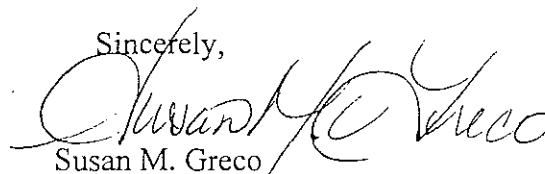
RE: Umatilla Refuse Group Cooperative
Case No. SW-ER-96-129

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Friday, June 25, 1999. The matter will be heard in the regular course of the meeting. The meeting will be held at the Oxford Suites, 1050 North 1st in Umatilla, Oregon. As soon as the agenda and record is available, I will forward the same to you.

Oral arguments by each party will be allowed at the meeting. Each party will be allowed 10 minutes for opening arguments, followed by 5 minutes of rebuttal and 2 minutes for closing arguments.

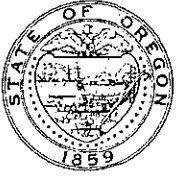
If you should have any questions or should need special accommodations, please feel free to call me at (503) 229-5213 or (800) 452-4011 ex. 5213 within the state of Oregon.

Sincerely,


Susan M. Greco
Rules Coordinator

cc: Larry Cwik, NWR DEQ

Attachment *A*
I Daae



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

March 29, 1999

Via Certified Mail

Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

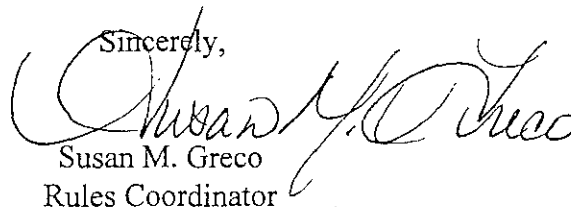
Larry Edelman
Department of Justice
1515 S.W. 5th Avenue, Suite 400
Portland OR 97201

RE: Umatilla Refuse Group Cooperative
Case No. Sw-ER-96-129

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Friday, June 25, 1999. The matter will be heard in the regular course of the meeting. The meeting will be held in Umatilla, Oregon. The exact location has not been determined at this time. As soon as the exact location is determined, and the agenda and record is available, I will forward the same to you.

If you should have any questions or should need special accommodations, please feel free to call me at (503) 229-5213 or (800) 452-4011 ex. 5213 within the state of Oregon.

Sincerely,


Susan M. Greco
Rules Coordinator

cc: Larry Cwik, NWR DEQ

Attachment B
1 page

RECEIVED
FEB 12 1999
DEPARTMENT OF JUSTICE
PORTLAND LEGAL

February 10, 1999

Larry Edelman
Department of Justice
1515 S.W. 5th Suite 410
Portland, Oregon 97201

Dear Mr. Edelman,

Enclosed please find the listed exceptions and the brief as was required of the Umatilla Refuse Group Co-operative.

Please call me if there are any questions.

Vera Simonton
Vera Simonton

Umatilla Refuse Group Co-operative

440 S.W. 1ST.

Pendleton, Oregon 97801

Phone (541) 276-0931

Attachment C
9 pages

December 13, 1998

Larry Edelman
Department of Justice
1515 S.W. 5th Ave. Suite 410
Portland, Oregon 97201

Dear Mr. Edelman,

Enclosed please find the listed exceptions and the brief as was required of the Umatilla Refuse Group Co-operative.

Please call me if there are any questions.



Vera Simonton
Umatilla Refuse Group Co-Operative
440 S.W. 1st St.
Pendleton, Oregon 97801

Phone (541) 276-0931

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
) EXCEPTIONS TO HEARING
Umatilla Refuse Group Co-Op) ORDER No. SW-ER-96-129
An Oregon Non-Profit) UMATILLA
Corporation

The following are the Exceptions that Umatilla Refuse Group Co-Op wants to present to the Environmental Quality Commission:

- 1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015, which mandates alternatives to solutions to Solid Waste Disposal.

State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, or altered through manufacturing is exempt as solid waste.

Statutes and County Ordinance 90-07 precludes all recyclable material, whose cost of collection, storage sale, etc., exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

- 2) Respondent Umatilla did request a "Demonstration" as per ORS 459-015.
- 3) Respondent Umatilla never opened a disposal site. We did not need a permit.
ORS 459.235
- 4) Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.
ORS 459.005(8)
- 5) Respondent Umatilla were not discarding our wood chips.
ORS 459.005(24)
- 6) There was no potential for adverse impact on any waters.
OAR 340-93-050 (e)
- 7) DEQ erred on ruling from Woodfeather's Inc. vs. Washington County, Oregon
1997 WL 31180 (D Or. March 31, 1997), No. 96-257-HA
- 8) DEQ erred and did not include INTER & INTRA State rulings and flow control of property
C & A Carbone Inc. vs. Town of Clarkston..
511 US 383 (1994)
- 9) Mike Johnson as the generator of the solid waste is responsible until the final disposal.
The URG contacted him many times, by telephone, letter and through our attorney to stop hauling to our site.

OAR 340-90-110

December 12, 1998

Umatilla Refuse Group Co-Operative



Vera Simonton

Kal B. Garton

cc Susan Greco, Environmental Quality Commission

Gordon Smith, U.S. Senator

Re-submitted February 10, 1999

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

<p>IN THE MATTER OF :</p> <p>Umatilla Refuse Group Co-Op</p> <p>An Oregon Non-Profit Corporation</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>HEARING ORDER</p> <p>DENYING</p> <p>CIVIL PENALTY</p> <p>NO. SW-ER-96-129</p> <p>UMATILLA</p>
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BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, The Umatilla Refuse Group Cooperative appealed the notice of assessed penalty dated September 14, 1998 to the Environmental Quality Commission.

Respondent Umatilla was represented by it's president Kal Garton and Vera Simonton, who were appointed legal representatives.

The hearing record should have remained open until Umatilla County was forced to comply with our formal requests to furnish us with the illegal dumping complaints received. The Umatilla Refuse Group has made many requests to the County Commissioners of Umatilla County and the Sheriff's office and to this date, October 12, 1998, have not received the records of illegal dumping complaints.

DEQ erred on ruling from Woodfeathers Inc. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and did not include inter and INTRA state rulings and flow control of property. C&A Carbone Inc. v Town of Clarkston, 511 US 383 (1994).

ISSUES

1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015 which mandates alternatives to solutions to Solid Waste Disposal. State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, altered through manufacturing is exempt as solid waste. Statutes and County Ord. 90-07 precludes all recyclable material whose cost of collection, storage, sale, etc. exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

2) Some members of respondent Umatilla were part of a group that successfully kept a TRANSFER STATION out of a low-mid income

residential neighborhood.

Respondent Umatilla has not pursued Pendleton Sanitary Service, Inc., Umatilla County and the City of Pendleton in State Courts.

3) Affirmed

4) Affirmed

5) Respondent Umatilla did file a previous LUCS application with Umatilla County which they then lost! Our LUCS was refiled, then County would not act upon our application until the Notice of Non-Compliance was resolved with DEQ.

No violation on Respondent's part. DEQ failed to punish the producer/perpetrator (Mike Johnson) in accordance with State Statutes. Mike Johnson, contractor, was the producer and transporter and provided the disposal.

6) Respondent Umatilla did request a "Demonstration" as per ORS 459-015. They participated in numerous conferences, correspondence and prepared a 50+ page A/E report clearly outlining their recycling and land reclamation goals.

7) Affirmed

8) The "person" who complained to DEQ about Johnson's dumping was the owner of Pendleton Sanitary Service Inc. Please provide a second non-biased citizen complaint.

Respondent Umatilla did not advertise that it would take "Solid Waste" for recycling.

There were large piles of clean wood chips, with a minor amount of rocks. There were small amounts of asphalt shingles, metal and gypsum board that had been hand-sorted out into small piles.

Wood waste is not "Clean Fill", clean wood chips are property, classed as recyclables. Ref: Woodfeather's, or DEQ's own Solid Waste definition, HB 3456 ORS 459.005 Section 1, (24) (b).

Clean fill is classed as rocks, asphalt, etc..

9) affirmed. Previous correspondence beginning March 9, 1998 with Mike Johnson apprised him of DEQ regulations concerning clean wood chips.

10) Respondent Umatilla complied and removed the other wastes. We reaffirm that the wood chips did not have to be removed.

Respondent Umatilla received the Notice of Non-Compliance after it had seen a front page story in the local newspaper.

11) All charges were dropped by Umatilla County Sheriff's office. This is not relevant.

12) Affirmed. The Umatilla Refuse Group is still pursuing Mike Johnson for violating our contractual agreement. The URG fired

our last attorney because of his inaction toward Johnson. Why didn't DEQ go after his bond?

13) DEQ's manager's letter of August 21, 1996 said in his opinion the majority of wood waste on site was from a construction and demolition site and DEQ did not consider it clean fill and to remove it. Reference Woodfeather's: It's property and it is recyclable. Letter then said rock and concrete could remain because it was clean fill! The DEQ manager then required Umatilla to coordinate any removal with Umatilla County to provide receipts from an authorized dump site. This constitutes FLOW CONTROL. We should not have had to remove all of the clean, hand separated wood chips (90-95% of the material).

14) DEQ continued to require that all wood chips be removed. Warren Taylor, owner of Torco Ranches, estimated that over 90% was wood. Two hundred thirty tons of wood chips were disposed of at the transfer station, a conservative amount of clean fill would be a mere 5%.

ULTIMATE FINDINGS

Respondent Umatilla did not establish an unpermitted disposal site. Respondent did not bury, burn or in any way try to hide it's operations. We only tried to abide by Senate Bill 66 that wanted to Reduce, Reuse, and Recycle.

APPLICABLE LAW

ORS 459.235

Respondent Umatilla never opened a disposal site. We did not need a permit.

ORS 459.005(8)

Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.

ORS 459.005(24)

Respondent Umatilla were not discarding our wood chips.

OAR 340-93-050 states:

(e) There was no potential for adverse impact on any waters.

CONCLUSIONS AND REASONS

Respondent Umatilla reaffirms their argument that no disposal site was established on the Torco Ranch.

DEQ representative did give Umatilla permission to accept clean wood chips without a permit.

There is no proof of any painted wood being chipped. Photos

do not reveal any indication of paint.

Ninety to ninety five percent of the woodchips received were clean.

The April 5, 1996 contract with Mike Johnson stated clearly that only clean wood chips would be accepted at the Torco Ranch site.

Respondent Umatilla continues to allege selective enforcement. DEQ was never denied access to our site, nothing was burned or buried (as the City of Pendleton did and as the remaining buildings at the old mill site were). Umatilla cooperated in every way with the local DEQ.

Respondent Umatilla did not advertise as a receiver of waste. Mike Johnson was to deliver source separated wood chips: Recyclables..

Respondent Umatilla's repeated efforts to gain approval from DEQ clearly show our intent to adhere to regulations. Every avenue that was pursued was thwarted by DEQ, Umatilla County and the City of Pendleton to the financial benefit of Pendleton Sanitary Service Inc., and the franchise fees paid to the City, County and State governments.

DEQ clearly understood we would not need a LUCS to accept clean wood chips.

Respondent Umatilla believes the facts are very relevant concerning recycling and meeting the goals for year 2000. We are proving DEQ is failing to follow SB 66 and is trashing the environment. We forced them to move the approved transfer station from a low to mid income neighborhood. We also showed how City of Pendleton was continuing to dump illegally in their own unpermitted landfill, failing to enforce Untreated Infectious Medical waste regulations, letting the City turn contaminated sites into parks when they were "donated" to the City, and letting the City Police discard drug paraphenalia and evidence in a school dumpster. This is clearly selective (vindictive) enforcement. We have been lied to numerous times by the DEQ. They also misquoted regulations regularly.

Umatilla cited Woodfeathers, In. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) and C&A Carbone v Town of Clarkston, 511 US 383 (1994) to support their position that it does support our defense theory. Woodfeathers case is about Inter & INTRA state commerce which further defines "property and recylcables".

CIVIL PENALTY

Respondent Umatilla did not establish a disposal site. The materials under question were clean wood chips, for which we did not need a permit. There was no disposal.

Respondent Umatilla's alleged violation was not intentional. Umatilla cooperated with DEQ: site inspections, removal of material, no burning or burying, numerous correspondence and conferences. Stephanie Hallock, Region 5, did give her permission to accept clean wood chips.

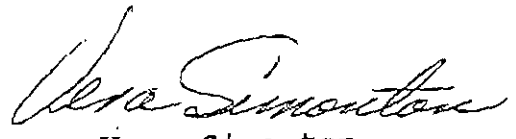
The first contract was signed by Gail Balderson, General Manager for Mike Johnson on April 5, 1996. The DEQ's own regulations were faxed to Mr. Johnson on March 11, 1996 for his complete review.

The Civil Penalty is in error as only a very small fraction of the total was not clean wood chips or clean fill. Everything that was on site was recyclable. There was no environmental hazard created or any threat to any Oregon waters.

October 12, 1998

Umatilla Refuse Group Cooperative


Kal Garton


Vera Simonton

Designated legal representatives

cc: Susan Greco, Environmental Quality Commission
Larry Cwik, DEQ

Re-submitted December 13, 1998

Re-submitted February 10, 1999

HARDY MYERS
Attorney General



DAVID SCHUMAN
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 14, 1999

VIA FACSIMILE – 503/229-5850
AND U.S. MAIL

Susan Greco
Rules Coordinator
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Re: *In the Matter of Umatilla Refuse Group Cooperative*
Case No. SW-ER-96-129

Dear Ms. Greco:

Enclosed is the Department's Brief in the above-referenced matter. A copy has been served on Respondent by mail.

Sincerely,

Larry H. Edelman
Larry H. Edelman
Assistant Attorney General

LHE/mas
Enclosure

cc: Larry Cwik, DEQ Enforcement (w/encl)
Kal Garton, Umatilla Refuse Group Cooperative (w/encl)

c:\docs\edelman\Greco.let

Attachment D
17 pages

State of Oregon
Department of Environmental Quality
Received
JAN 15 1999
OFFICE OF THE DIRECTOR

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 In the Matter of

Case No. SW-ER-96-129

4 UMATILLA REFUSE GROUP
5 COOPERATIVE,

DEPARTMENT OF ENVIRONMENTAL
QUALITY ANSWERING BRIEF, CROSS
APPEAL, EXCEPTIONS, AND PROPOSED
ALTERNATIVE CONCLUSIONS

6 Respondent.

7 BACKGROUND ESTABLISHED BY THE RECORD

8 In 1994, Umatilla Refuse Group Cooperative, a non-profit corporation (URGC) began
9 negotiating with DEQ to receive a permit or authorization to establish a recycling and
10 composting operation in the Pendleton area. Although URGC hoped to qualify for a statutory
11 solid waste permit exemption, DEQ instructed URGC that, based on its application, URGC
12 would require a Solid Waste Permit or a Solid Waste Letter Authorization from the agency.
13 URGC never submitted the required Land Use Compatibility Statement from the county,
14 however, and therefore, URGC never completed its permit or authorization application.
15

16 Though it lacked authorization, URGC began accepting construction debris at its leased
17 Torco Ranch site southeast of Pendleton on or about April 8, 1996. The construction debris
18 contained wood chips mixed with crushed rock and other construction waste. After receiving
19 complaints about the dumping and noting that URGC had advertised that it would accept solid
20 waste, DEQ inspected the Torco Ranch site with URGC's general manager on April 9, 1996.
21 DEQ found large piles of wood chips mixed with crushed rock, piles of demolished wood
22 planks, asphalt, shingles, metal, and gypsum board. At the time, DEQ informed Umatilla that
23 the waste could not remain at the site and needed to be sent to a licensed solid waste disposal
24 site. Despite these instructions, URGC's general manager signed a contract with Mike Johnson,
25
26

1 Inc., on April 12, 1996 for the disposal of construction waste. On April 18, 1996, DEQ
2 photographed Johnson dumping construction debris at the site. That same day, the Umatilla
3 County sheriff issued a citation to URGC for operating an unpermitted disposal site. On April
4 19th or 20th, URGC received and read the Notice of Noncompliance (NON) drafted by DEQ after
5 the April 9th inspection. The NON required specific Corrective Action, including a halt to the
6 acceptance of waste and removal of the wood and non-wood wastes. On May 1, 1996, the
7 Umatilla County deputy sheriff returned to Torco Ranch and took photographs and videos
8 documenting the waste. Approximately 230 cubic yards of solid waste were present at the site.
9

10 After unsuccessful attempts to require Mike Johnson to remove the debris, URGC began
11 removing the waste. By August 19, 1996, URGC had removed much of the non-wood waste.
12 By September 16, 1996, URGC had removed most of the wood waste.
13

14 DEQ issued a Notice of Assessment of Civil Penalty on June 7, 1996. *In the Matter of*
15 *Umatilla Refuse Group Co-op*, Notice of Assessment of Civil Penalty, No. SW-ER-96-121
16 (June 7, 1996). This assessment cited three days of violation (April 9, April 18, and May 1,
17 1996) and imposed a total civil penalty of \$18,750.¹ *Id.* at 1. URGC appealed the civil penalty
18 notice on June 24, 1996, and a hearing occurred on July 22, 1998.
19

20 After reviewing the evidence, the hearings officer concluded that URGC had established
21 an unpermitted disposal site. *In the Matter of Umatilla Refuse Group Co-op*, Hearing Order
22 Assessing Civil Penalty, No. SW-ER-96-129, at 5. (Sept. 4, 1998). With regard to the penalty,
23

24 _____
25 ¹ Using the civil penalty regulations in OAR 340-12-045 (1988), DEQ found that the violation was a Class I
26 moderate violation (with a base penalty of \$3,000), the violation was intentional, URGC was uncooperative, and
URGC gained an economic benefit of \$2,550 (the cost of disposing of the waste at a permitted facility). The penalty
component (\$5,400 times three) plus the economic benefit component (\$2,550) equaled \$18,750.

1 the hearings officer found that the violation was intentional but that URGC been cooperative.²
2 Additionally, the hearings officer found that URGC had gained no economic benefit, “[b]ecause
3 it was caught and had to remove all the material at considerable expense.” *Id.*, at 9. The
4 hearings officer assessed a total penalty of \$4,800. *Id.*

5
6 DEQ filed a Petition for Clarification on September 23, 1998, asking whether the \$4,800
7 penalty applied to each of the three cited days of violation. On October 26, 1998, the hearings
8 officer amended the Hearing Order to clarify that \$4,800 represented the total penalty. *In the*
9 *Matter of Umatilla Refuse Group Co-op*, Amended Hearing Order Assessing Civil Penalty, No.
10 SW-ER-96-129 (October 26, 1998) (hereinafter, Amended Hearing Order). In response to
11 DEQ’s argument that a penalty should be assessed for each cited day of violation, the hearings
12 officer noted that the number and exact dates of dumping, and the amount dumped each time,
13 had not been established in the record. Amended Hearing Order, at 9. The hearings officer
14 interpreted the solid waste statute as prohibiting the establishment of an unpermitted solid waste
15 disposal site, not specific or individual dumping at the site. *Id.* The Amended Hearing Order
16 stated
17

18 Respondent established the illegal site with the first dumping, and subsequent dumpings
19 at the same site does not seem to be a new violation under the above law. Under DEQ’s
20 reasoning, every truckload could be considered a separate violation. A more reasonable
21 interpretation is finding one violation for setting up the dump... and increasing the
22 penalty for repeated dumping at the site, based on other factors, such as repeated
23 dumpings or lack of cooperation.

24
25 *Id.* at 9-10. The hearings officer found that DEQ had not proven three separate violations
26 warranting the tripled penalty. *Id.* at 10.

² The hearings officer found that URGC had removed the material “somewhat promptly after realizing it could not compel Johnson to remove it.” AMENDED Hearing Order Assessing Civil Penalty, at 9.

1 **URGC'S APPEAL**

2 URGC filed a Notice of Appeal to the Commission of the Hearing Officer's Order.

3 URGC filed exceptions, a brief, and proposed "Hearing Order" December 13, 1998.

4 URGC argues that contrary to the hearings officer's findings, it did not establish, operate
5 or maintain a solid waste disposal site in violation of ORS 459.025. URGC argues inter alia that
6 it intended only to accept source separated wood chips, that only a small fraction of the material
7 it accepted was not clean wood chips or clean fill, and that its contract hauler violated the terms
8 of the contract with URGC by delivering materials other than wood chips and clean fill to the
9 Torco Ranch site.³

10 **DEPARTMENT RESPONSE**

11 Respondent URGC was cited by the Department for violation of ORS 459.205(1) and
12 OAR 340-93-050(1), which prohibit the establishment, operation, or maintenance of a solid
13 waste disposal site without a solid waste permit. As the hearings officer found "A disposal site
14 as defined by ORS 459.205(1) was established by respondent Umatilla on its site on the Torco
15 Ranch when mixed materials, and not only clean fill, were dumped on the site. Respondent
16 Umatilla never had a permit to dump such materials, so it violated the law." Amended Hearing
17 Order at 7.

18 URGC's arguments as to its original intent to accept only chips and clean fill is simply
19 not relevant, given the facts established by the record, that it actually received mixed waste at its
20

21
22
23
24 ³ URGC raises other issues and defenses which are either too vague or clearly irrelevant to merit specific mention or
25 response. One of these defenses is an argument that the case *Woodfeathers, Inc. v. Washington County, Oregon*
26 (D. Oregon March 31, 1997), somehow supports URGC. The Department provided a legal memorandum to the
hearing officer on this case and agrees with his finding that the case is not on point. (Legal Memorandum attached as
Appendix A).

1 site.⁴ The nature of URGC's arrangements and discussions with its hauler, Mr. Johnson, are
2 equally irrelevant. The Department agrees with the hearings officer's conclusions on these
3 points.

4 DEPARTMENT CROSS APPEAL AND EXCEPTIONS

5
6 The Department cross appeals the hearings officer's order on the determination of the
7 amount of the civil penalty. (The Department does not appeal the hearings officer's finding as to
8 the economic benefit portion of penalty.) In its June 7, 1996 Notice of Assessment of Civil
9 Penalty, the Department assessed a penalty based on three separate days of violation. The
10 hearings officer imposed a penalty based upon only one day of violation. Amended Hearing
11 Order at 9, 10.

12 FIRST EXCEPTION: The department takes exception to the hearings officer's
13 conclusion that applicable law proscribes on a one-time basis, the establishment of a solid waste
14 disposal site without a permit, but not subsequent specific or individual dumpings. Amended
15 Hearing Order at 9.

17 SECOND EXCEPTION: The department takes exception to the hearings officer's
18 apparent factual conclusion that DEQ has not established three separate days of maintaining or
19 operating a solid waste disposal site without a permit. Amended Hearing Order at 9, 10.

21 ARGUMENT

22 A. DEQ Reasonably Assessed Multiple Penalties for the Continued, Unpermitted 23 Operation of the URGC Solid Waste Facility.

24
25 ⁴ Even facilities which receive only source separated materials for material recovery are subject to DEQ solid waste
26 jurisdiction, and may require a permit if DEQ determines permitting necessary to protect public health or waters of
the state. OAR 340-93-050.

1 The hearings officer found that URGC's unpermitted establishment of a disposal site
2 violated ORS 459.205(1), which states:

3 Except as provided by ORS 259.215, a disposal site shall not be established, operated,
4 maintained or substantially altered, expanded or improved... until the person owning or
5 controlling the disposal site obtains a permit therefor from the department...

6 ORS 459.205(1)(1997). The statute clearly makes the establishment of an unpermitted site
7 illegal. However, the statute also makes the operation, maintenance or alteration of an
8 unpermitted site illegal. The hearings officer's opinion implies that, while either the
9 establishment, operation, or maintenance of an unpermitted site would be illegal, once the site is
10 established, it is not a separate violation to continue operating the site, or to continue accepting
11 additional material at the site. Instead these factors can only be incorporated into the penalty
12 calculation for the original violation. Amended Order at 9.

14 The hearings officer's interpretation, however, is not consistent with the Department's
15 interpretation and is not a proper or logical reading of the statutory and regulatory language.

17 The explicit wording of the statute makes it a violation of law not only to establish a solid
18 waste disposal site without a permit, but also to operate or maintain such an unpermitted site.

19 The terms "operate" and "maintain"⁵ are not limited to one-time incidents. Maintain means "to
20 keep in existence or continuance. See eg. *American College Dictionary*; *Black's Law Dictionary*
21 *6th Edition*. Moreover, even the term "establish" in the context of ORS 459.205 is not limited to
22 a single act of establishing. ORS 459.995 provides for civil penalties not to exceed \$10,000 a day
23 for each day of violation of ORS 459.205. The Department interprets this to mean that penalties
24

25 ⁵ The term "maintain" may actually include a passive aspect as in maintaining a nuisance by allowing it to continue
26 without taking abatement action. See eg. *New York v. Campbell*, 45 Misc. 2d 201 (1965).

1 may be imposed for each day solid waste remains at a site established without a permit. Any
2 other reading of the statute would result in a maximum civil penalty of \$10,000 regardless of
3 how long an illegal solid waste site exists once established. Such a one-time maximum penalty
4 would have minimal deterrent effect.

5
6 The hearings officers' decision conflicts with the plain language and intent behind DEQ's
7 penalty calculation regulations. The goals of DEQ's enforcement regulations are to:

- 8 (a) Obtain and maintain compliance with the Department's statutes, rules, permits,
9 and orders;
- 10 (b) Protect the public health and the environment;
- 11 (c) Deter future violators and violations; and
- 12 (d) Ensure an appropriate and consistent statewide enforcement program.

13
14 OAR 340-012-0026. Under the hearings officer's penalty theory, an illegal disposal site could
15 continue operating indefinitely, despite repeated warnings to stop accepting waste and to remove
16 existing waste, and not be subject to any increasing penalty. For example, under the hearings
17 officer's interpretation, the maximum penalty allowed for the violations in this case would be
18 \$6,000, even if Umatilla were still accepting additional waste at the site today.⁶ This result is not
19 a "more reasonable interpretation" of the statute than DEQ's interpretation. It would provide no
20 incentive for violators to remedy their violations and to stop breaking the law after they are cited
21

22
23 ⁶ Based on the hearing officer's finding that the economic benefit was zero, and taking into account the
24 maximum multipliers for multi-day violations and for non-cooperativeness (as the hearing officer recommended
25 DEQ might do for multi-day violations of this statute).

26 Under the hearings officer's economic benefit calculation, any additional costs of eventually coming into
compliance would be subtracted from the company's economic benefit assessment, further reducing any incentive to
achieve compliance quickly. In effect, there would be no additional penalty if the company took 2 years to come
into compliance, rather than 2 months (assuming that DEQ already considered the operator's uncooperative and
multi-day offenses, for penalty matrix purposes).

1 for the first violation. Thus, the hearings officer's interpretation would undermine a basic
2 purpose of the penalty rules.

3 In this case, the Department, exercising its enforcement discretion, assessed URGC civil
4 penalties for only 3 of the 23 days the unpermitted URGC disposal site continued in existence.⁷
5 The 3 days of violation cited were based on specific dates that disposal occurred. Consistent
6 with the statute and regulations, however, the Department could have assessed penalties for each
7 of the 23 days of continuing violation without establishing a separate basis for each.
8

9 The Department's interpretation with respect to penalty calculations based on violation of
10 ORS 459.205 is logical, reasonable, plausible and consistent with the applicable statute and
11 rules. Generally, an agency has "considerable leeway ***to interpret its own rules, especially
12 when the legislature has given it a broad mandate to promulgate the rules necessary to carry out
13 its duties and powers." *Martin v. Dept. of Transportation*, 122 Or App 271, 274-75 (1993).
14 Agency interpretations are not erroneous as long as they are plausible and consistent with the
15 wording of the statute or rule. *City of Klamath Falls v. EQC*, 318 Or 532, 870 P2d 825 (1994).
16

17 B. **The Record Supports the Department's Allegations that Operation or Maintenance**
18 **Occurred on 3 Dates Cited in the Notice of Assessment of Civil Penalty.**

19 The hearings officer concludes that the number and exact dates of dumping and the
20 amounts dumped at each time were not established in the record. Amended Order at 9.
21 As reasoned above, the Department does not believe it necessary to have established
22 separate violations to support the assessed penalty. Nevertheless, the record as well as
23 the hearings officer's own findings establish 3 separate documented incidents indicating
24

25 ⁷ The Department's cover letter accompanying the Notice of Assessment of Civil Penalty explained this. Notice of
26 Assessment transmittal letter at 2.

1 operation or maintenance of the site on the dates cited in the Notice of Assessment and
2 Civil Penalty.

3 The hearings officer found, based on the record, that solid waste was at the URGC
4 site on April 9, 1996 (Amended Order Finding 8), that additional solid waste was dumped
5 at the URGC site on April 18, 1996 (Amended Order Finding 11), and that more waste
6 was documented at the URGC site on May 1, 1996. (Amended Order Finding 11).
7

8 The three findings identified above establish three separate bases upon which
9 either operation or maintenance of a disposal site without a permit may be found. It is
10 thus unclear how the hearings officer could conclude that DEQ has not established three
11 dates of separate violation. Amended Order at 10. The hearings officer reasoned that
12 “Respondent established the illegal site with the first dumping, and subsequent dumpings
13 at the same site does not seem to be a new violation under the above law.” Amended
14 Order at 9. However, the hearings officer fails to explain why subsequent dumpings
15 would not establish continued operation or maintenance subjecting the violator to per day
16 penalties.
17

18 DEPARTMENT PROPOSED ALTERNATIVE CONCLUSION OF LAW

- 19 1. The Department may assess civil penalties for each day that an unpermitted solid
20 waste disposal site is operated or maintained in violation of ORS 459.205.
21

22 ///

23 ///

24 ///

25 ///

CONCLUSION

1 The hearings officer's findings and conclusions should be adopted by the
2 Commission with the exception that the hearings officer's interpretation regarding
3 establishment of the penalty amount based on days of violation should be rejected and the
4 full penalty imposed.

5 DATED this 13 day of January, 1999.

6
7 Respectfully submitted,

8 HARDY MYERS
9 Attorney General

10 

11

LARRY H. EDELMAN #89158
12 Assistant Attorney General
13 Of Attorneys for DEQ
14 Department of Justice
15 1515 S.W. Fifth Avenue
16 Portland, Oregon 97201
17 Telephone: (503) 229-5725

Attachment A

HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
FAX: (503) 229-9909
TDD: (503) 378-5938
Telephone: (503) 229-5725

DEPARTMENT OF JUSTICE
PORTLAND OFFICE

August 6, 1998

Lawrence Smith
Hearings Officer
875 Union Street NE
Salem, Oregon 97311

Re: In the Matter of Umatilla Refuse Group Cooperative; Contested Case

Dear Mr. Smith:

Enclosed for filing please find the Department of Environmental Quality's Supplemental Memorandum addressing legal issues raised at the contested case hearing in the above-referenced matter.

Sincerely,

Larry Edelman
Assistant Attorney General
Natural Resources Section

c: Larry Cwik, DEQ Enforcement
Kal Garton, Umatilla Refuse Group Cooperative

LE:k/LHE0382.LET

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) DEPARTMENT OF ENVIRONMENTAL
4 UMATILLA REFUSE GROUP) QUALITY'S SUPPLEMENTAL LEGAL
COOPERATIVE, an Oregon Corporation.) MEMORANDUM
5) No. SW-ER-96-121 Umatilla County

6 DEQ has requested that the Department of Justice respond on its behalf to several
7 legal issues that were raised by Respondent at the contested case hearing in this matter.

8 Specifically, Respondent appears to argue that DEQ is preempted from exercising its
9 solid waste permitting jurisdiction over Respondent's waste management activities at the
10 Torco Ranch. Respondent alludes to, *inter alia*, *Woodfeathers, Inc. v. Washington County,*
11 *Oregon*, 1997 WL 311480 (D Or March 31, 1997) No. 96-257-HA (not reported in F Supp)
12 (copy of opinion attached as Appendix A) and *C&A Carbone Inc. v. Town of Clarkstown,*
13 511 US 383 (1994) (copy of opinion attached as Appendix B). Respondent's reliance on
14 these cases is misplaced.

15 In *Woodfeathers*¹, the court noted that Section 601 of the Federal Aviation
16 Administration Authorization Act of 1994 (FAAAA) preempts state and local regulation of
17 the prices, routes, or services of any private motor carrier with respect to the transportation
18 of property. The court held that the undefined term "property" in the FAAAA includes
19 "recyclable materials when collected in an industrial or commercial context for the purpose
20 of recycling." Washington County had charged Woodfeathers, Inc., a roofing supply
21 company, with violation of the County solid waste collection franchise ordinance. Although
22 not a franchised solid waste transporter, Woodfeathers, Inc., as a service to roofers when
23 delivering new roofing material to a construction site, was collecting in a drop-box the waste
24 roofing materials for disposal or recycling. The court held that Washington County's solid
25

26

¹ The *Woodfeathers* decision is currently on appeal to the Ninth Circuit Court of Appeals.

1 waste collection franchise ordinance (challenged by Woodfeathers, Inc.) was preempted by
2 the FAAAA as to regulation of transporters of such materials.

3 The court's holding in *Woodfeathers* clearly did not extend to operation of storage
4 and disposal sites for non-recyclable materials which constitute much of the waste handled by
5 Respondent.

6 Even assuming, however, that some of the materials collected by Respondent were
7 "recyclable," the decision in *Woodfeathers* would not preclude state solid waste site
8 *permitting* requirements for storage or processing of such materials. Under the court's
9 holding, the FAAAA preempts only state regulation of the price, routes, or service of a
10 *motor carrier* with respect to transportation of property. The solid waste disposal site
11 *permitting* requirements in ORS 459 regulate the siting and operation of solid waste facilities
12 so as to protect public health and the environment. *See* ORS 459.205, 459.005(8), and
13 459.005(24). DEQ does not regulate the rates, routes or services of motor carriers through
14 its solid waste disposal site permits.

15 The court in *Woodfeathers* also held that the so-called "negative" or "dormant" aspect
16 of the Commerce Clause of the U.S. Constitution, U.S. Const. Art. I, § 8, cl.3, prohibits
17 state and local regulation of collection and transportation of any solid waste transported
18 across state lines. The court's holding has no application to Respondents since they were not
19 transporting materials out of state.²

20 Respondents apparently contend that the U.S. Supreme court's holding in *Carbone*
21 somehow prohibits state permitting of solid waste collection and disposal sites. This is
22 incorrect. In *Carbone*, the court held that state and local government, acting in a regulatory
23 capacity, may not interfere with interstate commerce by dictating to which processing or
24

25 ² While not applicable to the present case, the state believes this district court holding is
26 nonetheless a clearly erroneous interpretation of the Commerce Clause and U.S. Supreme Court
pronouncements thereon.

1 disposal facilities solid waste must be delivered ("flow control"). The court found such
2 regulatory attempts to be impermissible under the dormant Commerce Clause.

3 In the present case, DEQ was not exercising flow control. Rather, DEQ's
4 enforcement action against Respondent was based solely on the state law requirement that all
5 solid waste disposal sites be permitted.

6 DATED this 7 day of August, 1998.

7 Respectfully submitted,

8 HARDY MYERS
9 Attorney General

10 

11

Larry H. Edelman #89158
12 Assistant Attorney General
Of Attorneys for Department of
13 Environmental Quality
1515 SW Fifth Avenue, Suite 410
14 Portland, Oregon 97201
Phone: (503) 229-5725
15 Fax: (503) 229-5120

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served this 7th day of August, 1998, by
mail a true and correct copy of the DEPARTMENT OF ENVIRONMENTAL QUALITY'S
SUPPLEMENTAL LEGAL MEMORANDUM and appendices addressed to:

Lawrence Smith
Hearings officer
875 Union Street NE
Salem, Oregon 97311

Kal Gorton, President
Umatilla Refuse Group Cooperative
% Gorton & Associates Realtors
440 SW First
Pendleton, Oregon 97801



Larry H. Edelman #89158
Assistant Attorney General

LE:kj/LHE0383.PLE

CERTIFICATE OF SERVICE BY MAIL


I certify that on January 14, 1999, I served a true and correct copy of the ANSWERING BRIEF AND CROSS APPEAL by the method indicated below, and addressed to the following:

Susan Greco
Rules Coordinator
DEQ - Headquarters
811 SW Sixth Avenue
Portland, OR 97204
FAX: (503) 229-5850

HAND DELIEVER
 U.S. MAIL
 OVERNIGHT MAIL
 TELECOPY (FAX)

Kal Garton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton, OR 97801

HAND DELIEVER
 U.S. MAIL
 OVERNIGHT MAIL
 TELECOPY (FAX)


LARRY I. KNUDSEN, #89004
For LARRY H. EDELMAN #89158
Assistant Attorney General
Of Attorneys for DEQ
Department of Justice
1515 S.W. Fifth Avenue
Portland, Oregon 97201
Telephone: (503) 229-5725



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

December 15, 1998

Kal Garton/Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st Street
Pendleton OR 97801

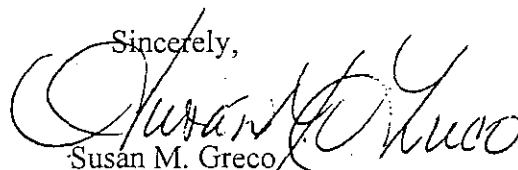
RE: Case No. Sw-ER-96-121

Dear Mr. Garton and Ms. Simonton:

On December 15, 1998, the Environmental Quality Commission received the Umatilla Refuse Group Cooperative's Exceptions and Brief in the above referenced matter. Pursuant to OAR 340-11-132(4)(b), the Department must file an answering brief within thirty days (January 14, 1999). Once the Department files its brief, you may file a reply, which will be due 20 days after filing of the Department's brief.

If you should have any questions regarding these procedures, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,


Susan M. Greco
Rules Coordinator

cc: Larry Edelman, Department of Justice
Larry Cwik, NWR

Attachment E
1 page

State of Oregon
Department of Environmental Quality

Received
DEC
NOV 15 1998
my

OFFICE OF THE DIRECTOR

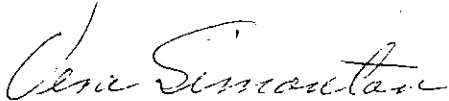
December 13, 1998

Larry Edelman
Department of Justice
1515 S.W. 5th Ave. Suite 410
Portland, Oregon 97201

Dear Mr. Edelman,

Enclosed please find the listed exceptions and the brief as was required of the Umatilla Refuse Group Co-operative.

Please call me if there are any questions.



Vera Simonton
Umatilla Refuse Group Co-Operative
440 S.W. 1st St.
Pendleton, Oregon 97801

Phone (541) 276-0931

Attachment F
11 pages

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:)
)
Umatilla Refuse Group Co-Op) EXCEPTIONS TO HEARING
An Oregon Non-Profit)
Corporation) ORDER No. SW-ER-96-129
) UMATILLA

The following are the Exceptions that Umatilla Refuse Group Co-Op wants to present to the Environmental Quality Commission:

- 1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015, which mandates alternatives to solutions to Solid Waste Disposal.

State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, or altered through manufacturing is exempt as solid waste.

Statutes and County Ordinance 90-07 precludes all recyclable material, whose cost of collection, storage sale, etc., exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

- 2) Respondent Umatilla did request a "Demonstration" as per ORS 459-015.
- 3) Respondent Umatilla never opened a disposal site. We did not need a permit.
ORS 459.235
- 4) Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.
ORS 459.005(8)
- 5) Respondent Umatilla were not discarding our wood chips.
ORS 459.005(24)
- 6) There was no potential for adverse impact on any waters.
OAR 340-93-050 (e)
- 7) DEQ erred on ruling from Woodfeather's Inc. vs. Washington County, Oregon
1997 WL 31180 (D Or. March 31, 1997), No. 96-257-HA
- 8) DEQ erred and did not include INTER & INTRA State rulings and flow control of property
C & A Carbone Inc. vs. Town of Clarkston.,
511 US 383 (1994)
- 9) Mike Johnson as the generator of the solid waste is responsible until the final disposal.
The URG contacted him many times, by telephone, letter and through our attorney to stop hauling to our site.

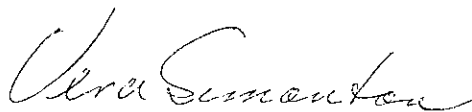
OAR 340-90-110

December 12, 1998

Umatilla Refuse Group Co-Operative



Kal B. Garton



Vera Simonton

cc Susan Greco, Environmental Quality Commission

Gordon Smith, U.S. Senator

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF :)
)
)
Umatilla Refuse Group Co-Op)
An Oregon Non-Profit Corporation)
)
HEARING ORDER
DENYING
CIVIL PENALTY
NO. SW-ER-96-129
UMATILLA

BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, The Umatilla Refuse Group Cooperative appealed the notice of assessed penalty dated September 14, 1998 to the Environmental Quality Commission.

Respondent Umatilla was represented by it's president Kal Garton and Vera Simonton, who were appointed legal representatives.

The hearing record should have remained open until Umatilla County was forced to comply with our formal requests to furnish us with the illegal dumping complaints received. The Umatilla Refuse Group has made many requests to the County Commissioners of Umatilla County and the Sheriff's office and to this date, October 12, 1998, have not received the records of illegal dumping complaints.

DEQ erred on ruling from Woodfeathers Inc. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and did not include inter and INTRA state rulings and flow control of property. C&A Carbone Inc. v Town of Clarkston, 511 US 383 (1994).

ISSUES

1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015 which mandates alternatives to solutions to Solid Waste Disposal. State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, altered through manufacturing is exempt as solid waste. Statutes and County Ord. 90-07 precludes all recyclable material whose cost of collection, storage, sale, etc. exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

2) Some members of respondent Umatilla were part of a group that successfully kept a TRANSFER STATION out of a low-mid income
page 1

residential neighborhood.

Respondent Umatilla has not pursued Pendleton Sanitary Service, Inc., Umatilla County and the City of Pendleton in State Courts.

3) Affirmed

4) Affirmed

5) Respondent Umatilla did file a previous LUCS application with Umatilla County which they then lost! Our LUCS was refiled, then County would not act upon our application until the Notice of Non-Compliance was resolved with DEQ.

No violation on Respondent's part. DEQ failed to punish the producer/perpetrator (Mike Johnson) in accordance with State Statutes. Mike Johnson, contractor, was the producer and transporter and provided the disposal.

6) Respondent Umatilla did request a "Demonstration" as per ORS 459-015. They participated in numerous conferences, correspondence and prepared a 50+ page A/E report clearly outlining their recycling and land reclamation goals.

7) Affirmed

8) The "person" who complained to DEQ about Johnson's dumping was the owner of Pendleton Sanitary Service Inc. Please provide a second non-biased citizen complaint.

Respondent Umatilla did not advertise that it would take "Solid Waste" for recycling.

There were large piles of clean wood chips, with a minor amount of rocks. There were small amounts of asphalt shingles, metal and gypsum board that had been hand-sorted out into small piles.

Wood waste is not "Clean Fill", clean wood chips are property, classed as recyclables. Ref: Woodfeather's, or DEQ's own Solid Waste definition, HB 3456 ORS 459.005 Section 1, (24) (b).

Clean fill is classed as rocks, asphalt, etc..

9) affirmed. Previous correspondence beginning March 9, 1998 with Mike Johnson apprised him of DEQ regulations concerning clean wood chips.

10) Respondent Umatilla complied and removed the other wastes. We reaffirm that the wood chips did not have to be removed.

Respondent Umatilla received the Notice of Non-Compliance after it had seen a front page story in the local newspaper.

11) All charges were dropped by Umatilla County Sheriff's office. This is not relevant.

12) Affirmed. The Umatilla Refuse Group is still pursuing Mike Johnson for violating our contractual agreement. The URG fired

our last attorney because of his inaction toward Johnson. Why didn't DEQ go after his bond?

13) DEQ's manager's letter of August 21, 1996 said in his opinion the majority of wood waste on site was from a construction and demolition site and DEQ did not consider it clean fill and to remove it. Reference Woodfeather's: It's property and it is recyclable. Letter then said rock and concrete could remain because it was clean fill! The DEQ manager then required Umatilla to coordinate any removal with Umatilla County to provide receipts from an authorized dump site. This constitutes FLOW CONTROL. We should not have had to remove all of the clean, hand separated wood chips (90-95% of the material).

14) DEQ continued to require that all wood chips be removed. Warren Taylor, owner of Torco Ranches, estimated that over 90% was wood. Two hundred thirty tons of wood chips were disposed of at the transfer station, a conservative amount of clean fill would be a mere 5%.

ULTIMATE FINDINGS

Respondent Umatilla did not establish an unpermitted disposal site. Respondent did not bury, burn or in any way try to hide it's operations. We only tried to abide by Senate Bill 66 that wanted to Reduce, Reuse, and Recycle.

APPLICABLE LAW

ORS 459.235

Respondent Umatilla never opened a disposal site. We did not need a permit.

ORS 459.005(8)

Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.

ORS 459.005(24)

Respondent Umatilla were not discarding our wood chips.

OAR 340-93-050 states:

(e) There was no potential for adverse impact on any waters.

CONCLUSIONS AND REASONS

Respondent Umatilla reaffirms their argument that no disposal site was established on the Torco Ranch.

DEQ representative did give Umatilla permission to accept clean wood chips without a permit.

There is no proof of any painted wood being chipped. Photos

do not reveal any indication of paint.

Ninety to ninety five percent of the woodchips received were clean.

The April 5, 1996 contract with Mike Johnson stated clearly that only clean wood chips would be accepted at the Torco Ranch site.

Respondent Umatilla continues to allege selective enforcement. DEQ was never denied access to our site, nothing was burned or buried (as the City of Pendleton did and as the remaining buildings at the old mill site were). Umatilla cooperated in every way with the local DEQ.

Respondent Umatilla did not advertise as a receiver of waste. Mike Johnson was to deliver source separated wood chips: Recyclables..

Respondent Umatilla's repeated efforts to gain approval from DEQ clearly show our intent to adhere to regulations. Every avenue that was pursued was thwarted by DEQ, Umatilla County and the City of Pendleton to the financial benefit of Pendleton Sanitary Service Inc., and the franchise fees paid to the City, County and State governments.

DEQ clearly understood we would not need a LUCS to accept clean wood chips.

Respondent Umatilla believes the facts are very relevant concerning recycling and meeting the goals for year 2000. We are proving DEQ is failing to follow SB 66 and is trashing the environment. We forced them to move the approved transfer station from a low to mid income neighborhood. We also showed how City of Pendleton was continuing to dump illegally in their own unpermitted landfill, failing to enforce Untreated Infectious Medical waste regulations, letting the City turn contaminated sites into parks when they were "donated" to the City, and letting the City Police discard drug paraphenalia and evidence in a school dumpster. This is clearly selective (vindictive) enforcement. We have been lied to numerous times by the DEQ. They also misquoted regulations regularly.

Umatilla cited Woodfeathers, In. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) and C&A Carbone v Town of Clarkston, 511 US 383 (1994) to support their position that it does support our defense theory. Woodfeathers case is about Inter & INTRA state commerce which further defines "property and recylcables".

CIVIL PENALTY

Respondent Umatilla did not establish a disposal site. The materials under question were clean wood chips, for which we did not need a permit. There was no disposal.

Respondent Umatilla's alleged violation was not intentional. Umatilla cooperated with DEQ: site inspections, removal of material, no burning or burying, numerous correspondence and conferences. Stephanie Hallock, Region 5, did give her permission to accept clean wood chips.

The first contract was signed by Gail Balderson, General Manager for Mike Johnson on April 5, 1996. The DEQ's own regulations were faxed to Mr. Johnson on March 11, 1996 for his complete review.

The Civil Penalty is in error as only a very small fraction of the total was not clean wood chips or clean fill. Everything that was on site was recyclable. There was no environmental hazard created or any threat to any Oregon waters.

October 12, 1998

Umatilla Refuse Group Cooperative



Kal Garton



Vera Simonton

Designated legal representatives

cc: Susan Greco, Environmental Quality Commission
Larry Cwik, DEQ

Re-submitted December 13, 1998

FACTS AND EVIDENCE

The URGC met with the Department, beginning in 1994, to discuss the opening of a composting operation. At no time were we given any encouragement or aided by staff to achieve our goal of undertaking a Demonstration for Recycling, Composting and Land Reclamation. ORS 459.015.

ORS-459.025 (1) and ORS-459.035 (2) and ORS 459.045 (A), (a), (b), (4)

We met each added requirement as required, by the County and DEQ, and still were never issued a permit. In Vera Simonton's letter of February 22, 1996 she asks why we are being asked to submit even more detailed information than what was agreed to at the meeting in The Dalles, February 8, 1996.

We formally asked Stephanie Hallock for an Independent Environmental Assessment and received NO response.

The County lost our LUCS application when we would not sign off on the 120 day limit for issuing a LUCS. After 120 days it should have been automatically issued. That is the State law.

The URGC attempted to adapt their facility to DEQ's ever changing requirements. The Department admits their own confusion on rules. Stephanie Hallock tells us we can use wood chips and manure with no permit required. Gerry Preston notifies us that every wood chip has to be removed as he "sees fit". Joni Hammond tells our attorney, Sean Donahue, that she doesn't see a problem with wood chips and manure.

The Department admits in their own publication, Waste Management & Cleanup Division, December 1996, "That the existing Solid Waste rules can not easily be applied to composting operations. This has resulted in inconsistencies in interpretation and application of existing rules at the 45 composting facilities around the state. Only six of the facilities currently have solid waste disposal site permits...". We could find NO permits for composting only, they are also for Solid Waste.

Clearly our organization has been singled out for alleged violations. To be cited for 1 tire, a sheet of visquine, and a small amount of fiberglass insulation borders on the ridiculous.

On August 8, 1995, the day after we had taken DEQ to our proposed site, we were issued a Non-Compliance citation for an old State of Oregon waste pile. It had been used by the State for more than 50 years and showed no evidence of any storm drainage into the adjacent gully. This proved there was no possible risk of runoff.

Please refer to the photos taken by Glen Diehl of the Sheriff's

office, Gerry Preston and John Dadoly of DEQ. There is no pernicious putrescible waste visible. There is no evidence of burying or burning the waste, excluding the warming fire for the workers who were sorting materials. There is no evidence of the URG deliberately hiding or mis-using any of the recyclables.

The photos clearly show materials being hand sorted and stacked. The metal, plastic, the tire and the fiberglass insulation were removed in a timely fashion.

The photos also show there is no possibility of surface water contamination. The wood chips were manufactured from 50 year old dried, cured, untreated waste wood from the Harris Pine Mill. They contained no contaminants, no paint or preservatives.

Our soils report, by Val Toronto P.E, Soils Expert, to DEQ showed there was no possibility of runoff. The URG also constructed 2 dikes, where the road crossed the gully, to contain any potential water runoff.

Mike Johnson, the hauler, was notified many times, by telephone, letters and by our attorney to stop hauling. As the generator of the waste he should be contacted by DEQ. OAR 340-90-010

URGC'S first notification of Non-Compliance was the front page article in the East Oregonian newspaper. We received the official notification April 21 or April 22, 1996.

Goal 2 of the Oregon State Integrated Resource & Solid Waste Management Plan 1995-2005, insures all residents of the state are provided the opportunity to recycle

We contend DEQ has not met the recycling goals for Oregon as directed by Legislation in 1991 (ORS-459). Umatilla County has not met the recycling goals mandated, in fact they reduced the goals as they cannot be met. Our environment is clearly getting trashed by the DEQ's support of flow control, monopolistic, no competition, budget driven policies.

This is truly environmental management by F-Troop. The DEQ's \$100 fee for a Transfer Station permit and the \$10,000 fee for recycling/resource recovery and composting operations clearly shows that the Department encourages more refuse going into landfills, where they get paid by the ton disposed of!

The Umatilla Recycling Group received NO economic benefit. As a registered Non-Profit Corporation this was not an option.

The URG met with DEQ and asked for an extension of time for disposing of the contested construction/demolition debris.

We also contend the magnintude of the violation, if any, has been greatly exaggerated. The complaint should only cover those

materials on site at the time of the Notice of Non-Compliance. These materials as per the NONC were clearly all clean wood materials and already source separated recyclables. We never received another NONC for Mr. Johnson's additional materials.

Members of the URG made formal complaints to John Dadoly in the Pendleton office, of the City of Pendleton's Patawa Creek unpermitted dump site. The waste was buried with no fine. The City Attorney and the City Planner were both aware it was an illegal operation. DEQ in Pendleton was furnished with/and made available over 400 photos of various illegal dumpsites in and near Pendleton and they took NO action. Many of these putrescible solid waste dump sites were located in watershed areas situated in the Umatilla River Basin.

Our problems with DEQ began with individual personalities and their interpretation of rules and regulations. There is too much confusion within the Department concerning rules governing composting operations, such as the one we tried to get approval for, that it was impossible to obtain clear answers to our questions.

Our goal was to provide a sanitary landfill and attain the 50% recycling goal established in State Statutes, State Planning Goals, County Land Use Planning, County Solid Waste Management Plan and County Ordinance 90-07.

The principle objectives of the Agri-Co-Op are set out in ORS 459.015 (1994,95,96).

We therefore ask that the DEQ be reprimanded for forcing us to dispose of our recyclable property and any and all fines or penalties be dismissed.

Umatilla Refuse Group Co-op
441 S.W. Court Ave.
Pendleton, Oregon 97801

Re-submitted December 13,1998



Karl Garton
Legal Representative



Vera Simonton
Legal Representative

November 23, 1998

Susan Greco
Rules Coordinator
Management Services Division
Department of Environmental Quality
811 SW 6th Avenue

State of Oregon
Portland, OR 97204
Department of Environmental Quality

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENFORCEMENT SECTION

Received
NOV 24 1998

OFFICE OF THE DIRECTOR

Re: Notice of Appeal to the Environmental
Quality Commission
Notice of Representation
In the Matter of the Umatilla Refuse Group
Cooperative
Case No. SW-ER-96-121
Umatilla County

Dear Ms. Greco:

The Department appeals the Hearings Officer's Amended Hearing Order in the case identified above.

Also, from this point on, Larry Edelman of the Department of Justice will represent the Department in the appeal. His address is 1515 S.W. Fifth Avenue, Suite 410, Portland, OR 97201; telephone 229-5725. Future correspondence on this case should be directed to him

Thank you.

Sincerely,



Larry Cwik
Enforcement Section

cc: Vera Simonton, Umatilla Refuse Group Cooperative
Stephanie Hallock, Eastern Region, Bend Office, DEQ
John Dadoly, Eastern Region, Pendleton Office, DEQ
Gerry Preston, Eastern Region, The Dalles Office, DEQ
Les Carlough/Neil Mullane, Enforcement



2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987
(503) 229-5528
TTY (503) 229-5471
DEQ-1

Attachment G
1 page

November 19, 1998

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

RE: Appeal to Environmental Quality Commission

Dear Ms. Simonton:

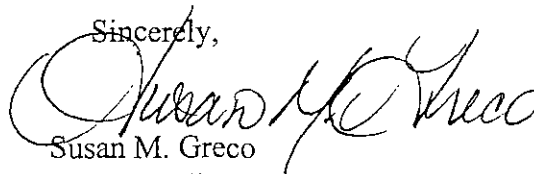
On November 16, 1998, the Environmental Quality Commission received the Umatilla Refuse Group Cooperative's timely request for administrative review by the Commission in DEQ Case No. SW-ER-96-121.

Pursuant to OAR 340-11-132(4)(a), you must file exceptions and brief within thirty days from the filing of the Notice of Appeal (December 16, 1998). The exceptions must specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, the Department may file an answer brief. I have enclosed a copy of the applicable administrative rules.

To file exceptions and brief, please send to Susan Greco, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204, with a copy to Larry Cwik, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201.

After the parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and the parties will be notified of the date and location. If you have any questions on this process, or need additional time to file exceptions and briefs, please call me at 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,


Susan M. Greco
Rules Coordinator

cc: Larry Cwik

Attachment H
1 page



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1



November 12, 1998

OFFICE OF THE DIRECTOR

RECEIVED
NOV 18 1998
State of Oregon
Department of Environmental Quality

Environmental Quality Commission
Rules Co-Ordinator, Susan Greco
811 S.W. 6th Ave.
Portland, Oregon 97204-1390

Dear Ms. Greco,

Umatilla Refuse Group is requesting a Notice of Appeal for administrative review of Amended Hearing Order Case No. SW-ER-96-121 with the Commission.

It is the intent of the URG that the Environmental Quality Commission review the Hearing Officer's Final Order.

Umatilla Refuse also requests the Chairman to schedule the opportunity for the URG to present oral argument before the Commission.

Vera Simonton
Vera Simonton

Kal Garton
440 S.W. 1st.
Pendleton, Oregon 97801

cc: Larry Cwik, DEQ
Henry Lorenzen

Attachment I
1 page



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

November 3, 1998

Kal Garton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

RE: Amended Hearing Order
Case No. SW-ER-96-121

Dear Mr. Garton:

On October 29, 1998, I mailed to you a copy of the Amended Hearing Order Assessing Civil Penalty issued by Hearing Officer Lawrence Smith in the above referenced case. The Amended Order was in response to the Department's request for reconsideration of the original order issued September 14, 1998. On September 28, 1998, the Environmental Quality Commission received your timely filed request for administrative review of the original Order.

The amended Order has superceded the original Order, therefore your petition for review dated September 28, 1998 has been nullified. If you wish to appeal the amended Order, you will need to file a request for administrative review with the Commission prior to November 28, 1998. Following receipt of your request, you will be allowed to file exceptions to the amended Order. If you wish to appeal the amended Order, please file your request for review with Susan Greco on behalf of the Environmental Quality Commission, 811 S.W. 6th Avenue, Portland, Oregon 97204.

If you should have any questions on this process, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,

Susan M. Greco
Rules Coordinator

cc: Larry Cwik, NWR

Attachment J
1 page

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

IN THE MATTER OF:	)	AMENDED
	)	HEARING ORDER
	)	ASSESSING
Umatilla Refuse Group Co-Op,	)	CIVIL PENALTY
an Oregon Non-Profit Corporation,	)	NO. SW-ER-96-129
Respondent	)	UMATILLA COUNTY

BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, under Oregon Revised Statutes (ORS) Chapters 468.126 through 468.140 and 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On June 24, 1996, respondent Umatilla Refuse Group Cooperative (Umatilla) appealed the Notice (Exhibit 6).

After pre-hearing telephone conferences on July 9, 1998, and July 17, 1998, a hearing was held in Portland, Oregon, on July 22 and 23, 1998, before hearings officer Lawrence S. Smith. Respondent Umatilla was represented by its president, Calvin Garton. Larry Cwik, environmental law specialist, represented DEQ.

The hearing record remained open for DEQ to file a hearing memorandum. It was received on August 4, 1998. Respondent Umatilla responded to the memorandum on August 14, 1998. DEQ filed a reply to respondent Umatilla's response on August 28, 1998, and the record was closed.

The hearing record also remained open for an affidavit and/or testimony from Warren Taylor, witness for respondent Umatilla. On August 19, 1998, respondent Umatilla submitted records of dumping complaints in Umatilla County, but no affidavit from Warren Taylor or offer of his testimony. No such affidavit or offer was received by September 1, 1998, so the record was closed. The record of dumping complaints is not received into the record because the record did not remain open for that evidence.

The hearing record finally remained open to give DEQ an opportunity to provide legal argument from the Attorney General's office in response to legal arguments by respondent Umatilla. The argument was received on August 6, 1998, and considered. Respondent Umatilla responded to it in its memorandum of August 14, 1998.

On September 23, 1998, DEQ filed a Petition for Clarification. This order was amended to consider this Petition.

Attachment K
12 pages

ISSUES

Did respondent Umatilla establish, operate, or maintain a solid waste disposal site without a solid waste disposal facility permit in violation of ORS 459.205(1) and OAR 340-93-050(1)?

If there was a violation, was the penalty appropriate under OAR 340-12-045?

FINDINGS OF FACT

1. In 1994, respondent Umatilla incorporated as a non-profit private corporation to provide recycling and other services for its members. Respondent Umatilla sought to set up a recycling and composting center near or around Pendleton, Oregon, for conversion of waste into usable products. It was interested in accepting clean wood chips and construction debris for use as cattle bedding and other beneficial uses.

2. Members of respondent Umatilla were part of a group that worked successfully against the siting of a landfill in a Pendleton neighborhood. Respondent Umatilla has continued to oppose Pendleton Sanitary Service as the sole solid waste handler in the Pendleton area. Respondent Umatilla believes that the monopoly enjoyed by Pendleton Sanitary Service has caused a large increase in disposal fees and that the increase in fees has led to much more illegal dumping. Respondent Umatilla alleged in the hearing and other forums that the City of Pendleton, Umatilla County and DEQ have established a flow control plan that protects Pendleton Sanitary Service's monopoly in disposing of solid waste in Umatilla County. Respondent Umatilla has pursued this theory in state court and in complaints filed against Pendleton Sanitary Service, Umatilla County, and the City of Pendleton.

3. In 1994, respondent Umatilla entered into protracted negotiations with DEQ, Umatilla County, and the City of Pendleton to receive a permit or authorization to establish a recycling and composting operation on property leased from one of its members on the member's cattle ranch (Torco Ranch) off Birch Creek Road, southeast of Pendleton (Tax Lot 3800, Section 24, Township 2 North, Range 31 East, Willamette Meridian, Oregon).

4. During the negotiations, the administrator of the eastern region for DEQ told respondent Umatilla in a letter of October 13, 1995, that respondent could accept clean fill and/or source-separated material without a permit if it met the exemption in OAR 340-93-050 (Exhibit 9). Based on respondent's application, the administrator did not feel this option was appropriate. In another letter on the same date, the administrator told respondent Umatilla that as long as the clean wood chips and clean fill were source-separated where generated and do not come as mixed waste, they are acceptable as compost materials (Exhibit 10). The administrator went on to say that if respondent Umatilla wanted to process more than those two materials, it would need a Solid Waste Letter Authorization (SWLA). In a letter of December 28, 1995, the administrator said

respondent Umatilla would definitely need a SWLA from DEQ before accepting the materials listed in its application (Exhibit 11).

5. On February 28, 1996, the administrator of the eastern region for DEQ wrote to respondent Umatilla, saying that respondent Umatilla needed to submit a Land Use Compatibility Statement (LUCS) from Umatilla County to complete its application for an SWLA (Exhibit 12). Respondent Umatilla has never obtained this LUCS and therefore has never completed its application to DEQ for an SWLA.

6. On March 13, 1996, the administrator of the eastern region for DEQ wrote to respondent Umatilla, summarizing DEQ's understanding of a meeting on February 9, 1996 (Exhibit 13). In that letter, the administrator said that two alternatives proposed by respondent Umatilla were appropriate for an SWLA, but that DEQ needed an LUCS before it could issue the SWLA. Respondent Umatilla reported that the proposed SWLA did not give it enough time to do what it proposed in its demonstration project and the cost of an application for a Solid Waste Disposal (SWD) permit was too high. DEQ told respondent Umatilla that the SWLA for its proposed demonstration project was good for six months, with an extension for another six months. Respondent Umatilla felt it needed at least four to five years to determine whether its project was feasible. DEQ suggested applying for a Solid Waste Disposal (SWD) permit after one year with the SWLA.

7. Starting on March 9, 1996, the general manager for respondent Umatilla began negotiating with Mike Johnson, Inc., a waste hauler located in the State of Washington. Johnson had been awarded the contract of removing the construction debris from the site of the former Harris Pine Mills. The site also contained a furniture factory and a retail sales store. The site was being cleared for construction of a Wal-Mart store in Pendleton. The general manager told Johnson that respondent Umatilla would take clean wood chips that were ground on site and other recyclable items. Respondent Umatilla wanted to mix the chips with manure for fertilizer and also use the wood chips for blotting under its compost operation. They also wanted to use wood chips for cattle bedding and anti-erosion materials. The general manager understood that Johnson would be hauling only clean wood and clean fill to respondent's site on Torco Ranch and provided two employees to Johnson to separate the materials on the Wal-Mart site. Around April 8, 1996, Johnson began transporting wood chips made from the boards in the buildings. These boards had never been treated or painted, except for painted boards from the front of the retail store. Johnson was told to tarp the loads so the wood chips would not fly away in transit, but instead, he put crushed rock on them to keep the wood chips down while he transported them.

8. A person with Pendleton Sanitary Service and another citizen complained to DEQ about Johnson's dumping of these materials on Torco Ranch. DEQ noted that respondent Umatilla had advertised that it could take solid waste for recycling. On April 9, 1996, DEQ inspected the Torco Ranch with the general manager for respondent Umatilla. Large piles of wood chips with rocks in them were on site, as well as piles of demolished wood planks, some asphalt shingles, metal, and gypsum board that had been

separated out in small piles (see Exhibit 23, pictures). The general manager admitted that the wood waste was not clean fill. The general manager said that the wood would be ground after respondent Umatilla bought a tub grinder, which it would not do until it received permit approval from DEQ and Umatilla County. The general manager said that the shingles, metal and other waste would be taken to the Athena Landfill, about 25 miles away.

9. On April 12, 1996, at 8:05 a.m., the general manager for respondent Umatilla signed a written contract with Mike E. Johnson, Inc., stating that respondent Umatilla would receive source-separated material and clean fill (Exhibit 26).

10. On April 16, 1996, DEQ mailed a Notice of Noncompliance to the general manager for respondent Umatilla (Exhibit 22). The Notice stated specific steps for Corrective Action, including taking of no more waste, removal of wood waste by May 31, 1996, and removal of other wastes. A newspaper article dated April 19, 1996, stated that DEQ was taking such actions against respondent Umatilla.

11. After April 9, 1996, Johnson was required to remove construction and other debris immediately from the Wal-Mart site, before it was separated or chipped. Johnson removed this material and dumped it on respondent's site at the Torco Ranch. This material contained large piles of wood, metal seams, insulation, roofing material, and some plastic (Exhibit 15, videotape, and Exhibit 16, pictures, taken on May 1, 1996). Johnson dumped some of this material on the Torco Ranch the morning of April 18, 1996. A Umatilla County sheriff cited respondent Umatilla with a violation on April 18, 1996, for allowing an unpermitted waste disposal on its property (Exhibit 17).

12. On May 21, 1996, the general manager for respondent Umatilla wrote a letter to Johnson, demanding removal of 20 of the 140 loads on the Torco Ranch because these 20 loads could not be source-separated (Exhibit 36). On May 31, 1996, an attorney for respondent Umatilla wrote a letter to Johnson, formally demanding Johnson to remove 47 truck loads of material which could not be source-separated by hand (Exhibit 7). Johnson never removed these loads, and respondent Umatilla was told it would cost too much to pursue legal action against Johnson because he was out-of-state.

13. Respondent Umatilla removed much of the non-wood waste by August 19, 1996, when DEQ again inspected the site at the Torco Ranch. DEQ's manager of solid waste wrote to respondent Umatilla on August 21, 1996, telling respondent that the vast majority of the waste on site was wood from a construction and demolition site, which DEQ did not consider clean fill and must be removed (Exhibit 29). The letter said that brick or concrete could remain because it was clean fill. Finally, the DEQ manager required respondent Umatilla to coordinate any removal with Umatilla County and to provide receipts of dumps at authorized sites.

14. By September 16, 1996, respondent Umatilla had removed all but the wood chips on the site and some paper and wood waste (see Exhibit 41, pictures provided by

respondent Umatilla). DEQ continued to require that all wood chips also be removed. On February 24, 1997, the landowner of Torco Ranch wrote to DEQ and reported that the cost of cleanup was \$25,763.11 (Exhibit 34). He advised DEQ that this cost was higher than it should have been because he thought DEQ required him to dispose of the waste with Pendleton Sanitary Service, where the cost was \$55 per ton, instead of the dump in Athena, Oregon, which charges \$5 per ton for dumping. Among the owner's costs were a \$5,000 donation to respondent Umatilla to get the cleanup started, \$3,500 to rent machinery for the cleanup, about \$5,000 to crews for hand-separating the material and picking up, and \$12,530.11 to Pendleton Sanitary Service. The owner estimated that the pile was over 90% wood and hauled 227.82 tons from the site. The owner finally said that some more hand-separating needed to be done.

ULTIMATE FINDINGS

Respondent Umatilla established an unpermitted disposal site.

APPLICABLE LAW

ORS 459.205(1) states:

Except as provided by ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the department as provided in ORS 459.235.

ORS 459.005(8) defines "disposal site" as:

[L]and and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank plumbing or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permits used under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

ORS 459.005(19) defines “recyclable material” as:

[A]ny material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

ORS 459.005(20) defines “recycling” as:

[A]ny process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

ORS 459.005(24) defines “solid waste” as:

[A]ll useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings and other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded and abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

OAR 340-93-050 states:

(1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

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

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

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

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

(d) Composting operations used only by the owner or persons in control of a dwelling unit to dispose of food scraps, garden wastes, weeds,

lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department;

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

OAR 340-93-030(78) states:

“Source Separated” means that the person who last uses recyclable materials separates the recyclable material from solid waste.

CONCLUSIONS AND REASONS

The basic facts regarding the violation are not in dispute. A disposal site as defined by ORS 459.205(1) was established by respondent Umatilla on its site on the Torco Ranch when mixed materials, and not only clean fill, were dumped on the site. Respondent Umatilla has never had a permit to dump such materials, so it violated the law.

Respondent Umatilla argued that DEQ gave it permission to dump clean fill and clean wood chips on the site without a permit. That claim is not strictly true, but in any event, it is not relevant in this case because the general manager for respondent Umatilla admitted the wood chips dumped on the site were mixed with rocks and other materials. The chips were not clean because Johnson mixed rocks with the wood chips to keep them down. Some of the wood chips were from the painted front of the retail store and were not untreated wood, as claimed by respondent. Many materials were mixed together, so the pile was not only clean fill and woodchips. The issue of impact of groundwater is not pertinent because the site was not used exclusively for disposal of clean fill, as required by OAR 340-93-050(2)(c), and because much more than source-separated materials were received on the site, as required by OAR 340-93-050(2)(c). Respondent Umatilla's arguments might have been more persuasive if they operated as they said they would, by accepting only clean fill and clean wood chips. Respondent Umatilla alleges that position, but the material dumped on their site did not fit that description, and respondent Umatilla needed a permit for accepting such materials.

Regarding respondent Umatilla's specific allegations, respondent has not established that it was the victim of selective enforcement. The three other alleged violations were not similar enough in regards to what was dumped and the seriousness of the violation to establish unequal treatment. Respondent Umatilla's violation is very much different because it was so obvious, occurring after extensive negotiation with DEQ on respondent's need for a permit, because of respondent's advertising as a receiver of waste and because it received mixed materials after it was clearly told it needed a permit.

Respondent Umatilla argued repeatedly that it should have been granted a permit. Its remedy for such a claim is legal action against DEQ for the permit or against Umatilla County for the Land Use Compatibility Statement (LUCS). As stated more than once in the hearing, the evidence that respondent should have been granted a permit is not relevant to whether there was a violation. Even if respondent Umatilla established that it was entitled to a permit, this entitlement without actually receiving the permit is not a defense to dumping without a permit. As stated above, respondent Umatilla had other avenues to secure its permit. Its belief that it deserves the permit does not relieve it of its legal duty to procure it before accepting waste at its site.

Respondent Umatilla alleged that DEQ failed to provide sufficient assistance in setting up its demonstration project. Respondent has not established any lack of cooperation, but even if it had, the evidence is not relevant unless it establishes equitable estoppel against DEQ, which was not alleged or established.

A DEQ publication did state that solid waste rules cannot be easily applied to composting operations, but the types of dumped materials were mixed and not suitable for composting. Independent of the DEQ publication, the manager for DEQ clearly stated to respondent what was needed, a Solid Waste Authorization Letter (SWLA) or Solid Waste Disposal (SWD) permit. DEQ was not completely consistent in stating what was required, but that was mainly because respondent changed its application and because it was a new project. Respondent clearly knew that it had to procure a Land Use Compatibility Statement (LUCS) from Umatilla County before it would have an SWLA or SWD and legally receive materials at its site.

Respondent Umatilla alleged that it gave sufficient notice to Mike Johnson to stop the dumping, but respondent's manager signed a contract with Johnson on April 12 after receiving notice from DEQ at a site visit on April 9 that no more dumping should be allowed. If respondent wanted to stop Johnson, it should not have signed a contract with him three days after he started dumping material on site.

Respondent Umatilla alleged that DEQ is not meeting its recycling goals and not managing the environment properly. Such a claim is not relevant regarding the violation, but it may be relevant in political forums, such as the legislature, regarding whether DEQ is fulfilling its legal responsibilities.

Respondent Umatilla cited *Woodfeathers, Inc. v. Washington County, Oregon*, 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and *C&A Carbone Inc. v. Town of Clarkston*, 511 US 383 (1994) in support of its position, but did not explain how these cases supported a particular defense theory, except to say "flow control". Those cases deal with interstate commerce and not solid waste disposal sites. DEQ's alleged violation did not involve interstate commerce, so these cases are not on point.

CIVIL PENALTY

DEQ set out its penalty calculation in Exhibit 1 to the Notice of Assessment of Civil Penalty (Exhibit 2). Respondent Umatilla established a disposal site without first obtaining a permit, which is a Class 1 violation under OAR 340-12-065(1)(b). The volume of the material disposed was between 40 and 400 cubic yards, so the magnitude was moderate under OAR 340-12-090(4)(a)(ii). The \$10,000 Matrix is the relevant matrix because it is a violation of solid waste statutes under OAR 340-12-042(1)(j). The Base Penalty under this Matrix is \$3,000.

The Base Penalty may be increased or decreased, based on other factors. DEQ appropriately increased the penalty by a factor of 6 because respondent Umatilla's violation was intentional, due to its knowledge that it needed a permit to allow dumping and allowed dumping anyway. Respondent Umatilla claimed that Johnson dumped materials that were not allowed under the contract between them, but the manager for respondent knew that on April 9, 1996, when inspecting the site with DEQ, yet the manager signed a contract with Johnson three days later, so it knew it would be receiving materials that were not approved. Its violation was intentional.

DEQ also raised the penalty by a factor of 2 for lack of cooperation. Respondent did remove the waste somewhat promptly after realizing it could not compel Johnson to remove it. Therefore, this factor is 0.

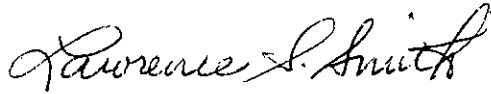
The last factor is economic benefit, which is what respondent Umatilla gained by dumping this material. This factor is to avoid the cases where a violator performs a cost-benefit analysis and concludes it makes better business sense to accept the fine rather than pay to comply. Because it was caught and complied with the law by removing all the material at the site at considerable expense, it received no economic gain. The total penalty is \$4,800 ($\$3,000 + 6 \times .1 \times \$3,000$).

After receiving the Hearing Order issued on September 14, 1998, DEQ requested reconsideration in a Petition for Clarification dated September 23, 1998. DEQ alleged the penalty should be tripled because the violation occurred on three different dates. The number and exact dates of dumping, and the amounts dumped at each time (more than 40 cubic yards), were not established in the record. Moreover, the above law proscribes the establishment of a solid waste disposal site, not specific or individual dumpings. Respondent established the illegal site with the first dumping, and subsequent dumpings at the same site does not seem to be a new violation under the above law. Under DEQ's reasoning, every truck load could be considered a separate violation. A more reasonable interpretation is finding one violation for setting up the dump at a particular site and increasing the penalty for repeated dumping at the site, based on the other factors, such as

repeated dumpings or the lack of cooperation. DEQ has not established three separate violations which would warrant tripling the penalty.

Dated this 26th day of October, 1998.

ENVIRONMENTAL QUALITY COMMISSION

A handwritten signature in cursive script that reads "Lawrence S. Smith".

Lawrence S. Smith
Hearings Officer

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

IN THE MATTER OF:)	
)	
	)	AMENDED ORDER
	)	ASSESSING
Umatilla Refuse Group Co-Op,	)	CIVIL PENALTY
an Oregon Non-Profit Corporation,	)	NO. SW-ER-96-129
Respondent	)	UMATILLA COUNTY

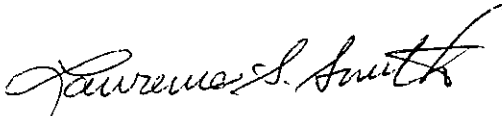
ORDER

IT IS HEREBY ORDERED that Umatilla Refuse Group Co-op is liable for a total civil penalty of \$4,800, plus interest pursuant to Oregon Revised Statute (ORS) 82.010, from the date this order is signed below until paid; and that if the civil penalty remains unpaid for more than ten (10) days, this order may be filed with each County Clerk and execution shall issue therefor.

If you are not satisfied with this decision, you have 30 days to appeal it to the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-11-132. If you wish to appeal the Commission's decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See, ORS 183.480 et seq.

Dated this 26th day of October, 1998.

ENVIRONMENTAL QUALITY COMMISSION



Lawrence S. Smith
Hearings Officer


Return to:
Enforcement Section
Department of Environmental Quality
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987

Certificate of Mailing

I certify that I mailed the attached AMENDED HEARING ORDER ASSESSING CIVIL PENALTY to each of the following persons on 10/29, 1998:

Kal Garton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801
(Via Certified Mail #P335742335)

Larry Cwik
Department of Environmental Quality
2020 S.W. 4th Avenue, Suite 400
Portland OR 97201


Susan M. Greco
Department of Environmental Quality



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

October 22, 1998

Kal Garton
Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

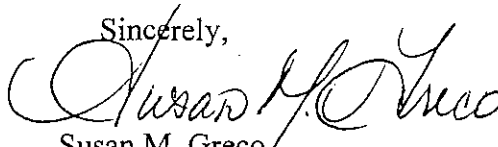
RE: Case No. SW-ER-96-121

Dear Mr. Garton and Ms. Simonton:

On October 21, 1998, the Environmental Quality Commission received the Umatilla Refuse Group Cooperative's Exceptions and Brief in the above referenced matter. Pursuant to OAR 340-11-132(4)(b), the Department must file an answering brief within thirty days (November 21, 1998). Once the Department files its brief, you may file a reply, which will be due 20 days after filing of the Department's brief.

If you should have any questions regarding these procedures, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,


Susan M. Greco
Rules Coordinator

cc: Larry Cwik, NWR

Attachment L
1 page

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

NOV 21 1998

IN THE MATTER OF :)
)
) HEARING ORDER
Umatilla Refuse Group Co-Op) DENYING
An Oregon Non-Profit Corporation) CIVIL PENALTY
) NO. SW-ER-96-129
) UMATILLA

BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, The Umatilla Refuse Group Cooperative appealed the notice of assessed penalty dated September 14, 1998 to the Environmental Quality Commission.

Respondent Umatilla was represented by it's president Kal Garton and Vera Simonton, who were appointed legal representatives.

The hearing record should have remained open until Umatilla County was forced to comply with our formal requests to furnish us with the illegal dumping complaints received. The Umatilla Refuse Group has made many requests to the County Commissioners of Umatilla County and the Sheriff's office and to this date, October 12, 1998, have not received the records of illegal dumping complaints.

DEQ erred on ruling from Woodfeathers Inc. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and did not include inter and INTRA state rulings and flow control of property. C&A Carbone Inc. v Town of Clarkston, 511 US 383 (1994).

ISSUES

1) Respondent Umatilla did not establish, operate, or maintain a solid waste disposal site in violation of Statutes 459.015 which mandates alternatives to solutions to Solid Waste Disposal. State Statute 459.015 defines any material source separated as a recyclable item, and any material that has or can be used-reused, altered through manufacturing is exempt as solid waste. Statutes and County Ord. 90-07 precludes all recyclable material whose cost of collection, storage, sale, etc. exceeds actual re-sale or sale/value/worth.

Umatilla Refuse Group wanted only clean wood chips for use as cattle bedding and beneficial composting.

2) Some members of respondent Umatilla were part of a group that successfully kept a TRANSFER STATION out of a low-mid income page 1

Attachment M
3 pages

residential neighborhood.

Respondent Umatilla has not pursued Pendleton Sanitary Service, Inc., Umatilla County and the City of Pendleton in State Courts.

3) Affirmed

4) Affirmed

5) Respondent Umatilla did file a previous LUCS application with Umatilla County which they then lost! Our LUCS was refiled, then County would not act upon our application until the Notice of Non-Compliance was resolved with DEQ.

No violation on Respondent's part. DEQ failed to punish the producer/perpetrator (Mike Johnson) in accordance with State Statutes. Mike Johnson, contractor, was the producer and transporter and provided the disposal.

6) Respondent Umatilla did request a "Demonstration" as per ORS 459-015. They participated in numerous conferences, correspondence and prepared a 50+ page A/E report clearly outlining their recycling and land reclamation goals.

7) Affirmed

8) The "person" who complained to DEQ about Johnson's dumping was the owner of Pendleton Sanitary Service Inc. Please provide a second non-biased citizen complaint.

Respondent Umatilla did not advertise that it would take "Solid Waste" for recycling.

There were large piles of clean wood chips, with a minor amount of rocks. There were small amounts of asphalt shingles, metal and gypsum board that had been hand-sorted out into small piles.

Wood waste is not "Clean Fill", clean wood chips are property, classed as recyclables. Ref: Woodfeather's, or DEQ's own Solid Waste definition, HB 3456 ORS 459.005 Section 1, (24) (b).

Clean fill is classed as rocks, asphalt, etc..

9) affirmed. Previous correspondence beginning March 9, 1998 with Mike Johnson apprised him of DEQ regulations concerning clean wood chips.

10) Respondent Umatilla complied and removed the other wastes. We reaffirm that the wood chips did not have to be removed.

Respondent Umatilla received the Notice of Non-Compliance after it had seen a front page story in the local newspaper.

11) All charges were dropped by Umatilla County Sheriff's office. This is not relevant.

12) Affirmed. The Umatilla Refuse Group is still pursuing Mike Johnson for violating our contractual agreement. The URG fired

our last attorney because of his inaction toward Johnson. Why didn't DEQ go after his bond?

13) DEQ's manager's letter of August 21, 1996 said in his opinion the majority of wood waste on site was from a construction and demolition site and DEQ did not consider it clean fill and to remove it. Reference Woodfeather's: It's property and it is recyclable. Letter then said rock and concrete could remain because it was clean fill! The DEQ manager then required Umatilla to coordinate any removal with Umatilla County to provide receipts from an authorized dump site. This constitutes FLOW CONTROL. We should not have had to remove all of the clean, hand separated wood chips (90-95% of the material).

14) DEQ continued to require that all wood chips be removed. Warren Taylor, owner of Torco Ranches, estimated that over 90% was wood. Two hundred thirty tons of wood chips were disposed of at the transfer station, a conservative amount of clean fill would be a mere 5%.

ULTIMATE FINDINGS

Respondent Umatilla did not establish an unpermitted disposal site. Respondent did not bury, burn or in any way try to hide it's operations. We only tried to abide by Senate Bill 66 that wanted to Reduce, Reuse, and Recycle.

APPLICABLE LAW

ORS 459.235

Respondent Umatilla never opened a disposal site. We did not need a permit.

ORS 459.005(8)

Respondent Umatilla never engaged in disposal. We had DEQ's permission to accept clean wood chips without a permit.

ORS 459.005(24)

Respondent Umatilla were not discarding our wood chips.

OAR 340-93-050 states:

(e) There was no potential for adverse impact on any waters.

CONCLUSIONS AND REASONS

Respondent Umatilla reaffirms their argument that no disposal site was established on the Torco Ranch.

DEQ representative did give Umatilla permission to accept clean wood chips without a permit.

There is no proof of any painted wood being chipped. Photos

do not reveal any indication of paint.

Ninety to ninety five percent of the woodchips received were clean.

The April 5, 1996 contract with Mike Johnson stated clearly that only clean wood chips would be accepted at the Torco Ranch site.

Respondent Umatilla continues to allege selective enforcement. DEQ was never denied access to our site, nothing was burned or buried (as the City of Pendleton did and as the remaining buildings at the old mill site were). Umatilla cooperated in every way with the local DEQ.

Respondent Umatilla did not advertise as a receiver of waste. Mike Johnson was to deliver source separated wood chips: Recyclables..

Respondent Umatilla's repeated efforts to gain approval from DEQ clearly show our intent to adhere to regulations. Every avenue that was pursued was thwarted by DEQ, Umatilla County and the City of Pendleton to the financial benefit of Pendleton Sanitary Service Inc., and the franchise fees paid to the City, County and State governments.

DEQ clearly understood we would not need a LUCS to accept clean wood chips.

Respondent Umatilla believes the facts are very relevant concerning recycling and meeting the goals for year 2000. We are proving DEQ is failing to follow SB 66 and is trashing the environment. We forced them to move the approved transfer station from a low to mid income neighborhood. We also showed how City of Pendleton was continuing to dump illegally in their own unpermitted landfill, failing to enforce Untreated Infectious Medical waste regulations, letting the City turn contaminated sites into parks when they were "donated" to the City, and letting the City Police discard drug paraphenalia and evidence in a school dumpster. This is clearly selective (vindictive) enforcement. We have been lied to numerous times by the DEQ. They also misquoted regulations regularly.

Umatilla cited Woodfeathers, In. v Washington County, Oregon 1997 WL 31180 (D Or March 31, 1997) and C&A Carbone v Town of CLarkston, 511 US 383 (1994) to support their position that it does support our defense theory. Woodfeathers case is about Inter & INTRA state commerce which further defines "property and recylcables".

CIVIL PENALTY

Respondent Umatilla did not establish a disposal site. The materials under question were clean wood chips, for which we did not need a permit. There was no disposal.

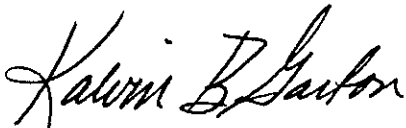
Respondent Umatilla's alleged violation was not intentional. Umatilla cooperated with DEQ: site inspections, removal of material, no burning or burying, numerous correspondence and conferences. Stephanie Hallock, Region 5, did give her permission to accept clean wood chips.

The first contract was signed by Gail Balderson, General Manager for Mike Johnson on April 5, 1996. The DEQ's own regulations were faxed to Mr. Johnson on March 11, 1996 for his complete review.

The Civil Penalty is in error as only a very small fraction of the total was not clean wood chips or clean fill. Everything that was on site was recyclable. There was no environmental hazard created or any threat to any Oregon waters.

October 12, 1998

Umatilla Refuse Group Cooperative



Kal Garton



Vera Simonton

Designated legal representatives

cc: Susan Greco, Environmental Quality Commission
Larry Cwik, DEQ



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

September 29, 1998

Vera Simonton
Umatilla Refuse Group Cooperative
440 S.W. 1st
Pendleton OR 97801

RE: Appeal to Environmental Quality Commission

Dear Ms. Simonton:

On September 28, 1998, the Environmental Quality Commission received the Umatilla Refuse Group Cooperative's timely request for administrative review by the Commission in DEQ Case No. SW-ER-96-121.

Pursuant to OAR 340-11-132(4)(a), you must file exceptions and brief within thirty days from the filing of the Notice of Appeal (October 28, 1998). The exceptions must specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, the Department may file an answer brief. I have enclosed a copy of the applicable administrative rules.

To file exceptions and brief, please send to Susan Greco, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204, with a copy to Larry Cwik, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201.

After the parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and the parties will be notified of the date and location. If you have any questions on this process, or need additional time to file exceptions and briefs, please call me at 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,

Susan M. Greco
Rules Coordinator

cc: Larry Cwik

Attachment N
1 page

September 24, 1998

RECEIVED

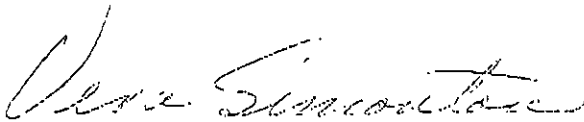
SEP 23 1998

Environmental Quality Commission
Henry Lorenzen, Chairman
222 S.E. Dorion Ave.
Pendleton, Oregon 97801

COREY, BYLER, REW
ATTORNEYS AT LAW

Dear Chairman Lorenzen,

The Umatilla Refuse Group Co-Operative respectfully request a hearing before The Environmental Quality Commission concerning and in denial of Hearing Order Assessing Civil Penalty #SW-ER 96-129 Umatilla County.



Vera Simonton

Umatilla Refuse Group Co-Operative
440 S.W. 1st
Pendleton, Oregon 97801

(541) 276-0931 FAX(541) 276-2459

Attachment 0
2 pages

LAWRENCE B. REW
STEVEN A. COREY
KEVIN C. LORBERG
GEOFFREY E. HUGHES
PATRICIA SULLIVAN
DAVID M. BLAND
TIMOTHY R. O'NEILL
STEVEN A. THOMAS
DENNIS L. CARLSON

222 S.E. CORCORAN AVE.
P.O. BOX 218
PENDLETON, OREGON 97051-0218

GEORGE H. COREY, RETIRED
ALEX M. STUBB, RETIRED

TELEPHONE (541) 276-3331

FACSIMILE (541) 276-3148

FAX COVER LETTER

DATE Sept 28, 1998

Please deliver this transmission to:

	<u>NAME</u>	<u>COMPANY</u>	<u>FAX NUMBER</u>
1.	<u>Ms. Daphne Bussey</u>	<u>DEA</u>	<u>503-229-5850</u>
2.			
3.			
4.			

This transmission is from: Henry Lorenzen

Client No.: _____

No. of pages (including cover page): 2 pgs

This transmission is being sent on a Sharp FO-640 fax machine. If you do not receive all of the pages, or if you have other problems receiving this transmission, please call _____ at (503) 276-3331.

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VIA FAX

September 23, 1998

Lawrence Smith, Hearings Officer
Employment Department Hearings Section
875 Union Street N.E.
Salem, OR 97311



DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENFORCEMENT SECTION

Re: Petition for Clarification
In the Matter of
Umatilla Refuse Group Cooperative
Case No. SW-NWR-96-121
Umatilla County

Dear Mr. Smith:

Attached please find the Department's Petition for Clarification to the Hearing Order in the case referred to above.

A copy is also being sent today by fax to Kal Garton of the URGC.

Thank you.

Sincerely,

A handwritten signature in cursive that reads "Larry Cwik".

Larry Cwik
Environmental Law Specialist
Enforcement Section
229-5728

Enclosures

cc: ✓ Kal Garton, President, Umatilla Refuse Group Cooperative, c/o Garton & Associates Realtors, 440 S.W. First, Pendleton, Oregon 97801
John Dadoly, DEQ Eastern Region, Pendleton
Gerry Preston, DEQ Eastern Region, The Dalles
Stephanie Hallock, DEQ Eastern Region, Bend
Joni Hammond, DEQ Eastern Region, Pendleton
Les Carlough, Enforcement Manager
Neil Mullane, Enforcement Administrator
Larry Edelman, Department of Justice
Glen Diehl, Umatilla County Sheriff's Office



2020 SW Fourth Avenue
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TTY (503) 229-5471
DEQ-1

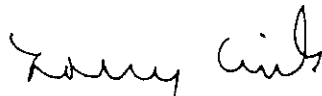
Attachment P
2 pages

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
UMATILLA REFUSE GROUP COOPERATIVE,)
an Oregon Corporation.)
PETITION FOR
CLARIFICATION
OF HEARING ORDER
No. SW-ER-96-121
UMATILLA COUNTY)

1. This Petition is to respectfully request that the Hearing Order in this case, dated September 14, 1998, be clarified. The Department assessed a penalty for three violations alleged in the Notice of Assessment of Civil Penalty (Notice) No. SW-ER-96-121 issued June 7, 1996, to the URGC, an Oregon corporation. Specifically, DEQ alleged that the URGC violated Oregon Revised Statute 459.205 by establishing, operating, or maintaining an unpermitted solid waste disposal site on the Torco Ranch, on April 9, April 18, and May 1, 1996. The Hearing Order assessed a penalty of \$4800 for one day of this violation. The Department petitions the Hearings Officer to rule that the Department met its burden of proof for each of the three cited days of violation and therefore clarify that the \$4,800 penalty applies to each of the three cited days of violation, for a total civil penalty of \$14,400 plus interest.

SEP 23 1998



Date

Larry Cwik
Environmental Law Specialist
Oregon Department of Environmental Quality

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

IN THE MATTER OF:)	
	)	HEARING ORDER
	)	ASSESSING
Umatilla Refuse Group Co-Op,	)	CIVIL PENALTY
an Oregon Non-Profit Corporation,	)	NO. SW-ER-96-129
Respondent	)	UMATILLA COUNTY

BACKGROUND

A Notice of Assessment of Civil Penalty was issued June 7, 1996, under Oregon Revised Statutes (ORS) Chapters 468.126 through 468.140 and 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On June 24, 1996, respondent Umatilla Refuse Group Cooperative (Umatilla) appealed the Notice (Exhibit 6).

After pre-hearing telephone conferences on July 9, 1998, and July 17, 1998, a hearing was held in Portland, Oregon, on July 22 and 23, 1998, before hearings officer Lawrence S. Smith. Respondent Umatilla was represented by its president, Kalvin Garton. Larry Cwik, environmental law specialist, represented DEQ.

The hearing record remained open for DEQ to file a hearing memorandum. It was received on August 4, 1998. Respondent Umatilla responded to the memorandum on August 14, 1998. DEQ filed a reply to respondent Umatilla's response on August 28, 1998, and the record was closed.

The hearing record also remained open for an affidavit and/or testimony from Warren Taylor, witness for respondent Umatilla. On August 19, 1998, respondent Umatilla submitted records of dumping complaints in Umatilla County, but no affidavit from Warren Taylor or offer of his testimony. No such affidavit or offer was received by September 1, 1998, so the record was closed. The record of dumping complaints is not received into the record because the record did not remain open for that evidence.

The hearing record finally remained open to give DEQ an opportunity to provide legal argument from the Attorney General's office in response to legal arguments by respondent Umatilla. The argument was received on August 6, 1998, and considered. Respondent Umatilla responded to it in its memorandum of August 14, 1998.

Attachment Q
11 pages

ISSUES

Did respondent Umatilla establish, operate, or maintain a solid waste disposal site without a solid waste disposal facility permit in violation of ORS 459.205(1) and OAR 340-93-050(1)?

If there was a violation, was the penalty appropriate under OAR 340-12-045?

FINDINGS OF FACT

1. In 1994, respondent Umatilla incorporated as a non-profit private corporation to provide recycling and other services for its members. Respondent Umatilla sought to set up a recycling and composting center near or around Pendleton, Oregon, for conversion of waste into usable products. It was interested in accepting clean wood chips and construction debris for use as cattle bedding and other beneficial uses.

2. Members of respondent Umatilla were part of a group that worked successfully against the siting of a landfill in a Pendleton neighborhood. Respondent Umatilla has continued to oppose Pendleton Sanitary Service as the sole solid waste handler in the Pendleton area. Respondent Umatilla believes that the monopoly enjoyed by Pendleton Sanitary Service has caused a large increase in disposal fees and that the increase in fees has led to much more illegal dumping. Respondent Umatilla alleged in the hearing and other forums that the City of Pendleton, Umatilla County and DEQ have established a flow control plan that protects Pendleton Sanitary Service's monopoly in disposing of solid waste in Umatilla County. Respondent Umatilla has pursued this theory in state court and in complaints filed against Pendleton Sanitary Service, Umatilla County, and the City of Pendleton.

3. In 1994, respondent Umatilla entered into protracted negotiations with DEQ, Umatilla County, and the City of Pendleton to receive a permit or authorization to establish a recycling and composting operation on property leased from one of its members on the member's cattle ranch (Torco Ranch) off Birch Creek Road, southeast of Pendleton (Tax Lot 3800, Section 24, Township 2 North, Range 31 East, Willamette Meridian, Oregon).

4. During the negotiations, the administrator of the eastern region for DEQ told respondent Umatilla in a letter of October 13, 1995, that respondent could accept clean fill and/or source-separated material without a permit if it met the exemption in OAR 340-93-050 (Exhibit 9). Based on respondent's application, the administrator did not feel this option was appropriate. In another letter on the same date, the administrator told respondent Umatilla that as long as the clean wood chips and clean fill were source-separated where generated and do not come as mixed waste, they are acceptable as compost materials (Exhibit 10). The administrator went on to say that if respondent Umatilla wanted to process more than those two materials, it would need a Solid Waste Letter Authorization (SWLA). In a letter of December 28, 1995, the administrator said

respondent Umatilla would definitely need a SWLA from DEQ before accepting the materials listed in its application (Exhibit 11).

5. On February 28, 1996, the administrator of the eastern region for DEQ wrote to respondent Umatilla, saying that respondent Umatilla needed to submit a Land Use Compatibility Statement (LUCS) from Umatilla County to complete its application for an SWLA (Exhibit 12). Respondent Umatilla has never obtained this LUCS and therefore has never completed its application to DEQ for an SWLA.

6. On March 13, 1996, the administrator of the eastern region for DEQ wrote to respondent Umatilla, summarizing DEQ's understanding of a meeting on February 9, 1996 (Exhibit 13). In that letter, the administrator said that two alternatives proposed by respondent Umatilla were appropriate for an SWLA, but that DEQ needed an LUCS before it could issue the SWLA. Respondent Umatilla reported that the proposed SWLA did not give it enough time to do what it proposed in its demonstration project and the cost of an application for a Solid Waste Disposal (SWD) permit was too high. DEQ told respondent Umatilla that the SWLA for its proposed demonstration project was good for six months, with an extension for another six months. Respondent Umatilla felt it needed at least four to five years to determine whether its project was feasible. DEQ suggested applying for a Solid Waste Disposal (SWD) permit after one year with the SWLA.

7. Starting on March 9, 1996, the general manager for respondent Umatilla began negotiating with Mike Johnson, Inc., a waste hauler located in the State of Washington. Johnson had been awarded the contract of removing the construction debris from the site of the former Harris Pine Mills. The site also contained a furniture factory and a retail sales store. The site was being cleared for construction of a Wal-Mart store in Pendleton. The general manager told Johnson that respondent Umatilla would take clean wood chips that were ground on site and other recyclable items. Respondent Umatilla wanted to mix the chips with manure for fertilizer and also use the wood chips for blotting under its compost operation. They also wanted to use wood chips for cattle bedding and anti-erosion materials. The general manager understood that Johnson would be hauling only clean wood and clean fill to respondent's site on Torco Ranch and provided two employees to Johnson to separate the materials on the Wal-Mart site. Around April 8, 1996, Johnson began transporting wood chips made from the boards in the buildings. These boards had never been treated or painted, except for painted boards from the front of the retail store. Johnson was told to tarp the loads so the wood chips would not fly away in transit, but instead, he put crushed rock on them to keep the wood chips down while he transported them.

8. A person with Pendleton Sanitary Service and another citizen complained to DEQ about Johnson's dumping of these materials on Torco Ranch. DEQ noted that respondent Umatilla had advertised that it could take solid waste for recycling. On April 9, 1996, DEQ inspected the Torco Ranch with the general manager for respondent Umatilla. Large piles of wood chips with rocks in them were on site, as well as piles of demolished wood planks, some asphalt shingles, metal, and gypsum board that had been

separated out in small piles (see Exhibit 23, pictures). The general manager admitted that the wood waste was not clean fill. The general manager said that the wood would be ground after respondent Umatilla bought a tub grinder, which it would not do until it received permit approval from DEQ and Umatilla County. The general manager said that the shingles, metal and other waste would be taken to the Athena Landfill, about 25 miles away.

9. On April 12, 1996, at 8:05 a.m., the general manager for respondent Umatilla signed a written contract with Mike E. Johnson, Inc., stating that respondent Umatilla would receive source-separated material and clean fill (Exhibit 26).

10. On April 16, 1996, DEQ mailed a Notice of Noncompliance to the general manager for respondent Umatilla (Exhibit 22). The Notice stated specific steps for Corrective Action, including taking of no more waste, removal of wood waste by May 31, 1996, and removal of other wastes. A newspaper article dated April 19, 1996, stated that DEQ was taking such actions against respondent Umatilla.

11. After April 9, 1996, Johnson was required to remove construction and other debris immediately from the Wal-Mart site, before it was separated or chipped. Johnson removed this material and dumped it on respondent's site at the Torco Ranch. This material contained large piles of wood, metal seams, insulation, roofing material, and some plastic (Exhibit 15, videotape, and Exhibit 16, pictures, taken on May 1, 1996). Johnson dumped some of this material on the Torco Ranch the morning of April 18, 1996. A Umatilla County sheriff cited respondent Umatilla with a violation on April 18, 1996, for allowing an unpermitted waste disposal on its property (Exhibit 17).

12. On May 21, 1996, the general manager for respondent Umatilla wrote a letter to Johnson, demanding removal of 20 of the 140 loads on the Torco Ranch because these 20 loads could not be source-separated (Exhibit 36). On May 31, 1996, an attorney for respondent Umatilla wrote a letter to Johnson, formally demanding Johnson to remove 47 truck loads of material which could not be source-separated by hand (Exhibit 7). Johnson never removed these loads, and respondent Umatilla was told it would cost too much to pursue legal action against Johnson because he was out-of-state.

13. Respondent Umatilla removed much of the non-wood waste by August 19, 1996, when DEQ again inspected the site at the Torco Ranch. DEQ's manager of solid waste wrote to respondent Umatilla on August 21, 1996, telling respondent that the vast majority of the waste on site was wood from a construction and demolition site, which DEQ did not consider clean fill and must be removed (Exhibit 29). The letter said that brick or concrete could remain because it was clean fill. Finally, the DEQ manager required respondent Umatilla to coordinate any removal with Umatilla County and to provide receipts of dumps at authorized sites.

14. By September 16, 1996, respondent Umatilla had removed all but the wood chips on the site and some paper and wood waste (see Exhibit 41, pictures provided by

respondent Umatilla). DEQ continued to require that all wood chips also be removed. On February 24, 1997, the landowner of Torco Ranch wrote to DEQ and reported that the cost of cleanup was \$25,763.11 (Exhibit 34). He advised DEQ that this cost was higher than it should have been because he thought DEQ required him to dispose of the waste with Pendleton Sanitary Service, where the cost was \$55 per ton, instead of the dump in Athena, Oregon, which charges \$5 per ton for dumping. Among the owner's costs were a \$5,000 donation to respondent Umatilla to get the cleanup started, \$3,500 to rent machinery for the cleanup, about \$5,000 to crews for hand-separating the material and picking up, and \$12,530.11 to Pendleton Sanitary Service. The owner estimated that the pile was over 90% wood and hauled 227.82 tons from the site. The owner finally said that some more hand-separating needed to be done.

ULTIMATE FINDINGS

Respondent Umatilla established an unpermitted disposal site.

APPLICABLE LAW

ORS 459.205(1) states:

Except as provided by ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the department as provided in ORS 459.235.

ORS 459.005(8) defines "disposal site" as:

[L]and and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank plumbing or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permits used under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

ORS 459.005(19) defines “recyclable material” as:

[A]ny material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

ORS 459.005(20) defines “recycling” as:

[A]ny process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

ORS 459.005(24) defines “solid waste” as:

[A]ll useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings and other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded and abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

OAR 340-93-050 states:

(1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

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

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

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

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

(d) Composting operations used only by the owner or persons in control of a dwelling unit to dispose of food scraps, garden wastes, weeds,

lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department;

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

OAR 340-93-030(78) states:

“Source Separated” means that the person who last uses recyclable materials separates the recyclable material from solid waste.

CONCLUSIONS AND REASONS

The basic facts regarding the violation are not in dispute. A disposal site as defined by ORS 459.205(1) was established by respondent Umatilla on its site on the Torco Ranch when mixed materials, and not only clean fill, were dumped on the site. Respondent Umatilla has never had a permit to dump such materials, so it violated the law.

Respondent Umatilla argued that DEQ gave it permission to dump clean fill and clean wood chips on the site without a permit. That claim is not strictly true, but in any event, it is not relevant in this case because the general manager for respondent Umatilla admitted the wood chips dumped on the site were mixed with rocks and other materials. The chips were not clean because Johnson mixed rocks with the wood chips to keep them down. Some of the wood chips were from the painted front of the retail store and were not untreated wood, as claimed by respondent. Many materials were mixed together, so the pile was not only clean fill and woodchips. The issue of impact of groundwater is not pertinent because the site was not used exclusively for disposal of clean fill, as required by OAR 340-93-050(2)(c), and because much more than source-separated materials were received on the site, as required by OAR 340-93-050(2)(c). Respondent Umatilla's arguments might have been more persuasive if they operated as they said they would, by accepting only clean fill and clean wood chips. Respondent Umatilla alleges that position, but the material dumped on their site did not fit that description, and respondent Umatilla needed a permit for accepting such materials.

Regarding respondent Umatilla's specific allegations, respondent has not established that it was the victim of selective enforcement. The three other alleged violations were not similar enough in regards to what was dumped and the seriousness of the violation to establish unequal treatment. Respondent Umatilla's violation is very much different because it was so obvious, occurring after extensive negotiation with DEQ on respondent's need for a permit, because of respondent's advertising as a receiver of waste and because it received mixed materials after it was clearly told it needed a permit.

Respondent Umatilla argued repeatedly that it should have been granted a permit. Its remedy for such a claim is legal action against DEQ for the permit or against Umatilla County for the Land Use Compatibility Statement (LUCS). As stated more than once in the hearing, the evidence that respondent should have been granted a permit is not relevant to whether there was a violation. Even if respondent Umatilla established that it was entitled to a permit, this entitlement without actually receiving the permit is not a defense to dumping without a permit. As stated above, respondent Umatilla had other avenues to secure its permit. Its belief that it deserves the permit does not relieve it of its legal duty to procure it before accepting waste at its site.

Respondent Umatilla alleged that DEQ failed to provide sufficient assistance in setting up its demonstration project. Respondent has not established any lack of cooperation, but even if it had, the evidence is not relevant unless it establishes equitable estoppel against DEQ, which was not alleged or established.

A DEQ publication did state that solid waste rules cannot be easily applied to composting operations, but the types of dumped materials were mixed and not suitable for composting. Independent of the DEQ publication, the manager for DEQ clearly stated to respondent what was needed, a Solid Waste Authorization Letter (SWLA) or Solid Waste Disposal (SWD) permit. DEQ was not completely consistent in stating what was required, but that was mainly because respondent changed its application and because it was a new project. Respondent clearly knew that it had to procure a Land Use Compatibility Statement (LUCS) from Umatilla County before it would have an SWLA or SWD and legally receive materials at its site.

Respondent Umatilla alleged that it gave sufficient notice to Mike Johnson to stop the dumping, but respondent's manager signed a contract with Johnson on April 12 after receiving notice from DEQ at a site visit on April 9 that no more dumping should be allowed. If respondent wanted to stop Johnson, it should not have signed a contract with him three days after he started dumping material on site.

Respondent Umatilla alleged that DEQ is not meeting its recycling goals and not managing the environment properly. Such a claim is not relevant regarding the violation, but it may be relevant in political forums, such as the legislature, regarding whether DEQ is fulfilling its legal responsibilities.

Respondent Umatilla cited *Woodfeathers, Inc. v. Washington County, Oregon*, 1997 WL 31180 (D Or March 31, 1997) No. 96-257-HA and *C&A Carbone Inc. v. Town of Clarkston*, 511 US 383 (1994) in support of its position, but did not explain how these cases supported a particular defense theory, except to say "flow control". Those cases deal with interstate commerce and not solid waste disposal sites. DEQ's alleged violation did not involve interstate commerce, so these cases are not on point.

CIVIL PENALTY

DEQ set out its penalty calculation in Exhibit 1 to the Notice of Assessment of Civil Penalty (Exhibit 2). Respondent Umatilla established a disposal site without first obtaining a permit, which is a Class 1 violation under OAR 340-12-065(1)(b). The volume of the material disposed was between 40 and 400 cubic yards, so the magnitude was moderate under OAR 340-12-090(4)(a)(ii). The \$10,000 Matrix is the relevant matrix because it is a violation of solid waste statutes under OAR 340-12-042(1)(j). The Base Penalty under this Matrix is \$3,000.

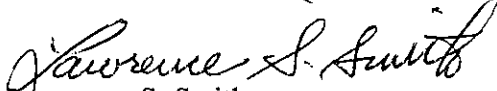
The Base Penalty may be increased or decreased, based on other factors. DEQ appropriately increased the penalty by a factor of 6 because respondent Umatilla's violation was intentional, due to its knowledge that it needed a permit to allow dumping and allowed dumping anyway. Respondent Umatilla claimed that Johnson dumped materials that were not allowed under the contract between them, but the manager for respondent knew that on April 9, 1996, when inspecting the site with DEQ, yet the manager signed a contract with Johnson three days later, so it knew it would be receiving materials that were not approved. Its violation was intentional.

DEQ also raised the penalty by a factor of 2 for lack of cooperation. Respondent did remove the waste somewhat promptly after realizing it could not compel Johnson to remove it. Therefore, this factor is 0.

The last factor is economic benefit, which is what respondent Umatilla gained by dumping this material. Because it was caught and had to remove all the material at considerable expense, it received no economic gain. The total penalty is \$4,800 ($\$3,000 + 6 \times .1 \times \$3,000$).

Dated this 14th day of September, 1998.

ENVIRONMENTAL QUALITY COMMISSION



Lawrence S. Smith
Hearings Officer

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

IN THE MATTER OF:)	
	)	ORDER
	)	ASSESSING
Umatilla Refuse Group Co-Op,	)	CIVIL PENALTY
an Oregon Non-Profit Corporation,	)	NO. SW-ER-96-129
Respondent	)	UMATILLA COUNTY

ORDER

IT IS HEREBY ORDERED that Umatilla Refuse Group Co-op is liable for a total civil penalty of \$4,800, plus interest pursuant to Oregon Revised Statute (ORS) 82.010, from the date this order is signed below until paid; and that if the civil penalty remains unpaid for more than ten (10) days, this order may be filed with each County Clerk and execution shall issue therefor.

If you are not satisfied with this decision, you have 30 days to appeal it to the Environmental Quality Commission. See Oregon Administrative Rule (OAR) 340-11-132. If you wish to appeal the Commission's decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See, ORS 183.480 et seq.

Dated this 14th day of September, 1998.

ENVIRONMENTAL QUALITY COMMISSION



Lawrence S. Smith
Hearings Officer

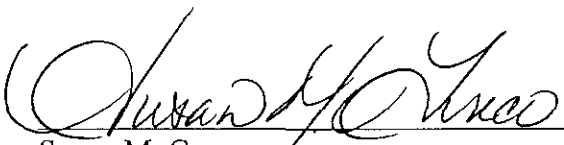
Return to:
Enforcement Section
Department of Environmental Quality
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987

Certificate of Mailing

I certify that I mailed the attached HEARING ORDER ASSESSING CIVIL PENALTY
and ORDER/ASSESSING CIVIL PENALTY to each of the following persons on
9/14, 1998:

Kal Garton
Umatilla Refuse Group Cooperative
441 S.W. Court
Pendleton OR 97801
(Via Certified Mail #P335742330)

Larry Cwik
Department of Environmental Quality
2020 S.W. 4th Avenue, Suite 400
Portland OR 97201


Susan M. Greco
Department of Environmental Quality

Post-it* Fax Note	7671	Date	8/28/98	# of pages	4
To	Lawrence Smith	From	Larry Cwik		
Co./Dept.	Env Dept Hearing	Co.	DEQ-Env		
Phone #		Phone #			
Fax #	238-5740	Fax #			



VIA FAX

August 28, 1998

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENFORCEMENT SECTION

Lawrence Smith, Hearings Officer
Employment Department Hearings Section
875 Union Street N.E.
Salem, OR 97311

Re: Contested Case Hearing
In the Matter of
Umatilla Refuse Group Cooperative
Case No. SW-NWR-96-121
Umatilla County

Dear Mr. Smith:

Attached is the Department's reply to the brief URGC filed concerning the Department's Hearing Memorandum for our recent contested case hearing. A copy is also being sent today by fax to Kal Garton of the URGC. I understand that the record will now be closed for this hearing with the one possible exception of an affidavit from Warren Taylor if URGC still desires this. Thank you.

Sincerely,

Larry Cwik
Environmental Law Specialist
Enforcement Section
229-5728

Enclosures

- cc: Kal Garton, President, Umatilla Refuse Group Cooperative, c/o Garton & Associates Realtors, 440 S.W. First, Pendleton, Oregon 97801
- John Dadoly, DEQ Eastern Region, Pendleton
- Gerry Preston, DEQ Eastern Region, The Dalles
- Stephanie Hallock, DEQ Eastern Region, Bend
- Joni Hammond, DEQ Eastern Region, Pendleton
- Les Carlough, Enforcement Manager
- Neil Mullane, Enforcement Administrator
- Larry Edelman, Department of Justice



2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987
(503) 229-5528
TTY (503) 229-5471
DEQ-1

Attachment R
4 pages

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: UMATILLA REFUSE GROUP COOPERATIVE, an Oregon Corporation)))))	REPLY TO RESPONDENT'S BRIEF CONCERNING HEARING MEMORANDUM No. SW-ER-96-121 UMATILLA COUNTY
--	-----------------------	--

I. RESPONSES TO URGC ARGUMENTS

1. This Reply is prompted by the Umatilla Refuse Group Cooperative's (URGC) August 14, 1998 Brief to the Department of Environmental Quality's (the Department, or DEQ) August 4, 1998, Hearing Memorandum concerning Notice of Assessment of Civil Penalty (Notice) No. SW-ER-96-121 issued June 7, 1996, to the URGC, an Oregon corporation, by DEQ.

2. URGC argues that only a few pieces of solid waste were included in the 46.35 tons of waste on the URGC disposal site located on the Torco Ranch, near Pendleton, Oregon. The sworn testimony in the record of Mr. Preston, Mr. Dadoly, and Mr. Diehl, and by the photographs and video of the URGC site introduced as exhibits into the hearing record (Exhibits 16, 23, 24), however, all show that the waste consisted of construction and demolition wood waste, much of it commingled and mixed with dirt and rock, boards, sheet metal, asphalt shingles, gypsum board, fiberglass insulation, a tire, visquene plastic, hoses, concrete, paper, and miscellaneous garbage.

3. DEQ objected during the hearing to URGC's arguments that DEQ is "trashing the environment" and engaging in flow control as they are irrelevant. In any case, the sworn testimony in the record of Mr. Preston, Mr. Dadoly, Mr. Diehl, and Ms. Hallock, and the Department's Supplemental Legal Memorandum from Larry Edelman, Department of Justice, dated August 7, 1998, all contradict these URGC assertions.

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8/28/98

Larry Cwik

Date

Larry Cwik
Environmental Law Specialist
Oregon Department of Environmental Quality

August 14, 1998

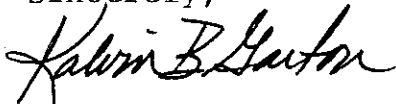
Lawrence Smith, Hearings Officer
Employment Department Hearings Section
875 Union Street N.E.
Salem, Oregon 97311

Re: Contested Case Hearing
in the Matter of
Umatilla Refuse Group
Cooperative
Case No. SW-NWR-96-121
Umatilla County

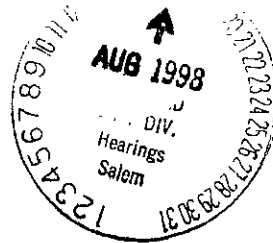
Dear Mr. Smith,

Attached is the Umatilla Refuse Group Cooperative's denial to the Hearing Memorandum for the recent contested case hearing of the URG. A copy is being sent today to Larry Cwik of DEQ.

Sincerely,



Kal Garton, President URG
Phone 276-0931
441 S.W. Court
Pendleton, Oregon



Attachment 5
5 pages

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
UMATILLA REFUSE GROUP COOPERATIVE) HEARING MEMORANDUM
an Oregon Non-Profit Corporation) No. SW-ER-96-121
) UMATILLA COUNTY
)

This Hearing Memorandum is offered in denial of the Notice of Assessment of Civil Penalty (Notice) No. SW-ER-96-121 issued June 7, 1996 to the Umatilla Refuse Group (URGC) an Oregon Non-Profit Corporation, by the Department of Environmental Quality (the Department or DEQ).

APPLICABLE STATUTES AND ADMINISTRATIVE RULES

1. Oregon Revised Statute (ORS) Relating to Solid Waste
 - ORS 459.095 Restrictions
 - 459.095 Local government restrictions may not conflict
 - 459.025 State Administration
 - Solid Waste-Recycling
 - ORS 459.005 Definition
 - 459.005 Resource Recovery
 - 459.005 Definitions
 - 459.153 Legislature intends that county not discourage recycling.
 - 190.007 Cooperative agreements for counties
 - 459.025 Cooperative agreements, generally
 - 340-90-010 Recycling -Definitions: Generator-person who last uses material and makes it available for disposal/recycling.
2. Oregon State Integrated Resource & Solid Waste Management Plan 1995-2005.
 - Page 40-Government's role
3. Oregon State Integrated Resource & Solid Waste Management Plan 1995-2005.
 - Page 41-Urban & Rural Differences: Rural Communities P# 7
 - Page 42-P# 6,8,9.
 - Page 43-P# 5,10,11.
 - Page 44-Sustainable Business P# 1,3,6
 - Page 130-Eastern Oregon RCRA Subtitle D Part 258
 - Implementation Strategy.
 - Eastern Oregon Characteristics
 - Page 130-P# 1 Climate: Low rainfall for Pendleton area.
 - Page 131-P# 2-4 Geology and Hydrogeology
 - Page 135-Tier 111-Landfill

11 FACTS AND EVIDENCE

The URGC met with the Department, beginning in 1994, to discuss the opening of a composting operation. At no time were we given any encouragement or aided by staff to achieve our goal of undertaking a Demonstration for Recycling, Composting and Land Reclamation. ORS 459.015.

ORS-459.025 (1) and ORS-459.035 (2) and ORS 459.045 (A), (a), (b), (4)

We met each added requirement as required, by the County and DEQ, and still were never issued a permit. In Vera Simonton's letter of February 22, 1996 she asks why we are being asked to submit even more detailed information than what was agreed to at the meeting in The Dalles, February 8, 1996.

We formally asked Stephanie Hallock for an Independent Environmental Assessment and received NO response.

The County lost our LUCS application when we would not sign off on the 120 day limit for issuing a LUCS. After 120 days it should have been automatically issued. That is the State law.

The URGC attempted to adapt their facility to DEQ's ever changing requirements. The Department admits their own confusion on rules. Stephanie Hallock tells us we can use wood chips and manure with no permit required. Gerry Preston notifies us that every wood chip has to be removed as he "sees fit". Joni Hammond tells our attorney, Sean Donahue, that she doesn't see a problem with wood chips and manure.

The Department admits in their own publication, Waste Management & Cleanup Division, December 1996, "That the existing Solid Waste rules can not easily be applied to composting operations. This has resulted in inconsistencies in interpretation and application of existing rules at the 45 composting facilities around the state. Only six of the facilities currently have solid waste disposal site permits...". We could find NO permits for composting only, they are also for Solid Waste.

Clearly our organization has been singled out for alleged violations. To be cited for 1 tire, a sheet of visquine, and a small amount of fiberglass insulation borders on the ridiculous.

On August 8, 1995, the day after we had taken DEQ to our proposed site, we were issued a Non-Compliance citation for an old State of Oregon waste pile. It had been used by the State for more than 50 years and showed no evidence of any storm drainage into the adjacent gully. This proved there was no possible risk of runoff.

Please refer to the photos taken by Glen Diehl of the Sheriff's

office, Gerry Preston and John Dadoly of DEQ. There is no pernicious putrescible waste visible. There is no evidence of burying or burning the waste, excluding the warming fire for the workers who were sorting materials. There is no evidence of the URG deliberately hiding or mis-using any of the recyclables.

The photos clearly show materials being hand sorted and stacked. The metal, plastic, the tire and the fiberglass insulation were removed in a timely fashion.

The photos also show there is no possibility of surface water contamination. The wood chips were manufactured from 50 year old dried, cured, untreated waste wood from the Harris Pine Mill. They contained no contaminants, no paint or preservatives.

Our soils report, by Val Toronto P.E, Soils Expert, to DEQ showed there was no possibility of runoff. The URG also constructed 2 dikes, where the road crossed the gully, to contain any potential water runoff.

Mike Johnson, the hauler, was notified many times, by telephone, letters and by our attorney to stop hauling. As the generator of the waste he should be contacted by DEQ. OAR 340-90-010

URGC'S first notification of Non-Compliance was the front page article in the East Oregonian newspaper. We received the official notification April 21 or April 22, 1996.

Goal 2 of the Oregon State Integrated Resource & Solid Waste Management Plan 1995-2005, insures all residents of the state are provided the opportunity to recycle

We contend DEQ has not met the recycling goals for Oregon as directed by Legislation in 1991 (ORS-459). Umatilla County has not met the recycling goals mandated, in fact they reduced the goals as they cannot be met. Our environment is clearly getting trashed by the DEQ's support of flow control, monopolistic, no competition, budget driven policies.

This is truly environmental management by F-Troop. The DEQ's \$100 fee for a Transfer Station permit and the \$10,000 fee for recycling/resource recovery and composting operations clearly shows that the Department encourages more refuse going into landfills, where they get paid by the ton disposed of!

The Umatilla Recycling Group received NO economic benefit. As a registered Non-Profit Corporation this was not an option.

The URG met with DEQ and asked for an extension of time for disposing of the contested construction/demolition debris.

We also contend the magnitude of the violation, if any, has been greatly exaggerated. The complaint should only cover those

materials on site at the time of the Notice of Non-Compliance. These materials as per the NONC were clearly all clean wood materials and already source separated recyclables. We never received another NONC for Mr. Johnson's additional materials.

Members of the URG made formal complaints to John Dadoly in the Pendleton office, of the City of Pendleton's Patawa Creek unpermitted dump site. The waste was buried with no fine. The City Attorney and the City Planner were both aware it was an illegal operation. DEQ in Pendleton was furnished with/and made available over 400 photos of various illegal dumpsites in and near Pendleton and they took NO action. Many of these putrescible solid waste dump sites were located in watershed areas situated in the Umatilla River Basin.

Our problems with DEQ began with individual personalities and their interpetation of rules and regulations. There is too much confusion within the Department concerning rules governing composting operations, such as the one we tried to get approval for, that it was impossible to obtain clear answers to our questions.

Our goal was to provide a sanitary landfill and attain the 50% recycling goal established in State Statutes, State Planning Goals, County Land Use Planning, County Solid Waste Management Plan and County Ordinance 90-07.

The priciples objectives of the Agri-Co-Op are set out in ORS 459.015 (1994,95,96).

We therefore ask that the DEQ be reprimanded for forcing us to dispose of our recyclable property and any and all fines or penalties be dismissed.

Umatilla Refuse Group Co-op
441 S.W. Court Ave.
Pendleton, Oregon 97801



Kal Garton
Legal Representative



Vera Simonton
Legal Representative

HARDY MYERS
ATTORNEY GENERAL



1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
FAX: (503) 229-5120
TDD: (503) 378-
Telephone: (503) 229-5

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
PORTLAND OFFICE

August 6, 1998



Lawrence Smith
Hearings Officer
875 Union Street NE
Salem, Oregon 97311

Re: In the Matter of Umatilla Refuse Group Cooperative; Contested Case

Dear Mr. Smith:

Enclosed for filing please find the Department of Environmental Quality's Supplemental Memorandum addressing legal issues raised at the contested case hearing in the above-referenced matter.

Sincerely,

Larry Edelman
Assistant Attorney General
Natural Resources Section

c: Larry Cwik, DEQ Enforcement
Kal Garton, Umatilla Refuse Group Cooperative

LE:ki/LHE0382.LET

Attachment
5 pages

1 waste collection franchise ordinance (challenged by Woodfeathers, Inc.) was preempted by
2 the FAAAA as to regulation of transporters of such materials.

3 The court's holding in *Woodfeathers* clearly did not extend to operation of storage
4 and disposal sites for non-recyclable materials which constitute much of the waste handled by
5 Respondent.

6 Even assuming, however, that some of the materials collected by Respondent were
7 "recyclable," the decision in *Woodfeathers* would not preclude state solid waste site
8 *permitting* requirements for storage or processing of such materials. Under the court's
9 holding, the FAAAA preempts only state regulation of the price, routes, or service of a
10 *motor carrier* with respect to transportation of property. The solid waste disposal site
11 *permitting* requirements in ORS 459 regulate the siting and operation of solid waste facilities
12 so as to protect public health and the environment. *See* ORS 459.205, 459.005(8), and
13 459.005(24). DEQ does not regulate the rates, routes or services of motor carriers through
14 its solid waste disposal site permits.

15 The court in *Woodfeathers* also held that the so-called "negative" or "dormant" aspect
16 of the Commerce Clause of the U.S. Constitution, U.S. Const. Art. I, § 8, cl.3, prohibits
17 state and local regulation of collection and transportation of any solid waste transported
18 across state lines. The court's holding has no application to Respondents since they were not
19 transporting materials out of state.²

20 Respondents apparently contend that the U.S. Supreme court's holding in *Carbone*
21 somehow prohibits state *permitting* of solid waste collection and disposal sites. This is
22 incorrect. In *Carbone*, the court held that state and local government, acting in a regulatory
23 capacity, may not interfere with interstate commerce by dictating to which processing or
24

25 ² While not applicable to the present case, the state believes this district court holding is
26 nonetheless a clearly erroneous interpretation of the Commerce Clause and U.S. Supreme Court
pronouncements thereon.


1 disposal facilities solid waste must be delivered ("flow control"). The court found such
2 regulatory attempts to be impermissible under the dormant Commerce Clause.

3 In the present case, DEQ was not exercising flow control. Rather, DEQ's
4 enforcement action against Respondent was based solely on the state law requirement that all
5 solid waste disposal sites be permitted.

6 DATED this 7 day of August, 1998.

7 Respectfully submitted,

8 HARDY MYERS
9 Attorney General

10 

11

Larry H. Edelman #89158
12 Assistant Attorney General
13 Of Attorneys for Department of
14 Environmental Quality
15 1515 SW Fifth Avenue, Suite 410
16 Portland, Oregon 97201
17 Phone: (503) 229-5725
18 Fax: (503) 229-5120

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LE:k/LHE0381.PLE

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served this 7th day of August, 1998, by U.S. mail a true and correct copy of the DEPARTMENT OF ENVIRONMENTAL QUALITY'S SUPPLEMENTAL LEGAL MEMORANDUM and appendices addressed to:

Lawrence Smith
Hearings officer
875 Union Street NE
Salem, Oregon 97311

Kal Garton, President
Umatilla Refuse Group Cooperative
% Gorton & Associates Realtors
440 SW First
Pendleton, Oregon 97801



Larry H. Edelman #89158
Assistant Attorney General

LE:kv/LHE0383.PLE



DEPARTMENT
ENVIRONMENTAL
QUALITY
ENFORCEMENT SECTION

VIA FAX
August 4, 1998

Lawrence Smith, Hearings Officer
Employment Department Hearings Section
875 Union Street N.E.
Salem, OR 97311

Re: Contested Case Hearing
In the Matter of
Umatilla Refuse Group Cooperative
Case No. SW-NWR-96-121
Umatilla County

Dear Mr. Smith:

Attached is the Department's Hearing Memorandum for our recent Umatilla Refuse Group Cooperative (URGC) contested case hearing. A copy is also being sent today by fax to Kal Garton of the URGC.

Sincerely,



Larry Cwik
Environmental Law Specialist
Enforcement Section
229-5728

Enclosures

cc: Kal Garton, President, Umatilla Refuse Group Cooperative, c/o Garton & Associates Realtors, 440 S.W. First, Pendleton, Oregon 97801
John Dadoly, DEQ Eastern Region, Pendleton
Gerry Preston, DEQ Eastern Region, The Dalles
Stephanie Hallock, DEQ Eastern Region, Bend
Joni Hammond, DEQ Eastern Region, Pendleton
Les Carlough, Enforcement Manager
Neil Mullane, Enforcement Administrator
Larry Edelman, Department of Justice
Glen Diehl, Umatilla County Sheriff's Office



2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4000

*Attachment U
T. Paals*

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
UMATILLA REFUSE GROUP COOPERATIVE,
an Oregon Corporation.

)
) HEARING MEMORANDUM
)
) No. SW-ER-96-121
) UMATILLA COUNTY
)

1. This Hearing Memorandum is offered in support of the Notice of Assessment of Civil Penalty (Notice) No. SW-ER-96-121 issued June 7, 1996, to the Umatilla Refuse Group Cooperative (URGC), an Oregon corporation, by the Department of Environmental Quality (the Department, or DEQ).

I. APPLICABLE STATUES AND ADMINISTRATIVE RULES

2. Oregon Revised Statute (ORS) 459.205(1) states that:

"Except as provided in ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department of Environmental Quality as provided in ORS 459.235.

ORS 459.005(8) states that:

"'Disposal site' means land and facilities used for the disposal, handing or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, . . . composting plants and"

ORS 459.005(24) states that:

"'Solid waste' means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, . . . , useless or discarded . . demolition and construction materials,"

III
III
III

II. FACTS AND EVIDENCE

1
2 3. Warren and Vivienne Taylor own the Torco Ranch near Pendleton,
3 Oregon. Mr. Taylor was a member of the URGC from January through September 29,
4 1996.

5 4. In 1994, 1995, and 1996, URGC met with the Department numerous
6 times to discuss various proposals related to a solid waste and/or composting facility
7 and/or demonstration project on the Torco Ranch (Exhibits 9-13, 18-21, and 28).
8 Copies of Oregon solid waste laws were included with 1994 DEQ correspondence to
9 the URGC.

10 5. URGC submitted an incomplete permit application to DEQ for its Torco
11 Ranch disposal site. URGC never completed the application. URGC never had a DEQ
12 solid waste permit for its disposal site.

13 6. On an April 9, 1996, inspection of the URGC waste site, DEQ staff told
14 URGC that the waste could not remain, and that it needed to be removed to a licensed
15 solid waste disposal site. The following solid waste was observed on the URGC
16 disposal site during the April 9, 1996, and subsequent inspections: construction and
17 demolition wood waste, much of it commingled and mixed with dirt and rock, boards,
18 sheet metal, asphalt shingles, gypsum board, fiberglass insulation, a tire, visquene
19 plastic, hoses, concrete, paper, and miscellaneous garbage (Exhibit 23). This type of
20 waste is not suitable for an agricultural operation, with the planned use of animal
21 bedding stated by URGC. ORS 459.005, as referenced above, defines solid waste to
22 include the type of waste disposed of by URGC on the Torco Ranch. The material on
23 the URGC site was discarded demolition and construction materials, solid waste
24 pursuant to ORS 459.005(24).

25 7. On April 16, 1996, DEQ sent a Notice of Noncompliance (NON) (Exhibit
26 22) to URGC for the solid waste violations documented at the site on April 9th. URGC
27 received and read this NON on April 19th or April 20th.

1 8. DEQ observed and photographed more solid waste being transported to
2 the URGC disposal site on the Torco Ranch on April 18th (Exhibit 24).

3 9. On April 18, 1996, Umatilla County Deputy Sheriff Glen Diehl issued a
4 warning citation to URGC for its unpermitted waste disposal site on the Torco Ranch
5 (Exhibit 17).

6 10. On April 19, 1996, a news article in the East Oregonian newspaper,
7 Pendleton, Oregon, was published concerning the URGC solid waste disposal site on
8 the Torco Ranch (Exhibit 35). The article mentioned that the DEQ had informed URGC
9 that the waste needed to be removed.

10 11. URGC read the newspaper article on April 19th.

11 12. On May 1, 1996, Umatilla County Deputy Sheriff Glen Diehl visited the
12 URGC waste site, took photographs, and shot video footage of the waste (Exhibit 16).
13 The video showed approximately 230 cubic yards of solid waste, estimated at 46
14 tons, considerably more than that observed at the site on April 9, 1996.

15 13. Three witnesses of the waste at the URGC site, Mr. Diehl, and John
16 Dadoly, and Gerry Preston, both of DEQ, agreed that the URGC disposal site posed a
17 threat of pollution to surface waters.

18 14. On or about May 21, 1996, URGC wrote its contractor hauling the solid
19 waste to the URGC Torco Ranch site, Mike Johnson Inc., and requested a halt to the
20 disposal of solid waste to the URGC site (Exhibit 36). This is the first written URGC
21 request that the dumping be stopped. This occurred 42 days after the Department's
22 April 9, 1996, visit to the URGC site and explanation of the violation to URGC, and 36
23 days after the Department's NON was issued, and more than a month after URGC
24 read the news article stating DEQ required that the waste be removed.

25 15. The waste was still on the site in August 1996.
26
27

1 16. In September 1996 Warren Taylor of the URGC arranged for the waste
2 to be disposed of from the Torco Ranch to a licensed solid waste facility to the
3 Department's satisfaction (Exhibit 32).

4 17. URGC operated, from at least April 9, 1996, through September 1996, a
5 solid waste disposal site located on the Torco Ranch, as the URGC site was for the
6 "disposal, handling or transfer of...solid waste", pursuant to ORS 459.005(8).

7 18. On July 22 and 23, 1998, a contested case hearing was held. The
8 hearings officer allowed the record to remain open to accept a memo from the
9 Department of Justice, responding to URGC's legal arguments during the hearing.

10 III. VIOLATIONS

11 19. On or about April 9, April 19, and May 1, 1996, URGC violated ORS
12 459.205(1) by operating a solid waste disposal facility without a permit on the Torco
13 Ranch, near Pendleton, Oregon. Specifically URGC's disposal site included the
14 following waste: construction and demolition wood waste, much of it commingled and
15 mixed with dirt and rock, boards, metal, asphalt shingles, gypsum board, a tire,
16 visquene plastic, hoses, concrete, paper, and miscellaneous garbage.

17 IV. CIVIL PENALTY CALCULATIONS

18 20. On June 7, 1996, DEQ issued a civil penalty to URGC (Exhibit 1).

19 21. The operation of a solid waste facility without a permit is a Class I
20 violation, pursuant to OAR 340-12-065(1)(b)..

21 22. The magnitude of the penalty for the violations is moderate because the
22 volume of solid waste at the URGC waste site was between 40 and 400 cubic yards,
23 pursuant to OAR 340-12-090(4)(a)(ii).

24 23. The base penalty for each of the three cited days of violation, Class I,
25 moderate magnitude violations, is \$3,000 pursuant to the matrix in OAR 340-12-
26 042(1).

27 24. Exhibit 1 of the Notice sets forth the calculation of the civil penalty.

1 25. The civil penalty for the violations was aggravated for the "C" or
2 cooperativeness factor. The Department found that URGC was uncooperative in
3 failing to immediately correct the violations and therefore applied an aggravating factor
4 of +2 to the civil penalty calculation. After the Department's first April 9, 1996, visit
5 to the unpermitted URGC site, URGC took no affirmative action to halt waste disposal
6 at the ranch until May 21, 1996.

7 26. The civil penalty for the violations was aggravated for the "R" or
8 causation factor. The Department found the cause of the violation to be intentional
9 conduct and therefore aggravated the penalty by a factor of +6. OAR 340-12-030(9)
10 states that "intentional" means conduct by a person with a conscious objective to
11 cause the result of the conduct". This definition does not require that a person have a
12 conscious intent to violate the law, only that a person consciously engage in the
13 conduct that constitutes a violation. URGC knew the waste was illegal to dispose of
14 on the site without a permit because of numerous, repeated prior advisals from DEQ
15 staff, yet allowed the waste to be repeatedly disposed of there anyway.

16 27. URGC enjoyed an economic benefit from the violation prior to the
17 Department's enforcement action through avoiding the tipping fees required for proper
18 disposal of the waste at a licensed solid waste facility. The economic benefit of the
19 violation (estimated before the enforcement action) is the benefit gained by avoiding
20 the tipping fees for proper disposal of 46.35 tons of waste at \$55/ton = \$2,550.
21 DEQ cited this economic benefit as part of the penalty for the violations.

22 V. CASE ANALYSIS

23 28. On April 9, April 19, and May 1, 1996, staff of the DEQ and/or the
24 Umatilla County Sheriff's Office documented solid waste on the URGC disposal site on
25 the Torco Ranch. URGC knew a permit was required but URGC did not have a permit.
26 After DEQ told URGC to halt the waste transport to the site, URGC was
27 uncooperative and took little or no action to prevent waste from being taken to the

1 site until six weeks after the initial inspection of the unpermitted solid waste site.
2 URGC knew that a permit was needed due to numerous meetings with and letters
3 from DEQ, yet intentionally chose to arrange for the disposal of solid waste on the
4 Torco Ranch prior to obtaining a permit. URGC's violations were intentional. URGC
5 was also uncooperative in failing to immediately correct the violation. URGC gained an
6 economic benefit from the violations.

7 VI. CONCLUSION

8 29. The Oregon legislature has enacted statutes and authorized the
9 Department to hold persons and organizations such as URGC legally responsible for
10 violations of laws enacted to protect environmental quality. In assessing URGC a
11 \$18,750 civil penalty the Department has acted reasonably and appropriately.

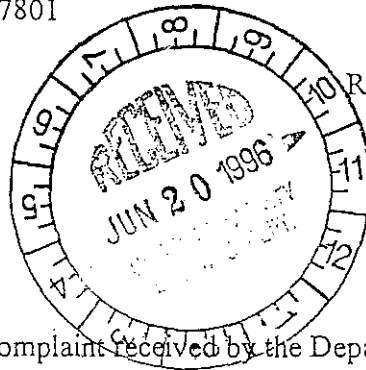
12 _____
13 Date Larry Cwik
14 Environmental Law Specialist
15 Oregon Department of Environmental Quality
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JUN 7 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

CERTIFIED MAIL Z 076 235 258

Umatilla Refuse Group Co-Op
c/o J. Val Toronto, P.E.,
Registered Agent and General Manager
225 SE Second Street
Pendleton, OR 97801



Re: Notice of Assessment of
Civil Penalty
No. SW-ER-96-121
Notice of Violation and Department
Order No. SW-ER-96-129
Umatilla County

In response to a complaint received by the Department on April 5, 1996, Department (DEQ) staff inspected a waste disposal site operated by the Umatilla Refuse Group Co-Op (URGC) on land known as the Torco Ranch, owned by Warren Taylor, southeast of Pendleton, Oregon on Birch Creek Road. On April 9, John Dadoly, Tim Davison, and Gerry Preston of the Department's Eastern Region visited the site and observed a very large accumulation of wood waste and miscellaneous debris, including asphalt shingles, metal and gypsum board, on the site. The wood waste on site was conservatively estimated at at least 230 cubic yards (46 tons) of wood waste. A dump truck operated by Mike Johnson Excavation, Kennewick, Washington, loaded with chipped wood debris was observed at the site on April 9 -- first weighing in on scales near the URGC disposal facility, and later returning empty. Mike Johnson Excavation was a subcontractor working on the Wal-Mart construction site in Pendleton. J. Val Toronto, URGC general manager, told DEQ staff on April 9, that waste already at the site and waste being brought to the site originated from the Wal-Mart site.

The site is an unpermitted solid waste disposal site. URGC had been in contact with the Department since July 1995 concerning the possibility of obtaining a permit for the site but no permit has been issued. A permit application was submitted to DEQ, but it was incomplete because URGC did not include a Land Use Compatibility Statement from Umatilla County. Without the Land Use Compatibility Statement, the Department cannot issue a permit for the disposal site. The Department has advised URGC on several occasions that no disposal site may be operated or maintained without a permit from the Department. The Department's permitting procedures are important as long-term impacts of a disposal site may include the generation of leachate which could impact surface water and groundwater. Some waste at the URGC site was observed to be placed near the drainageway at the south side of the site.

Ex. 1



Exhibits 1-49



The Department sent URGC a Notice of Noncompliance (NON) on April 16, 1996. It noted that the Department had been in contact with URGC about a proposed solid waste site since July 1995, that local review and approval would be required before any solid waste disposal site could be located in Umatilla County and before a permit could be granted for such a site, and that URGC's solid waste disposal site violated Oregon law.

On April 17, DEQ staff again observed a dump truck and trailer loaded with demolition debris on the scales at the Torco Ranch, headed in the direction of the URGC site. On the next day, April 18, Department staff observed trucks operated by Circle M Construction, Spokane, Washington, loaded with demolition waste leaving the Wal-Mart construction site, traveling to the Torco ranch, weighing on scales at the entrance to the ranch, traveling up a hill on the ranch toward the URGC disposal site, returning empty a short time later, and then heading back in the direction of the Wal-Mart construction site.

On May 1, 1996, Umatilla County Sheriff's office staff inspected the URGC disposal site, and determined that the waste was still there; indeed, there appeared to be more waste at the site on May 1 than there had previously been during the prior DEQ inspection. URGC has continued to cause or allow solid waste to be disposed at the unpermitted disposal site despite being informed that this violated state law. This is unacceptable.

URGC is liable for a civil penalty assessment because URGC violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$18,750. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule 340-12-045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1. The Department has chosen to assess URGC a civil penalty for only 3 of the 23 days of violation the unpermitted operation of the solid waste disposal site between April 9 and May 1, 1996. The penalty includes an estimated \$2,550 in avoided tipping fees that URGC would have had to pay had it properly disposed of the wood waste and other waste at a permitted site such as the Pendleton Sanitary Service transfer station in Pendleton.

The enclosed Order cites URGC's continuing violation of Oregon law and orders that URGC and the property owner, Warren Taylor, are jointly and severally liable to clean up the waste and remove it properly to a licensed site within 60 days of receipt of the Order. Appeal procedures are outlined in the Order. Appeal procedures for the penalty are outlined in Section IV of the Notice. If URGC fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against URGC.

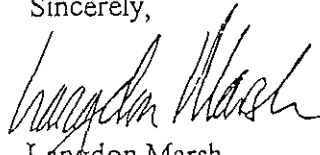
If URGC is cooperative in ensuring that the waste is properly removed and disposed of at a permitted disposal site, and satisfactory documentation is submitted to the Department in accord with the Order's schedule, the Department will mitigate the \$2,550 portion of the civil penalty assessed against URGC for the economic benefit to \$0. If the Order is not complied with, the Department will initiate additional and escalated enforcement action, which may include additional administrative civil penalties or injunctive relief.

If URGC wishes to discuss this matter, or if URGC believes there are mitigating factors which the Department might not have considered in assessing the civil penalty, it may request an informal discussion by attaching your request to your appeal. A request to discuss this matter with the Department will not waive URGC's right to a contested case hearing.

I look forward to URGC's cooperation in complying with Oregon environmental law in the future.

Copies of referenced rules are enclosed. If you have any questions about this action, please contact Larry Cwik with the Department's Enforcement Section in Portland at (503) 229-5728 or toll-free at 1-800-452-4011, Enforcement Section extension 5728.

Sincerely,



Langdon Marsh
Director

UAENFCPNOTICEURGCL.DOC

Enclosures

cc: Eastern Region, Pendleton Office, DEQ
Eastern Region, The Dalles Office, DEQ
Waste Management and Cleanup Division, DEQ
Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Umatilla County District Attorney
Umatilla County Counsel
Umatilla County Sheriff's Office
City of Pendleton
Warren Taylor, property owner
Wal-Mart
Mike Johnson Excavation
Circle M Construction

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
UMATILLA REFUSE GROUP CO-OP,
an Oregon cooperative corporation,
Respondent.

NOTICE OF ASSESSMENT
OF CIVIL PENALTY
No. SW-ER-96-121
UMATILLA COUNTY

I. AUTHORITY

This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent Umatilla Refuse Group Co-Op, an Oregon cooperative corporation, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. VIOLATIONS

On April 9, April 18, and May 1, 1996, Respondent established, operated or maintained a solid waste disposal site located off of Birch Creek Road southeast of Pendleton, Umatilla County, Oregon, on property described as Tax Lot 3800, Section 24, Township 2 North, Range 31 East, Willamette Meridian, Oregon, without a solid waste disposal facility permit from the Department, in violation of ORS 459.205(1) and OAR 340-93-050(1). The facility contained at least 232 cubic yards of wood waste and miscellaneous debris, including asphalt shingles, metal, and gypsum board. These violations are Class I violations pursuant to OAR 340-12-065(1)(b).

III. ASSESSMENT OF CIVIL PENALTIES

The Director imposes a total civil penalty of \$18,750 for the three days of violation cited in Section II. The findings and determination of Respondent's civil penalty, pursuant to OAR 340-12-045, are attached and incorporated as Exhibit 1.

IV. OPPORTUNITY FOR CONTESTED CASE HEARING

Respondent has the right to have a formal contested case hearing before the Environmental Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which time Respondent may be represented by an attorney and subpoena and cross-examine witnesses.

1 **The request for hearing must be made in writing, must be received by the Department's Rules**
2 **Coordinator within twenty (20) days from the date of service of this Notice, and must be**
3 **accompanied by a written "Answer" to the charges contained in this Notice.**

4 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this
5 Notice, and shall affirmatively allege any and all affirmative claims or defenses to the assessment of this
6 civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause
7 shown:

- 8 1. Factual matters not controverted shall be presumed admitted;
- 9 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or
10 defense;
- 11 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in
12 subsequent pleading or stipulation by the Department or Commission.

13 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Management**
14 **Services Division, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a
15 request for hearing and an Answer, Respondent will be notified of the date, time and place of the
16 hearing.

17 Failure to file a timely request for hearing and Answer may result in the entry of a Default
18 Order for the relief sought in this Notice.

19 Failure to appear at a scheduled hearing or meet a required deadline may result in a dismissal of
20 the request for hearing and also an entry of a Default Order.

21 The Department's case file at the time this Notice was issued may serve as the record for
22 purposes of entering the Default Order.

23 V. OPPORTUNITY FOR INFORMAL DISCUSSION

24 In addition to filing a request for a contested case hearing, Respondent may also request an
25 informal discussion with the Department by attaching a written request to the hearing request and
26 Answer.

27 ///

VI. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$18,750 should be made payable to "State Treasurer, State of Oregon" and sent to the Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

Date

6/2/96

Langdon Marsh, Director

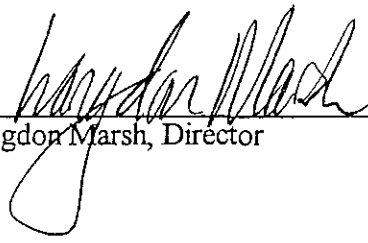


EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION 1: (Establishing, operating or maintaining a solid waste disposal site without a permit from the Department)

CLASSIFICATION: These are Class I violations pursuant to OAR 340-12-065(1)(b).

MAGNITUDE: The magnitude of the violations is moderate pursuant to the specified magnitude category rule set out in OAR 340-12-090(4)(a)(ii), as Respondent's unpermitted solid waste disposal site contained more than 40 cubic yards of waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

"BP" is the base penalty which is \$3,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant action(s) and receives a value of 0 as Respondent has no prior significant actions as defined in OAR 340-12-030(14).

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0 as Respondent has no prior significant actions as defined in OAR 340-12-030(14).

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as each of the three cited days of violation is being cited as a single occurrence.

"R" is the cause of the violation and receives a value of +6 as Respondent's violations were intentional. DEQ has informed Respondent many times that the operation of a solid waste disposal site without a permit from the Department is illegal, and that no disposal site may be established prior to obtaining a permit from the Department. Nonetheless, Respondent consciously decided to establish, operate and maintain a solid waste disposal facility and accept waste from outside the site and dispose of it on the site, contrary to Oregon law.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of +2 as Respondent has been uncooperative in correcting the violation. DEQ had informed Respondent that waste cannot be brought to the site unless a permit is obtained and that waste needs to be removed from the site, but Respondent has neither removed the waste nor obtained a permit.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of \$2,550, which is the estimated disposal fees for 232 cubic yards of wood waste at a permitted site in Pendleton, Oregon. Respondent has a volume of waste estimated at

Respondent has at least 46.35 tons of waste at the site. The disposal fee for waste of the same type at a permitted site such as the Pendleton Sanitary Service transfer station in Pendleton is \$55 per ton. 46.35 tons X \$55 per ton = \$2,550 in avoided tipping fees that Respondent has gained an economic benefit through violating Oregon law.

PENALTY CALCULATION:

Violation of April 9, 1996:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000 \times (0 + 0 + 0 + 6 + 2))] + \$2,550 \\ &= \$3,000 + [(\$300) \times (+8)] + \$2,550 \\ &= \$3,000 + \$2,400 + \$2,550 \\ &= \$5,400 + 2,550 \\ &= \$7,950 \end{aligned}$$

Violations of April 18, 1996 and May 1, 1996:

Respondent is assessed a civil penalty of \$5,400 for each day of violation for a total penalty for these two days of \$10,800. The \$5,400 is calculated as shown in the calculation above, except that no economic benefit of \$2,550 is cited for these two days of violation as it was included in the penalty for the April 9 violation.

$$\text{Total penalty} = \$7,950 + \$10,800 = \$18,750$$

Respondent's total civil penalty is \$18,750.

Issued By PORTLAND
Hearings Section
Telephone:1-888-577-2422
Mailed By: JFR

Date Mailed: 05/04/98
Case Type: DEQ
Ref No: G60082
Agency Case No: SW-ER-96-121

STATE OF OREGON

NOTICE OF HEARING

UMATILLA REFUSE GROUP COOPERATIVE
J. VAL TORONTO, REGISTERED AGENT
225 SE 2ND ST
PENDLETON OR 97801 2222

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE
PORTLAND OR 97204 1334

SEAN DONAHUE
DONAHUE AND ASSOCIATES
1 SW COLUMBIA ST STE 1620
PORTLAND OR 97258 2017

LARRY CWIK
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

HEARING DATE AND TIME

WEDNESDAY, JULY 22, 1998
9:00 AM PDT

HEARING PLACE

DEPT OF ENVIRONMENTAL QUALITY
2020 SW 4TH
4TH FLOOR - CONFERENCE ROOM C
PORTLAND OREGON

ADMINISTRATIVE LAW JUDGE

SMITH L

*If you have questions prior to your hearing, call toll-free: 1-888-577-2422.
If you are calling from the Salem area, please use: 378-2329.*

BE PROMPT AT TIME OF HEARING. INQUIRE IN LOCATION'S LOBBY AREA REGARDING HEARING ROOM. If you need directions, call the above number.

The issue(s) to be considered are:

DID RESPONDENT UMATILLA REFUSE GROUP COOPERATIVE ESTABLISH, OPERATE OR MAINTAIN A SOLID WASTE DISPOSAL SITE WITHOUT A SOLID WASTE DISPOSAL FACILITY PERMIT FROM DEQ IN VIOLATION OF ORS 459.20 AND OAR 340-93-050(1)?

WAS THE PENALTY APPROPRIATE UNDER OAR 340-12-045?

EX. 2

Held by: Employment Department Hearings Section
875 Union Street NE
Salem, OR 97311

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

Notice of Contested Case Rights and Procedures

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 (the Oregon Administrative Procedures Act) and Oregon Administrative Rules (OAR) of the Department of Environmental Quality (DEQ), Chapters 137 and 340.
2. Right to an attorney. You may represent yourself at the hearing, or be represented by an attorney or other representative, such as a partner, officer, or an employee. A representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. The hearings officer will decide whether to grant such a request. About half of the parties are not represented by an attorney. DEQ will be represented by an authorized agent, called an environmental law specialist.
3. Presiding Officer. The person presiding at the hearing is known as the hearings officer. The hearings officer will rule on all matters that arise at the hearing. The hearings officer is an administrative law judge for the Employment Department, under contract with the Environmental Quality Commission to perform this service. The hearings officer is not an employee, officer or representative of the agency and does have the authority to make a final independent determination based only on the evidence at the hearing.
4. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the hearings officer will have the opportunity to ask questions of all witnesses. DEQ will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.
5. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

Page Two--Notice of Contested Case Rights and Procedures

6. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical or written evidence, as well as your own testimony.
7. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the hearings officer will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ. DEQ may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ take "official notice" of any fact and you will be given an opportunity to contest any such facts.
 - b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
 - c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
 - d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
8. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
 - a. The evidence is unreliable;
 - b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
 - c. The evidence is unduly repetitious and duplicates evidence already received.

Page Three--Notice of Contested Case Rights and Procedures

9. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the hearings officer may grant you additional time to submit such evidence.
10. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the hearings officer. A copy of the tape is available upon payment of a minimal amount, as established by the Department of Environmental Quality (DEQ). A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.
11. Appeal. If you are not satisfied with the decision of the Hearings Officer, you have 30 days to appeal his decision to the Environmental Quality Commission. If you wish to appeal its decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See ORS 183.480 et seq.



Oregon

John A. Kitzhaber, M.D., Governor

Employment Department

875 Union Street NE
Salem, OR 97311
(503) 378-8420
TDD 1-800-237-3710
www.emp.state.or.us

June 25, 1998



Mr. Sean Donahue
Donahue and Associates
1 S W Columbia Street, Suite 1620
Portland, OR 97258 2017

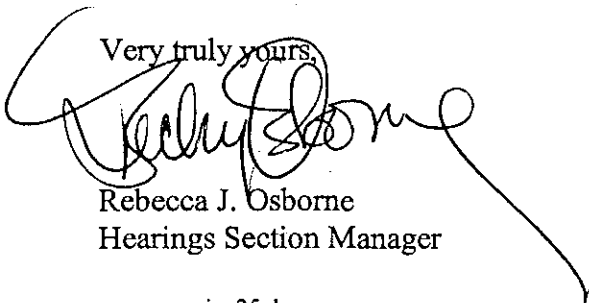
Mr. Larry Cwik
DEQ Enforcement Section
2020 S W Fourth Avenue, Suite 400
Portland, OR 97201 4959

RE: Umatilla Refuse Group Cooperative v. Department of Environmental Quality
Employment Department Reference Number : G60082

A Pre Hearing Conference in the subject matter has been scheduled for July 17, 1998 at 10:00 a.m., and will be conducted by telephone.

Our records indicate that Sean Donahue is representing the Umatilla Refuse Group Cooperative. At the time of the teleconference, we will contact Mr. Donahue at (503) 226 1084, and Mr. Larry Cwik on behalf of DEQ at (503) 229 5728. If these are not the correct phone numbers to be used that date, or if you have any questions about these arrangements, please notify Laurel VanFleet at (503) 947 1513 immediately and provide the correct numbers.

Very truly yours,



Rebecca J. Osborne
Hearings Section Manager

s:resource;jun25.doc

Ex. 3

RECEIVED

JUL 01 1996

OFFICE OF THE DEPUTY DIRECTOR

June 26, 1996

Rules Coordinator
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, Oregon 97204

Re: No. SW-ER-96-121
Order No. SW-ER-96-129

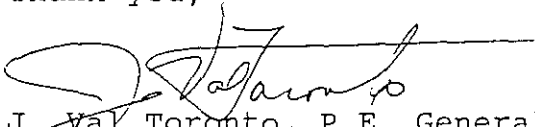
Attn: Van A Kollias, Manager, Enforcement Section

Gentlemen,

The Umatilla Refuse Group Co-Op wishes to have an informal meeting to discuss mitigating factors surrounding the Co-Op's 18 month effort to Recycle and provide Land Reclamation as set forth in ORS 459, Umatilla County's Solid Waste Management Plan and the Department's Solid Waste Management Recycling Plan for 1995-2005.

Your assistance in this matter is appreciated.

Thank you,


J. Val Toronto, P.E. General Manager
Umatilla Refuse Group Co-Op
Pendleton, Oregon 97801

encl: 40 page documentation
2 page correspondence to Mike Johnson, Inc., generator
and hauler.

cc: Larry C. Wik, Department of Environmental Quality
Northwest Region Office
2020 S.W. 4th Ave. #400
Portland, Oregon 97201-5884

Ex. 4

June 26, 1996

Mike Johnson, Inc. General Contractor
Rt. 7 Box 420
Union Loop and Brinkley Road
Kennewick, Wa. 99337

Dear Mr. Johnson,

I have made several attempts to contact you the early part of June for the single purpose of resolving the class and type of material delivered to our storage site.

Gale Balderson was instructed to store the material to the South of the property, not on or adjacent to the access road allowance.

Your response to the correspondence by Dennis Hachler, attorney, does not absolve the company from DEQ rules.

I have asked Gale Balderson, during two phone conversations to visit the site to determine for Mike Johnson Inc. the extent of the area that your material has been placed on the Co-Op's leased land. Also to view for himself the material that cannot possibly be source separated for any useable agricultural purpose.

The following referenced material was submitted to qualify the types and classes of materials acceptable for our purpose that is acceptable to the State of Oregon.

Date:	To:	From:	Subject:
3-9-96	Mike Johnson, Inc.	U.R.G.	Source separated materials description.
3-11-96	Mike Johnson, Inc.	U.R.G.	Source separated Demolition Construction Debris-2 pages DEQ explanations
3-12-96	Mike Johnson, Inc.	U.R.G.	Tentative agreement transmit with
3-18-96	Mike Johnson, Inc.	U.R.G.	.....this date. First inquiry to M. Johnson
3-20-96	Mike Johnson, Inc.	U.R.G.	Source separated material and clean fill.
4-5-96	U.R.G.	Mike Johnson	Rejection of contractors definition of construction debris.

EX. 5
(2 pages)

4-8-96	Mike Johnson, Inc.	U.R.G.	Clean wood and clean fill, wood fiber shredding, erosion controls, etc..
4-9-96	Mike Johnson, Inc.	U.R.G.	Authorize delivery of source separated materials with description.
4-10-96	Mike Johnson, Inc.	U.R.G.	Explanation of materials to be source separated prior to delivery, wood chips, located in area reserved for clean fill.
4-10-96	U.R.G.	Mike Johnson, Inc.	Adjudication by M. Johnson of source separated material.
4-11-96	U.R.G.	Mike Johnson, Inc.	1. Source separation 2. Cleanfill for land reclamation
5-21-96	Mike Johnson, Inc.	U.R.G.	Notification of unacceptable construction materials and placement of gravel in lieu of tarping for truck transportation

Note: By DEQ regulations, source separation must be accomplished prior to hauling or trucking. My conversation with Gale Balderson was that a secondary review of material, when placed on a conveyor, would hand sort out smaller objectionable material prior to entering the tub grinder.

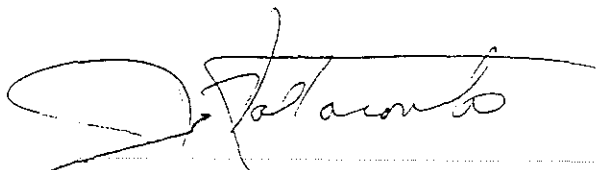
During this discussion, Mr. Johnson was providing source separation by use of crane and bucket equipment plus one workman prior to loading. Secondary separation off site was a necessary part to insure the use of a product for the stipulated purposes in the contract.

Of the several piles of material that were reviewed on the Wal-Mart site, with Mr. Balderson, only two piles of wood material, about 250' apart, were deemed acceptable and all others were rejected as not conforming to acceptable requirements.

All material hauled on April 19th and thereafter consists of material that was placed without the Coopertive's general knowledge or approval.

The material situated in the 40' easement, including all material situated North of the road allowance must be removed immediately.

Your aprompt attention will be appreciated.



J. Val Toronto, P.E. General Manger
Umatilla Refuse Group
216 S.E. 2nd.

June 24, 1996

Langston Marsh
Director
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Or 97204-1390

Dear Langston,

Enclosed please find our attorneys letter to Mike Johnson, Inc.; a copy of our contract with Mike Johnson, Inc.; the County's warning notice of April 18, 1996; Stephanie Hallock's letters of October 13, 1995 Feb. 15 and March 13, 1996; John Dadoly's letter of April 16, 1996; Val Toronto's letters of July 24, 1995, July 26, 1995, Dec. 18, 1995, Jan. 24, Feb. 2, Feb. 16th, March 15 and March 18, 1996 and June 24, 1996 and June 24, 1996; DEQ Fax from Peter Spendelow dated April 24, 1996; a City memo from Mike Hyde to Pete Wells dated Jan. 19, 1994 and Vera Simonton's letters of Feb. 22nd and 27th.

We are writing to formally appeal your fine as outlined in your complaint of June 7, 1996. We find the following errors in your complaint.

1. We did not allow any further deposits from the contractor after your notice of noncompliance. It was mailed on the 16th and received on the 18th or 19th. The contractor hauled after that date and we were unaware of it until today. Why wasn't the contractor notified with Mr. Dadoly's letter of March 16, 1996? We did not want anything that wasn't source separated and that could not be used in composting. You can easily see that the contractor is trying to take advantage of a poorly written contract. We would obviously not take all of his \$27,500.00 of refuse for \$3,500.00. Our intention was to only get source separated wood products and clean fill. No board action even approved the contract Mr. Toronto signed. The piles that we did not approve at the site ended up being dumped on us. We only approved two large wood chip piles. All the rest were rejected.
2. The fine should be directed at the contractor who violated our contract with him.
3. We have permission from your agency to accept source separated materials for recycling and reuse. The County has only warned us at this point. They lost our application at the point we refused to sign a release of liability form for not processing our application within the required 120 days. We have resubmitted to the County a copy of the application they misplaced for approval. The County continues to use the 1974 Solid Waste Management Plan. Recycling and agri-business is supported in the plan. It needs to be updated to protect our existing land fills.
4. The State's Solid Waste Management Plan encourages composting, recycling and land reclamation. Our proposal is in accordance with the statutes and Departments 1995-2005

Ex. 6
(3 pages)

S.W.M. Plan recommendations and goals. Eastern region has not provided a good faith effort to our organization in attainment of the recycling goals and land filling and land reclamation. We are still waiting for your letter of support subject only to County LUC approval. The Eastern Region promised this to us in February to help us with the County approval.

5. The City of Pendleton has continued the use of the old City landfill for an undisclosed period of time, which has been continually monitored since 1995. They could have been required to clean up the entire land fill and monitor the groundwater for the next 30 years. They were never fined and allowed to merely cover the land fill and remove a token amount of waste. The City also dumps solid waste at other unpermitted sites and has not been required to obtain a solid waste permit or even control storm water runoff.

6. I was required to spend approximately \$1.6 million in cleanups on the Harris Pine sale, yet the Brownfield Park property that had the same environmental problems was conveniently given a clean bill of health when donated to the City of Pendleton.

7. Clean fill materials that are denied us are allowed at several other sites locally. We have been told that we would be fined if we hauled the same materials to our clean fill location.

8. There is no drainage way on the south side of our property and no waste in any drainage way.

9. We object to Mr. Dadoly classifying this as our second offense. The first complaint was on the old State Mental Hospital Landfill site. We have already cleaned up an old state landfill at our site. We did not dump it there.

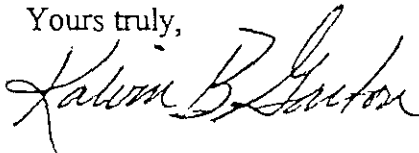
10. Our research shows that only a very small fraction of Oregon's compost operations in our state are permitted and illegal dumping has increased significantly.

11. When we filed a complaint for medical wastes being disposed of improperly, it fell on deaf ears. We had employees testimony, Sanitary Regulatory Board minutes, collection vs. Disposal receipts and wrappers picked up off the fence...not good enough! Again your agency protected the violators. There appears to be two sets of standards. One for government and another for the private sector.

We are trying to bring an environmentally safe, cost effective waste recycling, composting and disposal alternative to this state that will improve our environment. We would appreciate your support.

The State's environmental policies should be "Vision" driven, not "agency budget" driven.

Yours truly,



Kalvin B. Garton

President

Umatilla Refuse Group Cooperative

cc. Eastern Region, Pendleton Office DEQ
Eastern Region, The Dalles Office DEQ
Waste Management and Cleanup Division, DEQ
Department of Justice

Environmental Protection Agency
Environmental Quality Commission
Umatilla County District Attorney
Umatilla County Counsel
Glen Diehl, Umatilla County Sheriff's Office
City of Pendleton
Warren Taylor, Property Owner
Wal-Mart
Mike Johnson Excavation
Circle M. Construction
Dennis Hachler, Attorney
John Gilbert, Attorney
Emile Holman
Editor
Senator Gordon Smith

DENNIS A. HACHLER

ATTORNEY AT LAW

245 S. E. 4TH STREET

PENDLETON, OREGON 97901

**MAILING ADDRESS:
P.O. BOX 488**

**TELEPHONE:
(503) 278-2986
FAX: (503) 278-6007**

May 31, 1996

Mike Johnson, Inc.
General Contractor
Rt. 7 Box 420
Union Loop & Brinkley Rd.
Kennewick, WA 99337

RE: Umatilla Refuse Group Cooperative

Dear Mr. Johnson,

It is my understanding that my client, Umatilla Refuse Group Cooperative, by and through it's General Manager, Val Toronto, faxed you a letter on or about May 27, 1996, concerning several loads of material placed on their property in Umatilla County, Oregon, which had not been source separated, as was required by your original contract.

I have a copy of your May 28, 1996 response to said letter.

In looking at the contract which was signed between the parties, it indicates that the materials going to be deposited upon Umatilla Refuse Group's property would be source separated.

I have now been informed that gravel was placed over the top of the loads rather than tarps to keep the refuse material from blowing out of the trucks.

In addition, I have been advised that there are thirty one (31) loads of dirt and concrete mix, which have been dumped on the wrong property, and those need to be removed immediately from that property by you or your agents.

I also understand that there are sixteen (16) loads of dirt and concrete, which have been dumped on Umatilla Refuse Co-op's land, which can not be source separated unless it is done by hand.

EX-7

July 17, 1998

Dear Mr. Smith,

Attached please find our Exhibits Index and Lists of Exhibits that apply to each subpoenaed party.

This case is as simple as the definition of Solid Waste vs. Clean Wood Chips (Recyclables) OR.

It is far more complex because we have proved DEQ erred.

Our case cannot be presented as one piece, it has too many factors: Conspiracy, Flow Control, Environmental Degradation by the DEQ, Harassment, Discrimination, Restriction of Trade, Anti-Trust and Inter-State Commerce.

The facts begin in April 1994 when a group strongly objected to the siting of a Transfer Station-Recycling Center in a residential neighborhood.

Mr. Tim Davison, DEQ, stated the landfill needed to close because FAA would not allow it to remain open near the Airport because of the possibility of bird strike. The regulation was mis-stated and this was not true. He continues to make these mis-statements in July 1997.

A letter from Fred Hanson stated DEQ never ordered the landfill to close and a later letter from John Dadoly stated it was closed by Pendleton Sanitary Service "because of financial reasons they (DEQ) were not privy to".

A letter from Harold Handke, FAA, said they had never given any closure orders.

The information we gathered indicated DEQ was not assisting small communities to keep their landfills open, and were not reporting latest EPA regulations, RCRA and the latest Sub Title D rules.

DEQ is not reducing the amount of useable compostable material going into landfills. It is in fact going up and these composting/recycling programs in Oregon are a failure.

State law from the Senate states Reduce, Reuse and Recycle, these are clearly not being followed by this budget driven agency.

The Umatilla Refuse Group applied to the County for a landfill and the application was lost by them. Our requirements could not be completed because we could never get DEQ's promised

Ex-8
(3 pages)

approval.

We have pointed all these DEQ myths out repeatedly to the City, County, and State officials. Mr. Preston said this agency "can do anything he sees fit".

We had DEQ written approval to take clean wood chips. Then they illegally made us move them. They were clearly protecting their franchise/monopoly.

The Oregon Cattlemen's Association and Oregon Farm Bureau is very interested in the Agencies arrogant attitude to classifying animal bedding materials, compostable wood chips and soil amendments as Solid Wastes "as they see fit". August 22, 1996 letter from Mr. Preston.

The County tells us we must have DEQ permission first to locate a landfill.

We tore down all of Harris Pine Mills in Pendleton and recycled the lumber in the buildings. See photo.

Because of time constraints the office building and the Harris Pine Yard building was chipped on site.

Mike Johnson, of Kennewick, who did the hauling was fined \$189 after dumping about 5% of the total hauled in solid Waste.

We attended an informal hearing with Stephanie Hallock and were told we could use wood chips.

Appeared before the Pendleton Sanitary Regulatory Board and had them change their franchise ordinance to allow Recycling/Composting without a franchise.

Franchise fees collected amount to bribes of 5% of gross so the City, County and State Government want higher rates.

Illegal dumping complaints in Umatilla County skyrocket.

There have been numerous landfill closures but no new openings.

Total flow control creates a monopoly. Please see Carbone decision by Supreme Court. Interstate Commerce was affected as Mike JKohnson/WalMart were from out of state.

Locally the Woodfeathers case is against Flow Control-see decisions.

The bottom line is DEQ gave us permission to use wood chips. All other law suits were dropped immediately. They are still in our face and the County refuses to proceed.

We found DEQ violating the State Solid Waste Management Plan,

we made them move the transfer station out of a residential area, went after their budget, proposed legislation for Non-Putrescible landfills, and proved their actual policies of closing landfills increased illegal dumping.

The fine is disproportionate, considering the old City of Pendleton landfill, the drug paraphenalia discarded in a dumpster next to a school by the police department and the disregarded oil tanks in the new Brownfield Park.

Because of DEQ's actions we have lost our lease, paid out \$27,000 in cleanup, lost 4 years work, permit fees and \$60,000 in attorney fees.

This case deserves to have the U.R.G. awarded actual damages plus punitive damages from the Agency.

We ask that all witnesses in the hearing be sequestered.

Umatilla Refuse Group

Oregon

DEPARTMENT OF ENVIRONMENTAL

QUALITY

EASTERN REGION

Bend Office

October 13, 1995

RECEIVED
OCT 16 1995

Umatilla Recycling Group
J. Val Toronto, General Manager
4231 S.W. Broadlane Ave.
Pendleton, Ore. 97801

EASTERN REGION - COLUMBIA GORGE OFFICE
DEPARTMENT OF ENVIRONMENTAL QUALITY

Dear Mr. Toronto,

This letter is in response to your September 28, 1995 letter addressed to Gerry Preston, and two subsequent telephone calls with me. I hope this letter will clarify what is needed and why you should pursue establishing a composting facility in the Pendleton area.

First of all, let me say that DEQ is very supportive of composting as a solution for managing solid waste. The dilemma for us is how to encourage composting while ensuring that adequate controls are in place to manage waste properly and to protect human health and the environment. It is important to remember that, as a state regulatory agency, DEQ must be responsive to all publics in the community, so we want to work with you to ensure that your facility can succeed without generating complaints, enforcement actions or environmental and public health hazards.

To this end, we have discussed three regulatory options with you:

No permit. Facility must meet the exemption criteria in OAR 340-93-050 (attached) and accept only clean fill and/or source separated material. (I have also enclosed the Clean Fill Guidance, per your request.) If we determine that a site is exempt from a permit, it does not mean that a site is exempt from protecting the environment and public health. Even if you don't have a permit you may be subject to enforcement action and/or to a subsequent requirement to obtain a permit, or to closure in extreme circumstances. We expect all facilities, with or without a permit, to operate in accordance with all applicable state and local regulations and ordinances.

It is my understanding from your letters and our phone conversations that included in your current proposal are materials such as soiled paper, construction and demolition (C & D) waste and green or vegetable wastes. We are concerned about the composition of and ability to source separate these wastestreams, and therefore believe the "no permit" option is not viable as long as these wastestreams are included in your proposal.

You also asked if DEQ could allow a "demonstration project" with no permit, in which you could take a variety of materials in order to experiment with what makes good compost. The only exceptions the regulations allow us to make are in line with OAR 340-93-050.



Ex. 9
(4 pages)

2146 NE 4th Street
Suite 104
Bend, OR 97701
(503) 388-6146
DEQ/CR-101

Umatilla Recycling Group
J. Val Toronto, General Manager
October 13, 1995
Page 2

Full Solid Waste Permit. This would provide the most flexibility in regulating the varieties of waste you wish to experiment with, ironically because it offers the tightest regulatory control. The way our system works is the more complex you want to make the facility, the more complex are the regulatory requirements. As I mentioned in the "No Permit" option, if you limit the facility to source separated, clearly defined wastes, then you don't need a permit. However, when you get into mixed wastes (e.g. soiled paper) or putrescible and food wastes, the more need there is for regulation because of the potential impacts of those wastes on human health and the environment if they are not managed properly.

Although we have concerns about the composition of and ability to source separate C & D and green or vegetable wastes, a full solid waste permit may be more than you need for the activity you propose, which leads me to the third option we have discussed and which we have recommended you pursue.

Solid Waste Letter Authorization. As Gerry Preston's September 18 letter outlined, we feel it is most appropriate to require a Letter Authorization to get your project, as currently proposed, started. In response to your concerns about timing, our legal counsel advises us that if we have a complete application from you, including local land use approval, and determine that the Letter Authorization is the appropriate regulatory control, we are not required to issue the Letter Authorization until you actually begin taking waste. In other words, the one year "clock will not be running" while you are arranging financing and are in construction, and we will then have a full year of operation to determine if you will need to apply for a solid waste permit to continue, or if operation can continue without a permit after that year under the Letter Authorization. We would expect you to tell us in the application when you expect to start accepting waste.

In order to proceed with the Letter Authorization in a timely manner, DEQ must get an application from you which contains the following (see attached OAR 340-93-060 and OAR 340-96-020):

- (a) quantity and types of materials to be "managed". From your proposal, you wish to take: yard debris, manure, land clearing debris, paper products, C & D waste, clean fill, and green or vegetable waste. Your application will need to list each type (clearly define) of item you wish to take at the facility along with an estimate of the annual tonnage of each item. If you want to take soiled paper (mixed waste) or large amounts/several varieties of waste, then the Letter Authorization is really not appropriate and you may want to consider obtaining a full solid waste permit.
- (b) a discussion of need and justification for the project. This discussion should cover what is required by the Special Rules Pertaining to Compost Facilities

Umatilla Recycling Group
J. Val Toronto, General Manager
October 13, 1995
Page 3

(attached) in OAR 340-96-020(2)(b) which asks for a proposed plan for utilization of the processed compost.

- (c) the expected amount of time required to complete the project. You have stated in your September 28 letter that you need 2 ½ years to determine if it will work or not. If the Letter Authorization is issued when you begin to take waste, that would give you a year and a half from the time you have submitted a complete application to get the financing and construct the facility, and a year of operation. You should confirm in your application if 2 ½ years is appropriate.
- (d) the methods proposed to ensure safe and proper "management" of solid waste. In addition to a detailed listing of the types and quantities of waste you wish to take, this is the most important information you must provide. Following the Special Rules for Composting Facilities, we need to know how you will design, construct and operate your composting facility. The rule asks for information which includes: how you will control drainage, provide fire protection, minimize odors, vectors, and other impacts on human health and the environment. In some cases such as storage, the rule is very clear that compost shall be removed from the composting plant as frequently as possible, but not later than one year after treatment.
- (e) location of the proposed disposal site. You have already told us the proposed location.
- (f) statement of approval from the property owner. You need to submit a copy of the signed lease between you and the property owner.
- (g) written land use approval from the local government. The county has told DEQ that it is POSSIBLE they could issue conditional land use approval on this site. However, it is our understanding that there is at present no application from you for land use approval on file at the county for your site. By rule, DEQ must have a written affirmative statement (Land Use Compatibility Statement or LUCS) from the local government before we can process a permit application for any of our programs. No exceptions to this requirement are allowed in the rules for any of our programs. Land use control is a local government authority, not a DEQ authority.

You also need to submit a \$500 fee with your application. The attached rule also spells out the criteria under which DEQ may approve the application, and by which we may revoke the Letter Authorization if things don't work out.

I know that this process has been frustrating to you, I think for two reasons:

- 1) Multiple rules and guidance in the solid waste program must be applied to a facility such as you propose, and

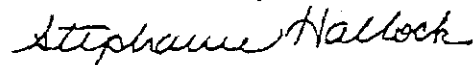
Umatilla Recycling Group
J. Val Toronto, General Manager
October 13, 1995
Page 4

- 2) We have had a hard time fully understanding what you want to do at the facility, in part because we haven't communicated very effectively with each other and in part because it is a new concept and all the ideas haven't been fleshed out yet.

I hope this letter clarifies the rationale behind the rules and the approach we are taking. The bottom line is, the more complex the facility you want to build and operate, the more complex are the regulatory requirements. In your situation, we would like to give you the chance to operate through the simpler (believe it or not) and less costly vehicle of the Letter Authorization. If that will not allow the flexibility that you seek, then we must go the full permit route.

Finally, you asked about fee waivers for non-profits. I have requested legal counsel to look into this and will let you know when we have an answer. If you feel that a meeting with me and Gerry Preston would be productive at this point, please contact Becky West, Gerry's secretary in The Dalles, and she will set it up.

Sincerely,



Stephanie Hallock
Administrator
Eastern Region

SH:cah

Enclosure(s)

cc: Mary Wahl, Administrator-Waste Management & Cleanup Division
Gerry Preston, Manager Eastern Region-The Dalles Office
John Dadoly, Eastern Region-Pendleton Office
Umatilla County

October 13, 1995

EASTERN REGION
Bend Office

Mr. Kal Garton
Umatilla Recycling Group
17 SW Frazer Ave.
Pendleton, OR 97801

Dear Mr. Garton:

Thank you for coming by today to pick up my letter to Mr. Toronto. You asked me to follow-up on whether or not manure and wood chips could be received at your proposed compost facility.

What I told you verbally is correct: As long as both of those materials are source separated where generated and don't come to you as mixed waste, they are acceptable as compost materials.

As we discussed, if you intend to limit your facility to a few source separated materials such as these, you would not need a permit; however, from what you have submitted to date, you want to take more varieties of waste, so a Letter Authorization is the appropriate regulatory mechanism. I appreciate the packet of information you brought by on behalf of Mr. Toronto. I am forwarding it to Gerry Preston in The Dalles, as neither he nor I had seen the September 29 letter to Mike Stolz at the County.

Sincerely,

Stephanie Hallock

Stephanie Hallock
Administrator
Eastern Region

Ex. 10

SH/ns

cc: Gerry Preston



2146 NE 4th Street
Suite 104
Bend, OR 97701
(503) 388-6146
DEQ/CR-101

December 28, 1995

J. Val Toronto, P.E.
General Manager
Umatilla Recycling Group
4231 SW Broadlane Ave.
Pendleton, OR 97801

Re: Solid Waste Letter Authorization Requirements
Umatilla Recycling Group
Umatilla County

Dear Mr. Toronto:

The Department has received your letter, dated December 18, 1995, in which you state that you plan to begin composting operations WITHOUT obtaining a Solid Waste Disposal (SWD) permit or a Solid Waste Letter Authorization (SWLA). In my October 13, 1995 letter I clearly pointed out that all composting proposals that you have presented to date would require at least a SWLA. Further, as my letter stated, the "no permit" option is not appropriate for the types of operations that you have proposed to date.

If you are still looking for DEQ's pre-approval of the composting proposals that you have presented thus far, we expect to receive from you a SWLA application and information regarding OAR Division 96 (Special Rules Pertaining to Composting) and the other items I outlined in my October 13 letter to you.

In closing, I would like to take this opportunity to bring to your attention that the "DEQ Compost Work Group" has recently been formed. The enclosure explains the group's purpose, lists the members, and contains an agenda for the first meeting. I have made certain that you are on the "interested party" mailing list. If you have any questions, please contact Gerry Preston at (541) 298-7255 x 22.

Sincerely,

Stephanie Hallock

Stephanie Hallock, Administrator
Eastern Region

Ex. 11



encl: Letter on DEQ Compost Work Group
cc: Gerry Preston, John Dadoly, Pat Vernon, Lauren Ertlin
Bob Perry, Umatilla County Planning Dept.

2146 NE 4th Street
Suite 104
Bend, OR 97701
(541) 388-6146
DEQ/CR-101

RECEIVED

Oregon

MAR - 1 1996

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

February 28, 1996

EASTERN REGION

Bend Office

Vera Simonton, Treasurer
Umatilla Refuse Group
1208 NW 47th St.
Pendleton, OR 97801

Solid Waste Letter Authorization Requirements
Umatilla Refuse Group
Umatilla County

Dear Ms. Simonton:

In response to your letter dated February 22, 1996, a letter which outlines the required submittals for a Solid Waste Letter Authorization was sent to J. Val Toronto on February 22, 1996. This letter (attached) listed two items which are required to make the SWLA application administratively complete. These items are as follows:

1. A copy of the plans for the facility which has been stamped by a Professional Engineer with a current Oregon registration.
2. A completed Land Use Compatibility Statement (LUCS) which has been signed by the Umatilla County Planning Commission.

Mr. Toronto responded to the first item by stamping the plans for the facility with his Corporate Seal (J. Val Toronto and Associates, Inc.) on February 23, 1996. He was informed by Department staff that if this seal was appropriate in accordance with the Oregon Engineering board of Examiners rules, it would be accepted by the Department. The second item (LUCS) has not been addressed.

As we have indicated in past meetings, including the one on February 8, and in past correspondence, a LUCS must be submitted for the Department to consider the permit application complete. As promised in our February 8 meeting, we did write to Umatilla County and indicated we were ready to move forward with your application as soon as the signed LUCS was received.

Ex. 12
(2 pages)



2146 NE 4th Street
Suite 104
Bend, OR 97701
(541) 388-6146
DEQ/CR-101 1-91

I would like to point out that the stamped plans and the LUCS are required to make the application administratively complete and legally sufficient for processing. The Department has the authority to request additional appropriate information from applicants or permittees at any time; we are, however only asking for the LUCS at this time.

If you have any further questions regarding these matters, please contact Gerry Preston, Manager, Eastern Region Solid Waste Program at (541) 298-7255.

Sincerely,

Stephanie Hallock

Stephanie Hallock
Administrator
Eastern Region

SH/ns

Cc: Gerry Preston, ER
John Dadoly, ER

Enc:

P. S. I understand that Gerry called and told you that the letter has been sent to the County.

March 13, 1996

Mr. Kal Garton, President
Umatilla Recycling Group
440 SW First Street
Pendleton, Or 97801

Mr. Garton:

In response to your March 11 letter, let me make it clear where the process for your facility stands:

- 1) The Department agreed at our February 9 meeting in The Dalles that Alternatives 1 and 2 proposed by the Umatilla Recycling Group (URG) are appropriate for a Solid Waste Letter Authorization (SWLA), but that a Land Use Compatibility Statement (LUCS) must be issued by Umatilla County before a SWLA can be prepared by DEQ.
- 2) The County has written to you regarding the LUCS (letter attached).
- 3) When the LUCS is issued by the County, DEQ will proceed with the Solid Waste Letter Authorization.

Your March 11 letter indicates that you think you should be able to proceed with your facility without a SWLA (not enough time allowed) or a solid waste permit (too expensive); as we have told you many times before, that is not acceptable for the facility you propose - Alternatives 1 and 2 require a SWLA and a LUCS from the County.

You also indicate that you no longer care to do business with Mr. Dadoly or Mr. Preston of my staff because they are "in McHenry's hip pockets." In my opinion, your remarks in the March 11 letter and remarks made by you, Val Toronto and the Umatilla Recycling Group in the past about my staff are not only inappropriate but border on slander. I will advise Mr. Preston and Mr. Dadoly that if they wish to seek legal recourse against you for these remarks, as their supervisor I will fully support their legal efforts.

Ex. 13



DONAHUE & ASSOCIATES

LAW OFFICES

1620 BENJAMIN FRANKLIN PLAZA · ONE S.W. COLUMBIA STREET · PORTLAND, OR 97258-2098
(503) 226-1084
FAX: (503) 222-6441

SEAN DONAHUE

December 19, 1996

VIA FAX NO. 1-541-276-2459

Mr. Val Toronto
Umatilla Refuse Group Cooperative
440 SW 1st
Pendleton, Oregon 98701

Re: Department of Environmental Quality

Dear Val:

Today I spoke with Joanne Hammond, who is now handling the cooperative's case for the Department of Environmental Quality (the "DEQ"). After some discussion, I asked Joanne for permission to leave the wood chips on the ground for the following reasons:

1. These materials constitute "recyclables", that cannot be regulated by Umatilla County, the City of Pendleton or the DEQ. As I mentioned to you, the U.S. Supreme Court's decision in Carbone and recent legislation essentially establish that states cannot regulate recycling. More importantly, this authority has recently been successfully used in a preliminary hearing by a Clackamas County roofing company. The company (Woodfeathers) has sued Clackamas County and the local franchised hauler for the right to haul wood chips and asphalt shingles to Washington State. A local federal judge, Hon. Ancer Haggerty, has enjoined the DEQ from attempting to regulate this transportation of recyclable materials.

2. I also discussed the recent "Right to Farm Bill" with Joanne. In these regards, she asked me whether the land owner would be willing to add manure in order to "compost" this material. I told Joanne that this could be a consideration and was worth looking into, assuming the DEQ had the right to regulate this material.

I am somewhat encouraged by the fact that Joanne is a "new player" in this matter and thus has not been a party to the long standing, often contentious, dispute

Ric

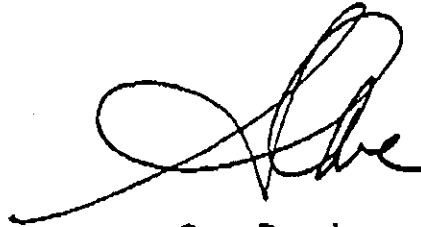
EX. 14
(2 pages)

Mr. Val Toronto
December 19, 1996
Page 2

between your company and the DEQ. In these regards, Joanne promised that should would do her best to try to work things out. While I believe her, it may be that her superiors may have a less constructive attitude.

Very truly yours,

DONAHUE & ASSOCIATES

A handwritten signature in black ink, appearing to read 'Sean Donahue', with a large, stylized initial 'S'.

Sean Donahue

SD:bjf
c:\files\umatilla\toronto.ltr

AFFIDAVIT

In the Matter of the Umatilla Refuse Group Cooperative
Oregon DEQ Case No. SW-ER-96-121

I hereby affirm the following:

1. I am employed by the Umatilla County Sheriff's Department as a Deputy Sheriff, and have been employed in this position since 1988.
2. On May 1, 1996, at approximately 3:00 p.m., I drove an official Sheriff's office car and visited the Torco Ranch, outside Pendleton, Oregon, as a result of an investigation into complaints of disposal of solid waste. While visiting the Ranch, on official business, as part of my duties, I filmed and narrated approximately five minutes of video footage of the waste on the property.
3. I observed and filmed demolition waste including wood waste and concrete in grassy fields on the Torco ranch, and took several close-up views with the video camera. Also visible and included in the video of the site are: piles of solid waste; piles of dirt; sheet metal; several filled black plastic bags, approximately 20 gallons in size; and several views of the car I drove to the site.
4. The attached video is an accurate copy of what I filmed and fairly depicts what I observed on the site on May 1, 1996.

Affirmed: *[Signature]*
 Glen Diehl
 Umatilla County Sheriff's
 Office

EX. 15
(w/ videotape)

Date: 7-9-98

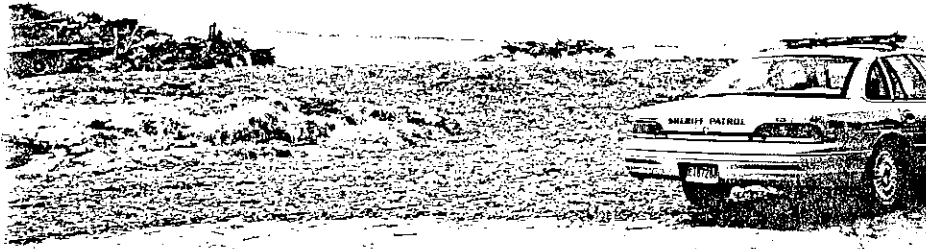


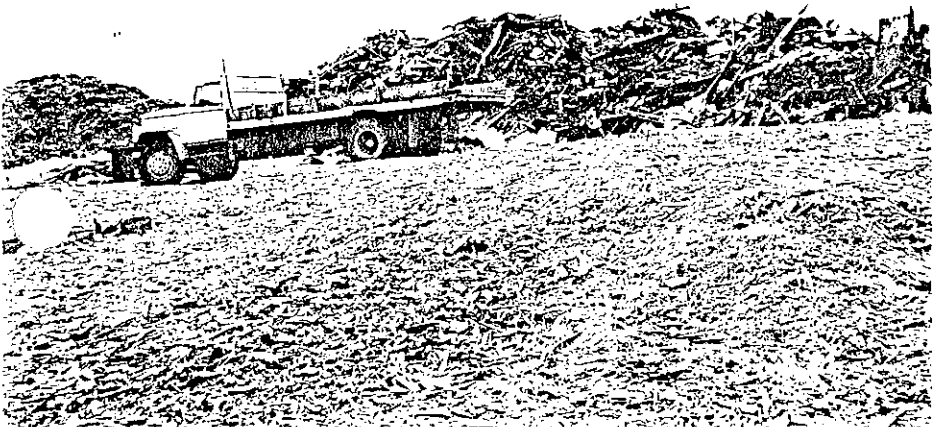
Susan A. LeBlanc
 7-9-98

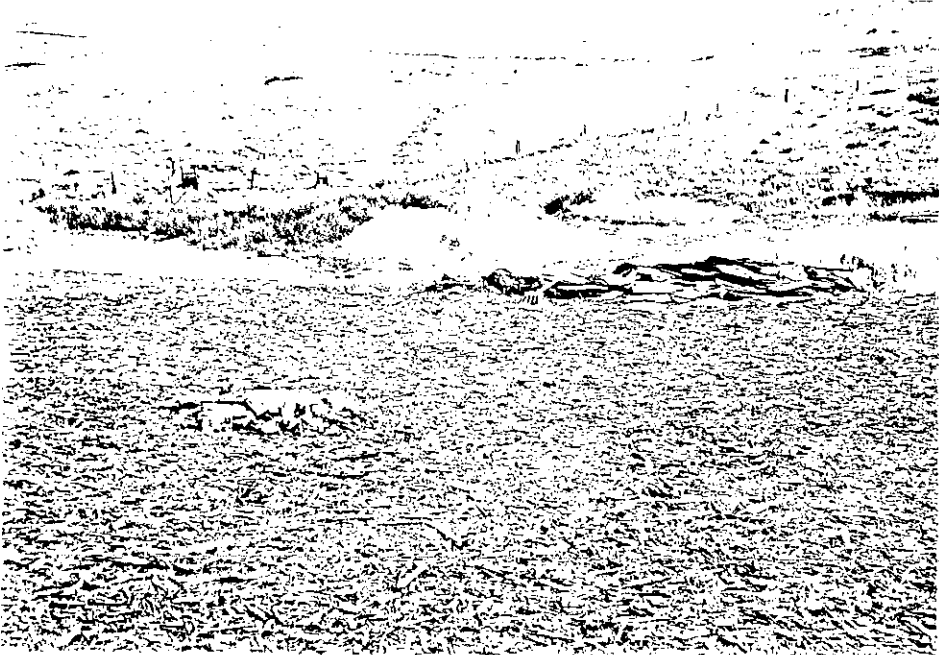
Comm. exp. 11-22-98

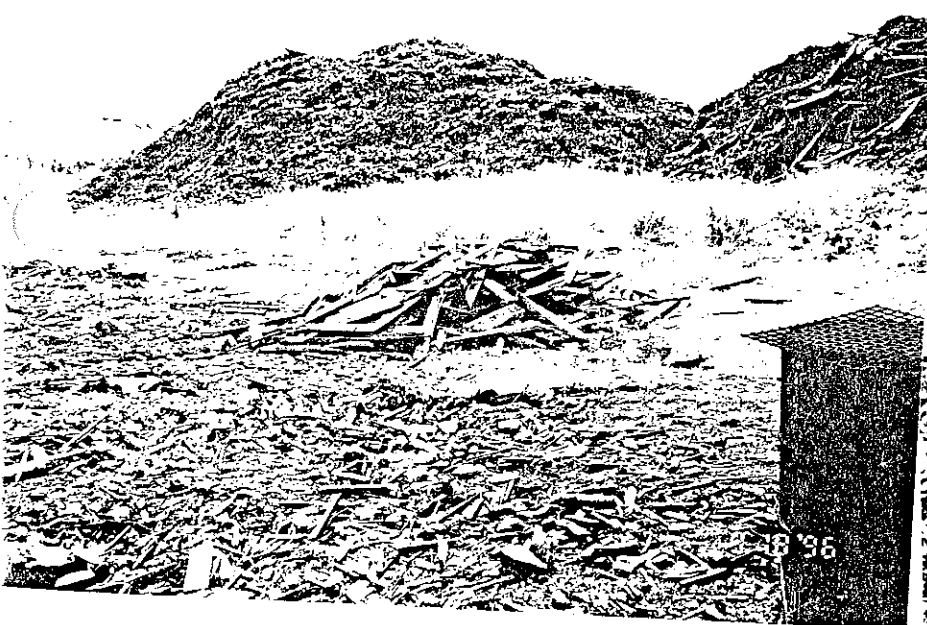
Exhibit 10
Umatilla Refuse Group Cooperative
Case No. SW-ER-96-121
Photos by Glen Diehl, Umatilla
Deputy Sheriff

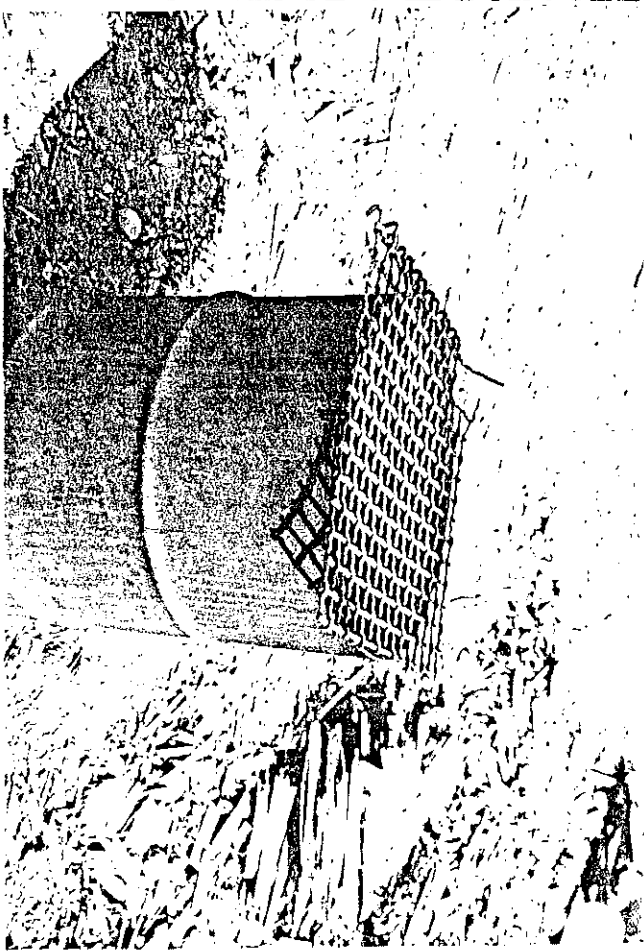
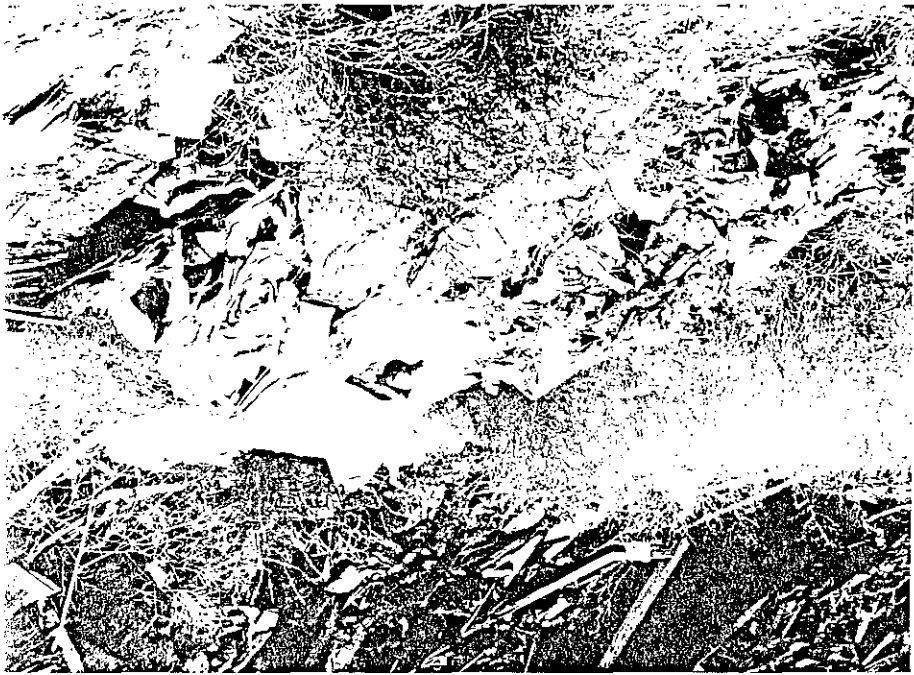










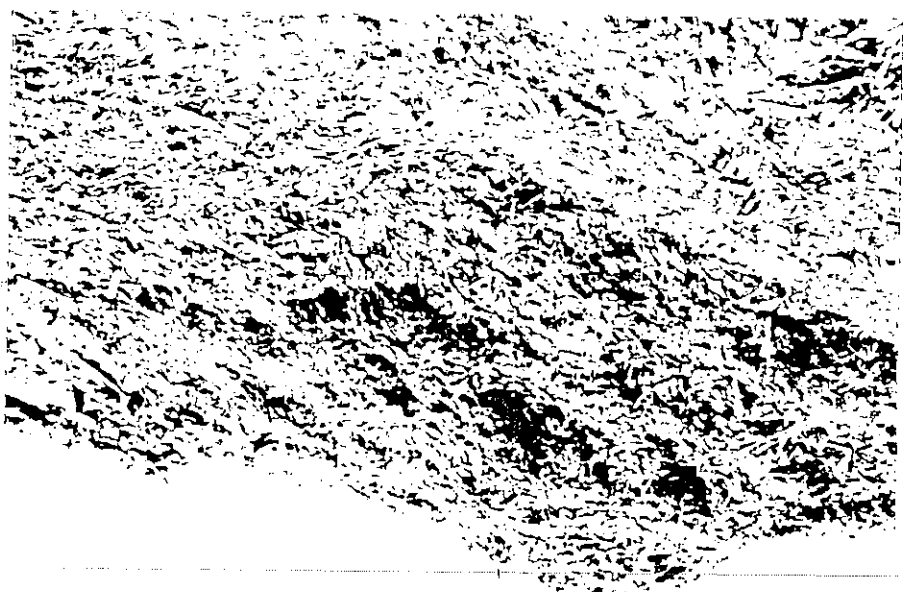




007

TAKE 8-19-90 ©

WRG TAKEN 8-19-96 0



No. _____

WARNING

UMATILLA COUNTY ORDINANCE VIOLATION

To: Umatilla Refuse Group Co-operative, its Board
of Directors & ^(name of responsible party) Vera Simonton, Treasurer.

(address)

1208 NW. 47th. Pendleton, OR 97801

Phone: _____

You are hereby warned that unless steps are taken immediately to correct the violation(s) specified below, or to contact the Umatilla County Enforcement Officer at the phone number or address specified below, a citation will be issued and substantial penalties can be assessed against you. Correction or contact must be made no later than 04-30-86.

You have been determined to be a responsible party for violations occurring on the following described property:

Site Address or Location Description: Toron Ranch, Birch Creek
Umatilla County State of Oregon

Assessor's Map I.D. #: XXXX 2N31000003800 / 2N31130000400

Zone: RMU

Record Owner: Taylor, Warren & Vivian

Description of Violation(s): Accumulation & Storage of solid waste.
Collection of, Maintaining, Permitting & Creating a
Solid waste disposal site w/out a Franchise or Land
use permits. Failure to apply for or obtain a Franchise
e. & land use permits. Creating a Public nuisance, &
hazard to health & safety of the Public.

Ordinance and Sections Violated: Section (s) 5.01, 8.01, 8.02, 8.04
and 8.08 of the Umatilla County Solid Waste Ordinance

Steps which must be taken to correct the violation(s): Clean up and remove ALL
Solid waste. Cease & Desist operation of disposal site
Obtain land use permits & Franchise.

Potential Penalties for Violation(s): \$ 500.00

Date: 04-18-86

Contact: _____
(signature)
Glen G. Diehl
(print name)

Umatilla County Enforcement Officer
216 S.E. 4th Street
Pendleton, Oregon 97801

(503) 276-7111 ext. 300

I hereby certify that I properly served an exact copy of this warning notice on the above named responsible party in accordance with the requirement of the Umatilla County Enforcement Ordinance # 90-01.

Viva Certified Mail _____

State of Oregon
County of Umatilla

Signed and sworn to or affirmed before me on _____

by _____

In and _____

Notary _____

My Commission expires _____

Ex. 17

November 30, 1994

J. Val Toronto
General Manager
Umatilla Refuse Group Co-Op
225 S.E. Second Street
Pendleton, OR 97801

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

Re: Permit Application Requirements

Dear Mr. Toronto:

During our meeting with you and Mr. Garton on Monday, November 28, 1994, you requested guidance in preparing an application for a Solid Waste Disposal (SWD) Permit for a landfill to dispose of construction and demolition (C & D) waste and industrial waste.


I have enclosed copies of Chapter 459 "Solid Waste Management" of the Oregon Revised Statutes (ORS) and of Oregon Administrative Rules (OAR), Chapter 340, Divisions 93-97 "Solid Waste Management" and Division 40 "Groundwater Quality Protection". These statutes and rules provide regulatory information concerning the permitting and operation of a solid waste disposal facility. The solid waste rules contained in Chapters 93, 95 and 97 apply to C & D and industrial waste landfills. The groundwater protection rules contained in Chapter 40 also apply to these types of landfills.

I have also enclosed a copy of the Department's draft Solid Waste Permit Guidance document, dated November 1, 1993. Although this document was developed to provide guidance to applicants proposing municipal solid waste (MSW) landfills, you may find it useful as you develop the technical information required by the rules for your proposed non-MSW landfill.

The requirements for submission of an application for a SWD Permit are contained in OAR 340-93-070. An application for a SWD Permit for a landfill must include three copies of the enclosed application form (signed by the person having legal control of the property), the applicable fees and the following exhibits:

1. A feasibility study report, as required by OAR 340-93-130 "Site Characterization Report(s)", which describes existing site conditions and a conceptual engineering proposal in sufficient detail to determine whether the facility is feasible and protects the environment.
2. Detailed engineering plans and specifications, as required by OAR 340-93-140 "Detailed Plans and Specifications Required", and including the information required by OAR 340-95-030 "Design Criteria". The proposed design must address the requirement contained in OAR 340-40 to protect groundwater quality.

Ex. 18
(2 pages)



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

Val Toronto
November 30, 1994
Page 2

3. A completed Land Use Compatibility Statement, issued and signed by the Planning Department of the local governmental unit (city or county) having jurisdiction over land use at the proposed disposal site location. A copy of this form is enclosed.
4. A written recommendation from the local government unit having jurisdiction over solid waste management stating that the proposed disposal site is compatible with the approved solid waste management plan.
5. A written closure plan that describes the steps necessary to close all land disposal units at any point during their active life, pursuant to OAR 340-95-050 to 340-95-060. The closure plan must include sufficient information so as to enable the applicant to develop reasonable closure and post-closure maintenance cost estimates for the proposed facility.
6. Evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance of the site, pursuant to OAR 340-95-090, unless the Department exempts the site from this requirement pursuant to OAR 340-95-050(3).

Please refer to OAR 340-97-110 "Solid Waste Permit and Disposal Fees" and OAR 340-97-120 "Permit Fee Schedule" to determine the applicable fees for your proposed facility.

As we mentioned during our meeting, the Department can not respond to questions regarding the environmental aspects of the proposed landfill prior to receiving a completed application. We recommend that the URGC obtain legal control of the proposed property and land use approval prior to preparing the site characterization and detailed engineering plans for the proposed landfill. After you obtain legal control of the proposed site and land use approval for a landfill on that site, Department staff would be available to meet with you and your consultants to provide assistance in preparing the required feasibility study and detailed plans and specifications.

Val Toronto
November 30, 1994
Page 3

If you have any questions, or if we may be of further assistance, please contact me at (503) 278-4616.

Sincerely,



John P. Dadoly
Environmental Specialist
Eastern Region

Enclosures:

cc: Gerry Preston, Manager Solid Waste & Tanks, ER, DEQ
Wayne Thomas, Solid Waste Program, ER, DEQ
Tim Davison, Solid Waste Program, ER, DEQ
Pat Vernon, Solid Waste Program, DEQ
Mike Hyde, Planning Director, City of Pendleton

(e:\wp51\URGCPAR1.LTR)

August 8, 1995

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

J. Val Toronto, P.E.
General Manager
Umatilla Waste Group Cooperative Association
440 SW First St.
Pendleton, OR 97801

Re: Recycling, Yard Waste Composting, Clean Fill
Umatilla Waste Group Cooperative Association
Umatilla County

Dear Mr. Toronto:

During our meeting on July 25, 1995, we discussed Solid Waste Disposal (SWD) permit requirements for landfills, recycling centers, and composting operations. The discussion mainly centered around activities which do not require SWD permits. The Department generally does not require SWD permits for the following activities:

1. A land disposal facility used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety (OAR 340-93-050(2)(c)). Enclosed is a description of "clean fill materials".
2. Facilities which receive only source separated materials for purposes of material recovery (recycling) or for composting, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health (OAR 340-93-050(2)(e)). As we discussed, recovering materials from solid waste or composting materials other than source separated (separated from the waste stream by the generator) would require a permit. Also as we discussed, the Department generally considers composting of anything but yard debris (source separated) to constitute a potential threat of adverse impact on the waters of the state and public health, and therefore, these activities would require a permit. This determination is the result of experience gained from composting proposals the Department has received to date.

Ex. 19

If, initially you propose to land dispose clean fill (per #1 above) or the Department does not initially determine that your recycling/composting facility poses a threat (per #2 above), it does not preclude the Department from requiring a permit or enforcement order if a threat arises at a later date.



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

J. Val Toronto
August 8, 1995
Page 2

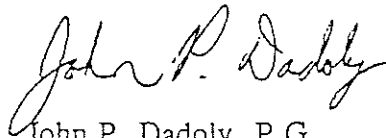
For your information, the Department generally considers materials such as compost and recyclables, which are stored for more than six months to be solid waste, which is subject to SWD permit requirements.

Mr. Toronto, it is important to clarify the Department's position regarding a statement in your July 26 memo to the Department "confirming the conference" on July 25 with you, Mr. Garton and Mr. Cole and Department staff. There was no formal acceptance or approval of the goals you presented. Second, there has been no decision by the Department that no permit is required for the "above referenced project" (You were referring to what you titled your July 26 letter as "Recycling Goals - Construction/Demolition/Land Clearing and Land Reclamation). In the meeting we discussed what sort of activities would need a SWD permit and what would not need a SWD permit, as outlined on the first page of this letter. Based on the meeting, you informed the Department that you would like to withdraw your application for a SWD permit at this time and pursue activities which do not require a SWD permit. The check for the application fee was returned to you at the close of our meeting on July 25, 1995. Enclosed are the copies of your application, which was received by the Department on July 25, 1995.

I encourage you to keep working with us as you are pursuing your proposal. My supervisor, Gerry Preston, is available to meet with you upon request, as well as our Headquarter's manager, Pat Vernon, who is very experienced with recycling and material recovery.

If you have any questions regarding our meeting or this letter, please call me at (503) 278-4616.

Sincerely,



John P. Dadoly, P.G.
Environmental Specialist
Eastern Region

Encl.: Clean Fill Guidance Doc.
SWD Application

cc: Gerry Preston, DEQ, ER
Pat Vernon, DEQ, HQ
Stephanie Hallock, DEQ, ER
Joni Hammond, DEQ, ER
Bob Perry, Umatilla County Planning Dept.

February 22, 1996

J. Val Toronto, P.E.
General Manager
Umatilla Refuse Group
440 SW First
Pendleton, OR 97801

RECEIVED
FEB 23 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

Re: Umatilla Refuse Group
SWLA Requirements
Umatilla County

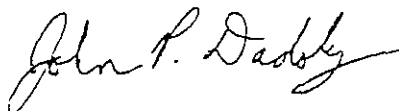
Dear Mr. Toronto:

The Department has reviewed the application for a Solid Waste Letter Authorization (SWLA) which you submitted on February 9, 1996. In our initial review of the application submitted we found it to be administratively incomplete. The Department cannot process an incomplete application. In order to process the application the Department requires the following information:

1. A copy of the plans for the facility which has been stamped by a Professional Engineer with a current Oregon registration.
2. A completed Land Use Compatibility Statement (LUCS) which has been signed by the Umatilla County Planning Commission.

If you have any further questions regarding this matter please contact me at (541) 278-4616.

Sincerely,



John P. Dadoly, P.G.,
Environmental Specialist,
Eastern Region

Ex. 20

cc: Stephanie Hallock, ER
Gerry Preston, ER
Dennis Olsen, Umatilla County Planning Commission



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

March 25, 1996

J. Val Toronto, P.E.
General Manager
Umatilla Refuse Group
440 SW First
Pendleton, OR 97801

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

Re: Umatilla Refuse Group
Clean Fill Disposal
Umatilla County

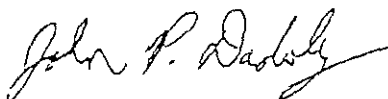
Dear Mr. Toronto:

In response to your recent written and verbal requests regarding the disposal of clean fill, the Department has the following responses:

1. As described in OAR 340-93-050, you do not need authorization from the Department to dispose of clean fill materials as defined by OAR 340-93-030.
2. Disposal of demolition and construction debris which are not source separated into clean fill materials would require a Solid Waste Disposal permit from the Department.
3. The person who is disposing of clean fill materials is responsible for determining if the materials meet the definition in OAR 340-93-030.

Enclosed are two letters, dated August 8, 1995, and February 15, 1996, which address this issue, and a copy of the Department's Clean Fill Guidance Document.

Sincerely,



John P. Dadoly, P.G.,
Environmental Specialist,
Eastern Region

Ex-21

enclosures: 8/8/95 letter to J. Val Toronto
2/15/96 letter to Dennis Olsen
Clean Fill Guidance

cc: Stephanie Hallock, ER
Gerry Preston, ER
Dennis Olsen, Umatilla County Planning Commission



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDU
FAX (503) 278-0168
DEQ/ER-101

DATE MAILED

April 16, 1996

Oregon

J. Val Toronto, P.E.
General Manager, Umatilla Refuse Group
219 S.E. 2nd
Pendleton, OR 97801

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

**Notice of Noncompliance ER-P-96-031
Unpermitted Solid Waste Facility
Umatilla County**

Dear Mr. Toronto:

BACKGROUND:

Since July 25, 1995 the Umatilla Refuse Group (URG) has been making several proposals which have included recycling, composting and disposal of various materials. Officials from both the Department of Environmental Quality (Department) and Umatilla County (County) have reviewed all of your proposals to help you ensure your project would adhere to state statutes, rules and local ordinances. We have often commended your group for seeking state and local review of what would be required "before" implementing such proposals.

"CLARIFYING MEETING":

At your request, in an attempt to finally clarify what proposal(s) the URG wishes to pursue, on February 8, 1996 your group met with my supervisors Stephanie Hallock and Gerry Preston and myself. At that meeting the URG presented three proposals labeled "Alternative 1", "Alternative 2", and "Alternative 3". You will recall that we used an outline to ensure we all agreed upon what each alternative entailed so the Department could better articulate to you what sort of permit we would require. *(This outline, which includes the URG's clarifying answers, is enclosed).* To summarize that discussion, all three alternatives included composting various materials. All three alternatives included disposing of "clean fill". Alternative 1 did not include composting food waste or paper products while Alternative 2 and 3 did. Only Alternative 3 included burial of materials other than "clean fill".

Using the same outline, the Department explained that we would require a Solid Waste Letter Authorization (SWLA) for Alternative 1 and that although Alternative 2 is probably pushing a Material Recovery Facility (MRF), we'd also agree to a SWLA for it as well. For Alternative 3 we made it clear that any filling or burial with materials other than "clean fill" requires a full Solid Waste Disposal Permit (SWDP).

Understanding this, the URG wanted to combine Alternative 1 and 2 under a



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

Ex. 22
(4 pages)

SWLA application (and may eventually apply for a MRF for Alternative 1 and 2). The URG did not wish to pursue Alternative 3 which would have required a full SWDP. The URG wanted these decisions documented so we all "signed-off" on it. (*This documentation is enclosed*)

SINCE THE "CLARIFYING MEETING":

Following our meeting, the URG submitted an incomplete SWLA application (a Land Use Compatibility Statement - LUCS - was not included with your application). To date, the Department is still waiting for you to provide us with the LUCS so we can process your SWLA application. In the meantime, the County has written the URG a letter explaining that a conditional use permit and franchise approval would be required for the URG's proposed project and that a resubmittal of an application and fee to the County would be necessary for them to process it. According to the County the URG has not re-submitted an application and fee. In Stephanie Hallock's March 13 letter to your group, she stated "Until such time as you have received a LUCS from the County, there is no point in further discussions between the Department and the URG on this matter."

COMPLAINT INVESTIGATION:

The Department has received complaints about the URG's advertisements to generators soliciting that the URG can take solid waste. The Department has also received complaints about truck loads of waste being taken to the Torco Ranch. Therefore, on April 9, 1996, the Department inspected the portion of the Torco Ranch which you lease. Before you arrived to meet Department staff at the entrance, a large, full dump truck was observed parked on top of a weight scale. The driver then came out of the scale house and proceeded up the hill to your leased property. After the Department followed you to the dumping location, staff observed large quantities of construction and demolition (C&D) waste consisting mainly of wood. Also in the C&D waste there were asphalt shingles, metal, gypsum board, and other materials which had been separated out from the wood waste into several distinct, small piles.

When asked "what" you intend to do with the wood waste you said you planned to use it for "land-reclamation" to help level out the property to make it more usable. (Tilling it into the ground to "fill" in low levels and make land flatter) You further said you did not intend to use the wood waste for compost or soil amendment. You also stated that you realized that the wood waste is not "clean fill". Upon being asked "when" you planned to use the wood waste for "land-reclamation", you said you needed to purchase a grinder first but that you would likely wait until you received permit approval from the Department and County. For now, your intentions are solely to store the wood waste. As for the metal, asphalt shingles, etc., you said you would be taking this waste to the Athena Landfill for proper disposal. Upon being asked "when" you planned to transfer this waste to the Athena Landfill, you said you

weren't sure when you'd "get around to it." Lastly, when asked how much more waste you intend to take at this site, you said you "really don't know".

Mr. Toronto, if the URG truly intends to use the wood waste for "land-reclamation" to level out the land, the Department has told the URG in the past that such a use constitutes disposal (this is "filling", but not using "clean fill"). Such a use is what the URG's Alternative 3 outlined which we have already said needs a SWDP which the URG has not wanted to do and has not applied for. If the URG believes the wood waste could be used in some manner as part of Alternative 1 and 2 (ie; for composting), the Department has told the URG all along that a SWLA must first be obtained from the Department. In any case, the URG has begun to commercially accept C&D waste without a permit. Until the URG has local approval from the County and a permit from the Department, you are not authorized to accept or store solid waste at your site.

VIOLATION:

The property leased by URG is being used by URG to store and handle solid waste without a permit. This is a violation of Oregon Administrative Rule 340-93-050(1).

CORRECTIVE ACTION:

o **Take No Additional Solid Waste.** This property has now received two Notices of Non-Compliance for having solid waste without a permit. This property may only accept "clean fill" materials. No material other than clean fill may be buried on site without obtaining a SWD permit.

o **Wood Waste.** The wood waste currently stored on the URG site may remain there until May 31, 1996 (about two months from the date of the Department's inspection). If the URG receives land use approval from the County by then, the Department will act on the SWLA application which you have submitted. The SWLA will contain conditions regarding storage and processing of the wood waste. Again, if the URG ultimately wishes to use this wood waste for ground leveling that is your Alternative 3 (disposal of more than just "clean fill") and you will need to apply for a SWDP.

o **Steel tanks.** The two large steel tanks in the drainageway on the south side of the site must be either put to use as culverts or properly disposed of. If the tanks are used as culverts, they must be properly cleaned and the residue must be sent to an appropriate facility. Either must occur by April 30, 1996 (about three weeks from the date of the Department's inspection).

o **Other Wastes.** The metals and asphalt shingles and other non-woody solid waste must be removed from the site and taken to a permitted solid waste disposal facility by April 30, 1996.

o **Proper Storage.** The solid waste material currently on site must be stored properly to ensure protection of the environment. The waste located near the drainageway on the south side of the site should be moved back at least 25 feet away from the drainageway by April 30, 1996.

o **No Burning.** No burning of wood waste or other materials is to be performed.

o **Receipts.** Receipts from a permitted disposal facility or a recycling facility for all of the solid waste disposed or recycled as required in this corrective action section must be submitted to the Department's Pendleton office by 5:00 PM on April 30, 1996 (for non-wood waste) and June 3, 1996 (for wood waste).

The Department will conduct follow-up inspections on or around May 1, 1996, and June 3, 1996. The violation listed in this notice is a Class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to comply with the corrective action schedule set forth in this notice or should a similar violation occur, we may refer your file to the Department's Enforcement section with a recommendation to proceed with formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

You will note that the property owner, Warren Taylor, is also receiving a copy of this notice. He is receiving a copy because he owns the property and is listed as one of the Directors of URG. If all other means fail with the URG (lessee in this case), he will be asked to take corrective actions to clean up his property.

If you have any questions regarding this matter please contact me at (541) 278-4616.

Sincerely,



John P. Dadoly, P.G.
Environmental Specialist,
Eastern Region

enclosure

cc: **URG Board of Directors** - Kal Garton, Vera Simonton, Warren Taylor, Lucky Meyers, Allen Key, Silva Garton
City of Pendleton - Pete Wells, City Attorney
County - Dennis Olsen, Director of Resource Services & Development Dept.
DEQ - Stephanie Hallock, Gerry Preston, Pat Vernon, Enforcement Section



4/9/96
Photos by
John
Doboly of
Oregon D.E.A.,
ER, of
VR&C solid
waste site,
Pendleton,
OR

Ex. 23
(3 pages)







4/18/96
photos
by John
Daboly of
Oregon DEO
ER, of
URG.C.
solid wood
sill
Pendleton
OR

Ex. 24
(2 pages)





Handwritten initials and arrows: "AKS" with an arrow pointing right, and "VC" with an arrow pointing left.

City of Pendleton
34 SE Dorion
Pendleton, OR 97801
Attn: Pete Wells, City Attorney

Re: Unpermitted Solid Waste Disposal Site
Nye Avenue, Pendleton
Umatilla County

NOTICE OF NONCOMPLIANCE ER-P-96-042

Dear Mr. Wells:

On May 15, 1996, the Department received a complaint which indicated that the City of Pendleton was disposing of solid waste at the closed city dump at the east end of Nye Avenue in Pendleton. On May 23, 1996, Department staff inspected the site along with Jerry Odman of the Pendleton Public Works Department.

The northern portion of the site is apparently used for the disposal of clean fill materials including soil, rock, and concrete (enclosed is a copy of the Department's clean fill guidance). However, there were also minor amounts of solid waste present. The solid waste consisted of fresh asphalt, tires, plastic pipe and assorted litter.

The southern portion of the site consists of the old city dump. The old city dump is not subject to the Department's solid waste rules or federal rules (RCRA) because it was closed prior to their implementation. The Department's Cleanup Program attempts to inventory such sites, as they may need attention in the future. Unless there is an obvious release to the environment, these old landfill sites are a low priority. The Department's visual inspection of the landfill and adjacent drainage did not indicate that there were any releases of leachate.

The southern portion of the site is also being used as an auto wrecking yard. Auto wrecking yards are not subject to solid waste rules if they have a certificate from the Department of Transportation (DOT) in accordance with ORS 822.110. To our knowledge, there is no certificate for this site.

Ex. 25

Violation:

The property owned by the City of Pendleton is being used to dispose of solid waste without a SWD permit.



Required Actions:

1. **Take no additional solid waste.** This property may only be used for disposal of "clean fill" materials. No material other than clean fill may be buried on site without a SWD permit.
2. **Wrecking yard materials.** By June 30, 1996, submit a copy of a DOT Wrecker Certificate for the wrecking yard or a plan for removing the scrap metal, autos, and associated materials.
3. **Other solid waste.** By June 15, 1996, remove all solid waste from the northern portion of the site and dispose of it at a permitted Solid Waste Disposal facility.
4. **No Burning.** No burning of solid waste is to be performed.
5. **Receipts.** Within ten (10) days of completion of the cleanup project(s), receipts from the disposal or recycling facility which received the waste must be submitted to the Department.

The Department will conduct a follow-up inspection on or after June 18. The violation listed in this notice is a Class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Please contact me at 278-4616 if you have any questions about this notice.

Sincerely,



John P. Dadoly, P.G.
Environmental Specialist
Eastern Region

encl: Clean Fill Guidance

cc: Gerry Preston, DEQ, ER
Tim Davison, DEQ, ER
Van Kollias, DEQ, Enforcement Section

DEPT OF ENVIRONMENTAL QUALITY
RECEIVED

JUN 3 1996

NORTHWEST REGION



Rt. 7, Box 420 • Kennewick, WA 99337
(Union Loop and Brinkley Road)

Ph. (509) 735-8039
Fax (509) 735-2402

April 11, 1996

Umatilla Refuse Group Co-Operative
219 SE 2nd St.
Pendleton, Or 97801

Re: Lump Sum agreement for construction demolition material

Subject:

1. Source separated material for use in production of wood fiber, shredding for farm use, erosion control, landscaping an/or land reclamation
2. Clean fill for land reclamation

Mike M. Johnson, Inc. agrees to pay a lump sum amount of Three Thousand Five Hundred Dollars (\$3,500.00) to the Umatilla Refuse Group Co-Operative, for accepting and receiving all source separated construction demolition material from the Wal-Mart Project at the Co-Op's 40 acre land reclamation site. The Umatilla Refuse Group Co-Operative accepts ownership and all liability for above mentioned material.

The Umatilla Refuse Co-Operative agrees to furnish all necessary labor to separate the construction demolition material.

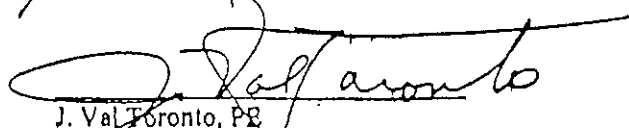
Payment to be as follows:

Advance payment of \$1,000.00 to be paid for completed work to date. The balance of \$2,500.00 to be paid within 10 days after the total amount of material is delivered to U.R.G. Co-Op's Land Reclamation site.


Thank you,


Mike M. Johnson, Inc.

4/11/96
Date


J. Val Toronto, PR
General Manager
U.R.G. Co-Op.

4/12/1996 8:05 A.M.
Date

26
Ex. 

From: Michael Hyde (MIKEHYDE)
To: Pete
Date: Wednesday, January 19, 1994 4:39 pm
Subject: Landfills

While the San Reg Bd and city are considering the closure of the airport landfill, should we also have those consultants look at what might be done to better secure the old Patawa Creek landfill so that it is not such an attraction for illegal dumping? Right now, we have a lease with a guy who is tearing apart vehicles on the site and running people out of there. I'd prefer to put a substantial fence around the place and get rid of this quasi-junk yard.

The problem is that we would draw attention to the fact that this Patawa landfill was not closed very well, it has very little top cover, etc... Maybe we should just let that "sleeping dog lie?"

Is this something worth bringing up to the reg bd to consider in the closure study?

Ex 27
(not entered.)

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED

Oregon

SEP 22 1995

September 18, 1995

DEPARTMENT OF ENVIRONMENTAL QUALITY
PENDLETON OFFICE

EASTERN REGION
Bend Office

J. Val Toronto, P.E.
General Manager
Umatilla Refuse Group Cooperative Association
440 SW First St.
Pendleton, OR 97801

Re: Recycling, Yard Waste Composting, Clean Fill
Umatilla Refuse Group Cooperative Association
Umatilla County

Dear Mr. Toronto:

The purpose of this letter is three-fold. One, I will document and summarize our August 22 meeting. Two, I will discuss the Department's position on the written composting proposal you handed us on August 22. And finally, I will respond to your August 23 letter regarding the enforcement action we took against the property owner of the land your group leases.

AUGUST 22 MEETING SUMMARY

During the time period between our meeting with you on July 25 and then again on August 22, 1995 it was our understanding (See our August 8 letter) that you intended to pursue a composting project that would not require a permit. On August 22, Department staff and managers met with you, Mr. Garton, Mr. Cole and Ms. Simonton.

At the beginning of the meeting it was alleged that DEQ was not giving you an answer in a timely fashion, that time was running out on this construction season and DEQ was causing delay. The Department countered that it was our understanding you were pursuing a project that would not need a permit but that if you wanted our determination of whether your project needed a permit or not we would be more than happy to review it. At that time, you handed us a copy of your proposed project and asked us to review it as quickly as possible and then get back to you.

After handing us your proposal you proceeded to talk about how composting of all sorts of materials was being done successfully across the nation and that DEQ should not be so closed-minded about it and allow it. The Department agreed with you wholeheartedly that composting of all sorts of materials can be done successfully; even in Oregon. We explained that the issue, however, was not how good composting is, but rather which sort of composting facilities would need a permit, which ones would not, and why. Without regard to the specifics of your proposal (since we'd just received it) we spent the remainder of the meeting discussing just that. We again explained (as we had in our July 25

Ex. 28
(2 pages)



2146 NE 4th Street
Suite 104
Bend, OR 97701
(503) 388-6146
DEQ/CR-101

J. Val Toronto
September 18, 1995
Page 2

S. Prater:
S. W.
A. W.
F. J.
= Needed

meeting and our August 8 letter) that the Department generally does not require a S permit in the following instance:

Facilities which receive only source separated materials for the purposes of composting, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health (OAR 340-93-050(2)(e)).

Composting materials other than source separated (separated from the waste stream by the generator) would require a permit. From past experience, the Department is generally most comfortable with not requiring a permit for source separated yard debris operations.

DEPARTMENT'S POSITION ON YOUR WRITTEN PROPOSAL

Having received and reviewed your proposal, we feel it is unnecessary to require a "full" permit, but we do feel it is appropriate to require a letter authorization permit to at least get your project started. A full permit would be \$5,000, would need to be renewed every 5 years and there would be "per ton" fees associated with the waste that comes into the facility. The letter authorization permit I am referring to is a six month permit, has a \$500 fee, can be renewed once, and there are no "per ton" fees.

The reason for the letter authorization permit is that we need to become comfortable with the compost process you propose in terms of the nature, odor, amounts, location and other possible contributors to problems; including and ESPECIALLY how well source separation actually occurs during your project. You will find what is expected in a letter authorization permit application in OAR 340-93-60. As a part of the permit application, please also follow the appropriate sections of OAR 340-96-20 which are special rules pertaining to composting facilities.

As you prepare your detailed plans, please keep in mind that all materials must be source separated or else we cannot process the permit. This letter authorization would not be meant to "permit" non-source separated material to be composted; that would require a full permit. While it is true that the Department has some flexibility in determining whether or not to require a permit for source separated material composting facilities (per paragraph at top of page), the intent of requiring the letter authorization permit is that it gives you and the Department an appropriate "tool" to get started. Again, this would allow, over time, an evaluation of things such as nature, odor, amounts of material, location and other possible contributors to problems; including and ESPECIALLY how well source separation actually occurs.

As I said, this is just the "tool" to get started. A letter authorization is for six months and then can be extended for another six months, but no more after that. There is no commitment on behalf of the Department that we would make a determination of "no permit"

J. Val Toronto
September 18, 1995
Page 3

versus "full permit" during the letter authorization period. This is because there may not be enough time or experience in six months or even a year. It may be at ANY time, whether your facility is covered by a letter authorization permit or not, that we determine your operation needs a full permit or even possible enforcement action. If this were to be required, it would be due to problems that your project experiences including, but not limited to, odor or inadequate source separation.

We hope you agree that the letter authorization strikes a correct balance between requiring a full permit and not requiring any permit whatsoever at the start-up of your project. Assuming you want to proceed with your project, we look forward to receiving a letter authorization application in accordance with this letter, OAR 340-93-60 and OAR 340-96-20.

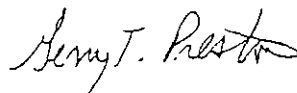
Note: It is also possible that this facility will need a storm water discharge permit from the Department's Water Quality program.

ENFORCEMENT ACTION AGAINST PROPERTY OWNER

In your letter of August 23, 1995 you complained about the Department contacting the landowner of your site directly. You may recall that it was explained to you before Department staff visited the property with you that if the Department documented violations of its rules, we are obligated to follow-up. As you know, we found a very old illegal dump and explained to you that our action in this case would need to be against the long-term land owner, not you, the short-term lessee. Before we sent the enforcement notice to the land owner, we discussed it with you and the land owner over the phone. The Department cannot meet your request to, in any future correspondence which directly relate to the owner, "relay" through you instead of contacting the land owner directly.

I hope this response also alleviates the concerns of your September 8 letter. If you have any questions, please call me at (503) 298-7255 or John Dadoly at (503) 278-4616.

Sincerely,



Gerry T. Preston, Manager
Eastern Region Solid Waste and Tanks

cc: Pat Vernon, Stephanie Hallock, Mary Wahl, DEQ
Bob Perry, Umatilla County Planning Dept.
Cal Garton, Bill Cole, Warren Taylor
John Dadoly, Tim Davison, DEQ

August 21, 1996

Certified Mail

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

J. Val Toronto, P.E.
Umatilla Recycling Group
219 S.E. 2nd
Pendleton, OR 97801

Kal Garton
Garton & Associates Realtors
440 S.W. 1st
Pendleton, OR 97801

Dear Mr. Toronto & Mr. Garton:

Thank you for inviting the Department of Environmental Quality and Umatilla County representatives to assist you in your cleanup efforts. The purpose of our visit (per your request) was to provide a visual review and verbal discussion of what items could and what items could not stay on the site. When we accepted your invitation to provide this "on-site" assistance, you may recall that we told you on several earlier occasions, that only clean fill could remain.

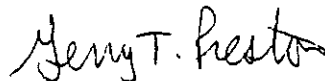
We again confirmed this when we visited your site on August 19, 1996. The vast majority of your waste is wood from a construction and demolition site, which is not "clean fill" and therefore, this woodwaste must be removed. We further explained that materials such as brick or concrete could remain because it does meet the definition of clean fill. After this discussion we let you know that the order deadline is extended to September 19, 1996. This is the date by which all materials that do not meet the definition of clean fill must be removed.

It is critical to remind you of two items as you proceed with cleanup over the next month:

- a) Coordinate your removal, hauling and disposal with the County to ensure it complies with their ordinances and franchise agreements.
- b) It appeared that some waste had been removed (tires, garbage bags, paper and metal) and we appreciate your compliance thus far with the Department order. However, you still must submit documentation (including receipts and dates) of disposal when the project is complete. This includes wastes you've already had removed so far.

Again, thanks for your cleanup efforts to date and we look forward to your continued and ultimate cleanup by September 19, 1996 after which the Department will consider mitigation of the civil penalty assessed.

Sincerely,



Gerry T. Preston
Manager, Solid Waste and Tanks
Eastern Region

Ex. 29

cc: Larry Cwik
Stephanie Hallock
John Dadoly
Umatilla County - Bill Jones and Glen Diehl
Warren Taylor



Columbia Gorge Office
400 E Scenic Dr., Suite 307
The Dalles, OR 97058
Voice (541) 298-7255
FAX (541) 298-7330
TTY (541) 298-7386
DEQ/ER-101

P.S. It was good to see that you had the access road secured by a cable line.

Ex. 30 Oregon

August 22, 1996

Certified Mail

Kal Garton
Garton & Associates Realtors
440 S.W. 1st
Pendleton, OR 97801

STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 26 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

Dear Mr. Garton:

As promised, yesterday I sent you a letter regarding this past week's visit to your site. Today, I received a letter from you regarding the same visit. Our two letters have crossed in the mail and some of the issues you raise in your letter were already addressed by my letter. So I've enclosed my letter again today.

Please especially note item "a" in my letter. Your Umatilla Recycling Group, not DEQ, must coordinate the removal, hauling and disposal with the County to ensure it complies with ordinances and franchise agreements. That is under County purview, not ours. The County also explained this during the visit.

With regard to your quote of our rules, the Department reviewed our definition of solid waste long before we took our enforcement action against your group. The enforcement action states that you are operating a solid waste disposal facility without a solid waste disposal permit. This certainly includes all the wood (the majority of the waste at your illegal site) from the construction and demolition project that you accepted (and charged a fee for) on your leased property without a permit and without a franchise. The Department and the County have made it clear to you that the property must be returned to its original state. As I say in my enclosed letter, the enforcement order deadline is extended until September 19, 1996 to remove the waste.

With regard to your comparison of your site to Pendleton Sanitary Service's, theirs is permitted by DEQ and your site is not. Their permit specifically says "Salvaging and recycling at the temporary transfer station are authorized, if conducted in a controlled and orderly manner". Wood waste is a solid waste as are appliances, newspaper, cardboard etc. Even though these materials can be recycled, they are still considered solid waste and the Department has the authority to regulate solid waste activities as deemed appropriate.

Finally, in your letter you request a copy of the tape of our July 22 meeting in Portland in which we discussed the civil penalty and order. I would first like to remind you that you recorded the meeting yourself that day. If for some reason you cannot locate your copy or it did not turn out, let me know and we can arrange for a copy. The tape that the Department made is not a formal recording.

Sincerely,

Gerry Preston
Manager, Solid Waste and Tanks
Eastern Region

Ex. 30

enc:

- cc: Steve Zweirzynski, URG Council
- Warren Taylor, Land Owner
- Glen Diehl, County Sheriff
- Bill Jones, County Council
- Emile Holman, County Commissioner
- Mike Johnson Construction
- Stephanie Hallock, Eastern Region Administrator



Columbia Gorge Office
400 E Scenic Dr., Suite 307
The Dalles, OR 97058
Voice (541) 298-7255
FAX (541) 298-7330
TTY (541) 298-7386
DEQ/ER-101

John Dadoly, Eastern Region DEQ
David Nelson
Gordon Smith, State Senator
Langdon Marsh, Director of DEQ
Jim Hatley, Construction
Larry Cwik, Enforcement Division

April 11, 1991

Boise Cascade Corporation
Attn: Bob Wilson, Region Manager
1917 Jackson Street
La Grande, Oregon 97850

Re: SW-Union County
Log Deck Waste Project
SWD Letter Authorization #A251

Dear Mr. Wilson:

The Department is in receipt of Boise Cascade Corporation's application for a letter authorization for the continuation of land application of log deck waste begun under Letter Authorization #A247. Letter Authorization #A247 expired on April 11, 1991.

The application is for placement of 35,000 cubic yards of log deck waste, originating at Boise Cascade Corporation's Elgin facility, on 33 acres of property owned by R.D. Mac, Inc. The site covered by this letter authorization is the parcel described as the 1990 application area in the site investigation report prepared by Cascade Earth Sciences, Ltd. (September 1990, with October 1990 amendments). The 33 acre application area is a portion of the 138 parcel identified as Township 1 North, Range 39 East W.M., Section 09, Tax Lot 200.

The application area has been prepared for log deck waste application by ripping the soil to a depth of eight inches. The log deck waste has been spread in a uniform lift of eight inches over the application area. A buffer zone of 50 feet has been maintained from all surface water channels and property boundaries. After application of the log deck waste, the site will be plowed to a minimum depth of sixteen inches to thoroughly mix the waste with native soil, leveled and prepared for farming. The site will be fertilized and seeded into pasture grass. The cover crop will be maintained at all times to prevent soil erosion, waste migration and blowing of fine woody materials.

Ex. 31
(2 pages)

BARBARA ROBER
Governor

In accordance with Oregon Administrative Rules 340-61-027, this letter authorization is issued to Boise Cascade Corporation for completion of this project. This authorization is subject to the following conditions:

1. The project will be managed in accordance with the plans and specifications contained in the application, including the site modifications on Page 18 of the site investigation report.



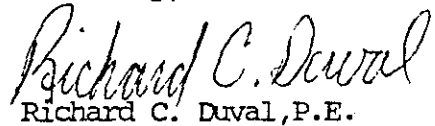
700 SE Emigrant
Suite 330
Pendleton, OR 97901
(503) 276-4063

Boise Cascade Corporation
April 11, 1991
Page 2

2. This authorization does not constitute approval to dispose of substances regulated under Parts 260-268 of 40 CFR Chapter 1 relating to the management of hazardous waste or the Comprehensive Environmental Response, Compensation, and Liability (CERCLA) Act.
3. At the conclusion of this project, the condition of the land application site shall be suitable to continue the agricultural practices existing prior to the application of log deck waste.

This letter authorization will expire on October 11, 1991.

Sincerely,



Richard C. Duval, P.E.
Regional Environmental Engineer

RCD

c: Ernest Schmidt, Hazardous & Solid Waste Division

Warren A. Taylor
TORCO Ranch
Rt. 2, Box 184
Pendleton, OR 97801
541-278-0541
September 29, 1996

Mr. Gerry T. Preston
D.F.Q. Eastern Region
400 E. Scenic Dr. Suite 307
The Dalles, OR. 97058

Dear Mr. Preston,

This will be my response to your letter dated September 23, 1996. I wish to thank you for the extension of time needed for the cleanup. The site will be cleaned up by October 11th. But it also should be pointed out that we lost a weeks cleanup time on your instructions to wait for your correspondence, which we didn't receive until September 27th, 1996. This will make for some very tight scheduling.

An end has to come to this nonsense. I personally feel that a lot of this has come out of a personality conflict between you and Mr. Toronto. Which I don't care to be in the middle of.

URGC's lease of this property will be terminated as of tomorrow September 30th, 1996, enough is enough. I believe they had a good idea, but I also realize they went about getting their permits the wrong way.

All the non clean fill material at this site will be hauled to Pendleton Sanitary Service's transfer station.

My personal cost as of now is about \$12,000.00 and will go up from there when we move men and machines onto the site to finish the cleanup.

There are a couple of things I would like to comment on further. One is your personal decision to qualify wood chips as not having agricultural value and calling them solid waste. We have used wood chips for many years as an ingredient in soil building formulas (if you think about it, what is soil made of at the start) and as animal bedding, there would be a lot of very cold animals (especially in Eastern Oregon) without them.

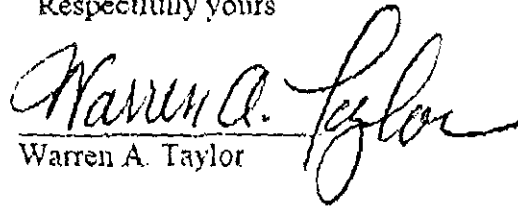
Ex. 32
(2 pages)

The second thing I would like to mention is all of these adverse press releases and threatening letters are starting to affect my wife's health. She is already an invalid (rheumatoid arthritis since she was three, with both hips and both knees replaced) and I don't say anything about this for advantage, but to make you aware of what is happening with all of the stress created by this situation. An end must be accomplished.

I also have questionings about blaming the land owner for something somebody else did, especially when you know exactly who that person or persons were. For example someone dumps a old refrigerator on your lawn in the front yard and you and the authorities know who did it, then the authorities hand you the land owner the fine and blame. A very Strange justice wouldn't you say.

I also want to correct something else. In your August 22 Nd letter your pointed out that we received a fee for taking in the material. I can assure you that the land owner has not received any fees for anything including any lease money whatsoever. Our intent was to provide a community service in regard to recycling and reclamation.

Respectfully yours


Warren A. Taylor

cc:Stephanie Hallock, D.E.Q. ER Administrator
John Dadoly, D.E.Q, Pendleton
Umatilla County- Bill Jones & Glen Diehl
Kal Garton, URG
Steve Zwierzynski, URG Attorney

permitted because of greater environmental impact.

Existing solid waste rules can not easily be applied to composting operations. This has resulted in inconsistencies in interpretation and application of existing rules at the 45 composting facilities around the state. Only six of the facilities currently have solid waste disposal site permits, although the number of commercial composting facilities in the state has increased from 15 to 45 in the last five years. This number is expected to increase to approximately 65 facilities by the year 2001. The growth is in response to the increasing availability of organic feedstocks for composting and the increasing demand for compost products.

For more information on the proposed compost rules, contact Lauren Ettlin, (503) 229-5934, or dial toll-free.



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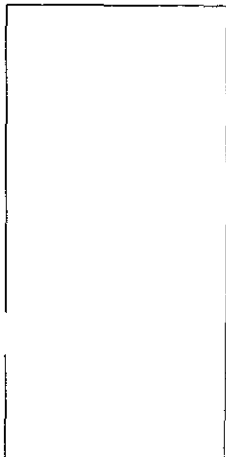


Waste Management & Cleanup Division

Department of
Environmental
Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Bulk Rate
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PAID
Portland, Oregon
Permit #852

EX. 33



*****5-DIGIT 97801
3275
VERA SIMONTON
1203 NW 47TH ST
PENDLETON OR 97801-4580

FAX Sean Donahoe
503) 232-6441

Warren A. Taylor
41095 Taylor Lane
Pendleton, OR 97801
541-278-0541
February 24th, 1997

Mr. Gerry Preston
D.E.Q. Eastern Region
400 E. Scenic Dr. Suite 307
The Dalles, OR 97058

Dear Gerry,

I am happy to report that our project is finally finished. All solid waste ^{and chips} of wood ~~and other materials~~ have been hauled off and disposed of properly. I am including a summation of our costs. The material was hand separated in order to try to reduce the weight that had to be carried up to Pendleton Sanitary and paid for at a very hefty \$55.00 a ton for trucking (that's all they do and that comes out to be about 27.50 per loaded mile for a 20 ton load) material to Finley Butte.

Costs to Taylors is as follows:

\$5000.00 donation to URG to try and get clean-up started.....	\$5000.00
\$3500.00 to A.Key excavation for machinery use (Backhoe, Excavator, Trailer Ect.)	3500.00
\$ 816.00 to Jerry Patten for Indian crew for hand separation.....	816.00
\$12,530.11 to Pendleton Sanitary for trucking to Finley Butte.....	12,530.11
\$ 2641.00 Ranch employee Kevin A. Lintelman 278 hours Operating Backhoe and hand cleanup @ 9.50/hr.....	2641.00
\$ 988.00 Ranch employee Robert C. Taylor 104 hours operating Excavator, D6 Cat. and trucking.....	988.00
\$ 288.00 For church youth group to hand clean.....	288.00

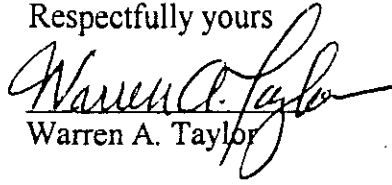
Total \$25,763.11

I'd like to point out that this comes to a cost of \$113.09 per ton to cleanup what was over 90 % wood. Remember, grain is only \$110.00 per ton locally and you can feed a lot of people with a ton of grain. We believe this should negate any of the fine.

This is the cost Taylors have absorbed to date for hauling 227.82 tons, all that remains is to have a church youth group finish up some hand work they have started, (they are trying to earn money to go down to Mexico and help build an orphanage) over the next couple of weekends.

Ex 34
(2 pages)

Respectfully yours

A handwritten signature in cursive script, appearing to read "Warren A. Taylor".

Warren A. Taylor

cc: Deputy Glenn Diehl Umatilla County Sheriffs Department

4/19/76

Group accused of operating illegal dump

By STEVEN BROWN
of the East Oregonian

PENDLETON — The same group that opposed the closure of the Pendleton landfill and fought against construction of a garbage transfer station near the Pendleton airport now stands accused of operating an illegal dump near Rieth.

The Oregon Department of Environmental Quality has ordered the Umatilla Recycling Group to clean up the site, which it alleges is being operated without the required solid waste disposal permit.

The group must complete the clean up in order to avoid civil penalties.

The Recycling Group, formerly known as the Umatilla Refuse Group Cooperative, was served Tuesday with a DEQ notice instructing the group to stop accepting solid waste and establish a schedule for clean up of the site.

The non-profit group includes prominent members of the Pendair Citizens Committee, an organization that defeated an attempt to construct a garbage transfer station in Pendair Heights atop airport hill.

The Recycling Group's board of directors includes Executive Director Val Toronto, President Kal Garton and Treasurer Vera Simonton, a candidate for mayor.

John Dadoly, an environmental specialist in the DEQ's solid waste program, said two complaints were received on April 5 alerting the department to possible violations.

"We were told that solid waste was being hauled from the (future) Wal-Mart site in Pendleton to the Umatilla Recycling Group's solid waste facility at the Torco Ranch on Birch Creek Road," Dadoly said. "They are leasing a piece of that property."



Gerry Preston, the Department of Environmental Quality's Eastern Region solid waste manager, walks through a pile of wood debris trucked to a recycling site on farm land along Birch Creek Road near Rieth. The site, leased by the non-profit Umatilla Recycling Group does not have DEQ authorization and has not received land-use approval or a county solid waste franchise necessary to operate a composting or recycling facility.

Contributed Photo

The land is owned by Warren Taylor who also is identified as a member of the Recycling Group's board of directors.

Garton said this morning that the Recycling Group would comply with DEQ's schedule for clean up. But he contended the group had done nothing wrong.

"This is not a landfill, it's for source-separated material," Garton said. The group plans to compost and recycle items it accepts. "Source-separated

material is what we agreed to take from the contractor. Wood material can be composted. We have permission to do that from the local DEQ office."

However, the DEQ's "Notice of Noncompliance" says the Recycling Group has not received the necessary Solid Waste Letter Authorization. The group submitted an incomplete application, failing to include a land-use compatibility statement, Dadoly

See Dump/2A

EX-35
(2 pages)

Dump

Continued from 1A

said. The group also is operating without a required Umatilla County conditional use permit.

Dadoly said the Recycling Group could accept "clean fill," such as bricks, concrete, rocks and soil, without a permit. But DEQ, during an April 9 inspection, found construction and demolition waste, mainly wood but also asphalt shingles, metal and gypsum board.

The Recycling Group has until May 31 to remove the wood waste, unless in the meantime it receives land-use approval from the county to operate the recycling and composting facility. The Group also must receive DEQ authorization.

The clean-up schedule also requires that two steel tanks be removed from a ditch or be cleaned and used as culverts by April 30. Metal items, asphalt shingles and other solid waste must be hauled to a permitted disposal site by the same date. In addition, waste must be moved back at least 25 feet from a drainage ditch.

Garton said the Recycling Group was created largely to provide competition for Pendleton Sanitary Service. He said items removed under the clean-up request will not be taken to the Sanitary Service's transfer station.

He said that since the Recycling Group started accepting material for recycling and composting, Pendleton Sanitary Service has responded by maintaining its rates at the same level.

"If we hadn't gone into competition with them, their rates would have continued to go up," Garton said.

Meanwhile, demolition contractor Mike Johnson, Inc., from the Tri-Cities, is suspected of hauling waste from the future site of Wal-Mart to the site operated by the Recycling Group. That would be a violation of the city's solid

waste ordinance requiring a franchise to haul and dispose of garbage for compensation.

The contractor could face fines of up to \$500 per day from the city of Pendleton, which is investigating the potential violation, said City Attorney Peter Walls.

The purpose of the franchise is to ensure our citizens receive solid waste disposal services at a reasonable cost," Walls said. "The franchise ensures uniformity of service. We don't want someone taking the cream of the business and leaving the dregs to be paid for by residential customers."

The ordinance prohibits anyone from hauling solid waste for financial gain other than an approved franchise holder. Pendleton Sanitary Service is the franchise holder in Pendleton, although the city's ordinance does not limit the number of companies that can hold a franchise.

Because the Wal-Mart site falls both in and outside the city limits, Umatilla County officials also are investigating to determine if its franchise ordinance has been violated.

The county's ordinance requires a franchise in order to collect, transport and deposit solid waste within the county. The county is investigating both Mike Johnson, Inc. and the Recycling Group.

Garton said the Recycling Group has not violated county franchise agreements, saying the company never hauled garbage, only material intended for composting or recycling.

"We are probably going to have to sort this whole thing out with an anti-trust restriction of trade lawsuit," Garton said. "We are considering that."

Toronto and Simonton could not be reached for comment.

May 21, 1996

Mike Johnson, Inc., General Contractor
Rt.7 Box 420 Union Loop and Brinkley Road
Kennewick, Wa. 99337

Attn: Gale Balderson

Dear Gale,

I would like to restate our discussion of Tuesday, May 21, 1996.

Of the 140 truck loads recorded and delivered, there are about 20 loads that should not have been delivered to the Umatilla Refuse/Recycling Group site.

Those 20 loads can not be 1) Source separated for use in the production of wood fiber, shredding for farm use, erosion control, landscaping or 2) classified as clean fill for land reclamation.

The material is co-mingled and co-mixed and contains such a high quantity of undesirable materials for the above specified use that source separation would not produce the material, as outlined, for Number 1 or Number 2 in the agreement dated April 11, 1996, between Mike M. Johnson, Inc. and the Co-Op.

Most loads, including the 20, have been topped off with a large quantity of gravel and rock. This will require additional secondary separation and screening of all material prior to use.

The gravel and rock was not on the piles of wood that I had previously examined, the week before April 11, 1996. It should never have been placed on top of each load before hauling.

I was very disappointed to see that these piles had been covered with gravel and rock in lieu of tarping. Gravel material placed on top of the acceptable wood has required the State to reject what at one time was clean wood debris.

There is no problem with acceptance of the chipped wood for the payment received.

The Co-Operative's preference is to negate the agreement for the remaining \$2500.00 balance and have all unacceptable material removed from the site.

We suggest a meeting at the earliest possible time.

J. Val Toronto, General Manager
219 S.E. 2nd. Pendleton, Oregon 97801

*Mike Johnson
20 loads*

Ex. 36

UMATILLA RECYCLING GROUP CORPORATION

RESOURCE CONSERVATION AND RECOVERY ACT (AMENDED)

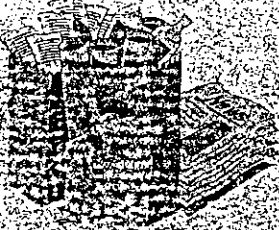
DEMONSTRATION ON RECYCLING AND CONSERVATION

EX-37

FEBRUARY 1996

Sponsor: Umatilla Recycling Group
(a non-profit association)

Umatilla Reuse Group Co-operative
4015 W. 1st
Pendleton, Oregon 97801



*Hand Composed to Dennis Olson office
 Du Sablon Planning Dept February 91*

INDEX

SECTION 1

Sheet No.	Description	Purpose
1	Application for Letter of Authorization (2 Pages)	Justification and Need
2&3	Cover Letter <i>To Stephanie Hollick to determine legislative intent and alternate solutions.</i>	Request for Demonstration <i>and should not have to follow existing rules.</i>
4&5	Recycling alternatives to existing S.W. practices O.S.U. Extension Service.	Demonstrate alternate recycling solutions <i>Supports Composting.</i>
<i>S(x)</i> 6,7&8,9	A cost effective Commercial Industrial Resource Conservation Recycling Program	Outlines need for R.C.R.A. act for Pendleton

SECTION 2

1,2,3,7,4	Describes lack of and need for alternative recycling facilities City/County	Background, history and delays <i>describes Alternative 1 and 2. County Alt. 3 at DEC request and RCRA Act Goals of conservation.</i>
The Umatilla Refuse Group Integrated Recycling-Recycling Management Program		

SECTION 3

1	General information, alternates	All Alternatives
2	<i>legislative intent, County S.W.M. Plan 1974</i>	<i>AS 121 - BUSINESS EXEMPT</i>
3	Alternative 1	<i>250 - Land Use - Former Kingman</i>
4	Purpose of County Plan and summary of Alt.#1 benefits	Description of materials and amount. Protection of Agri Business
5,6,7,& 8	County Comprehensive Plan & summary of Alt.#1 benefits	To protect solid waste sites; existing & future sites
9	U.S.G.S Quad.	Site location
10	Soil Conservation Plat	Identifies soil classes
11	Plan Layout	Indicates location of Alt.#1,2 & 3
12	Cross Section of Alt.#1	Defines work site area for Alt.#1

February 16, 1996

Dennis Olson, Administrator
Umatilla County Planning Department
Umatilla County Court House
Pendleton, OR 97801

Re: L.U.C. Approval to implement the Resource Conservation and Recovery Act (amended) and O.R.S. 459.015 pertaining to a "Demonstration thru Recycling Composting, and Land Reclamation".

Dear Mr. Olson,

Hand carried this date is a copy of the proposed project approval by the Department of Environmental Equality subject to Umatilla County approval.

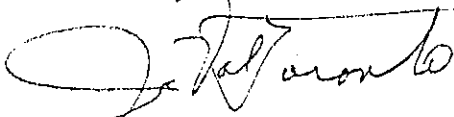
Approval has been granted by DEQ for alternate 1 and alternate 2 during the negotiated conference on February 9, 1996 in The Dalles.

These alternates are fully explained in the demonstration on recycling and conservation document submitted herewith. Also, included are over 80 regulatory goals, rules and statutes encouraging and perhaps mandating the proposals contained within the above described document. The U.R.G. intends to implement the clean fill provisions immediately and look forward to your administrative approval within the coming week.

Don't hesitate to contact me as necessary to expedite your approval.

Thank you.

Sincerely,



J. Val Toronto, P.E.
General Manager U.R.G.A.

Enclosures: Demonstration on recycling and conservation

SECTION 4

February 20, 1995 Soils investigation report, including maps

August 18, 1995 Transmittal to D.E.Q. Soils Report Data, Hydrology, Site Evaluation and Operations and Management Report.

September 5, 1995 D.E.Q. Solid Waste Management Plan and Recycling Goals for 1995-2005.

SECTION 5

6
Legislative Intent
Alternatives 2 & 3

SECTION 6

1	Perk Up Pendleton Week indicates alternative needed	5,000 Cubic Yards of Solid Waste stored annually
2 & 3	State/Federal Requirements and Definitions	Classifies laws to recycling and operations
4	Supreme Court Ruling	Allows S.W. Disposal in E.F.U. zones
5 & 6	Supreme Court explanation for Ruling	Defines reasons for S.W. uses on E.F.U. land
7	Solid Waste Permit from D.E.Q.	Permit Process is issued first from D.E.Q.

SECTION 1

r

Mail 2 copies of this Application,
and \$500 fee to:
Business Office
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204



Date rec'd _____
Amount rec'd _____
Check No. _____

APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY
FOR A LETTER AUTHORIZATION

Applicant: Umatilla Refuse Group Co-operative Assoc.

Site Name: Torro Ranch

Mailing Address: 440 SW 1st

County: Umatilla

Pendleton, OR 97801

Location: Section 24, Twp 2N, Range 31E, W.M.

Telephone: 541-276-0931

NE 1/4 NE 1/4

Disposal Site Telephone (if any): N/A

Property Owner: Warren A. & Vivian M. Taylor
Leasee: Umatilla Refuse Group Co-op. Assoc.

Site Operator: J Val Toronto P.E.

Mailing Address: Rt. 2 Box 1184

Address: 4231 SW Broadlane Ave

Pendleton, OR 97801

Pendleton, OR 97801

Telephone: 541-278-0541

Telephone: 541-276-0579 541-276-2459 Fax

I. Please complete the following items:

1. Quantity and types of materials to be disposed of:
Source separated materials refer to report for details of *Alternate 1 + Alternate 2 combined*
2. Location and size of proposed disposal site:
Refer to report for details 40 acre out of 940 acre ranch
3. Project schedule, starting and ending dates (maximum time six months):
As soon as possible

II. Please discuss the following using supplementary sheets of paper:

1. Need and justification for disposal site.
In accordance with resource reclamation and recovery act (amended) and CRS459 and 57 Goals-Rules and statute
2. Proposed methods of disposal.
For land reclamation and improved agricultural productivity.
(Note: You must provide sufficient information for the Department to find that the project is not likely to cause a public nuisance, health hazard, air or water pollution, or other environmental problem.)

SWFORMSISK4326 (1/1/93)

1-1



[Handwritten signature]

submitted for a corporation must be signed by (or the signatory must be authorized by) a principal executive officer of at least the level of vice president; or for a partnership or sole proprietorship, by a general partner or the proprietor, respectively. In the case of a municipal, state, federal or other public facility, the application shall be signed by either a principal operating officer or ranking elected official.

1. J. Val Toronto General Manager
 (Print Name) (Title)

1. Kalvin B. Garton President
 (Print Name) (Title)

certify that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete.

Signature: [Handwritten Signature] Date: Feb 2 - 1996

Signature: [Handwritten Signature] Date: Feb 2 1996

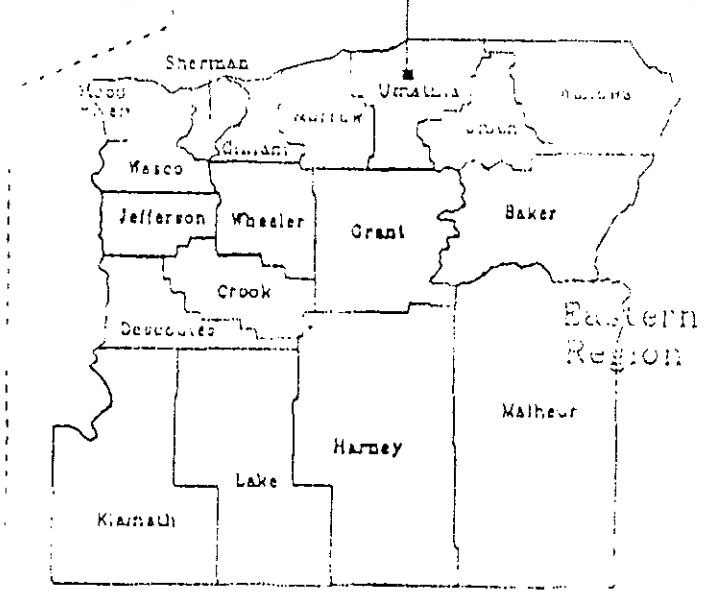
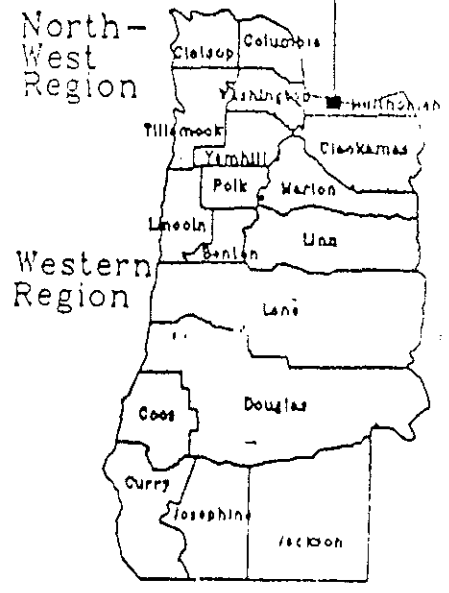
Mail 3 copies of this Application as indicated below.

Application for new site (with fee attached): Business Office
 Department of Environmental Quality
 811 SW Sixth Avenue
 Portland, OR 97204

Application for modification or renewal of existing permit:

Solid Waste Permits
 Department of Environmental Quality
 811 SW Sixth Avenue, 7th Floor
 Portland, OR 97204

Eastern Region
 Department of Environmental Quality
 700 SE Emigrant, Suite 200
 Pendleton, OR 97601



- Attachments:
- o Land Use Compatibility Statement
 - o Permit Fee Schedule

Re: Demonstration For Alternate Solutions to S.W.M. Practices
Through Source Separation and Recycling and Land Reclamation

Stephanie Hallock

Dear Stephanie,

I believe it is important to determine legislative intent in evaluating our proposal for a "Demonstration" to provide alternative solutions to existing solid waste management practices. These management practices are set out in several O.A.R. categories.

If the Department (DEQ) requires our project follow existing O.A.R. guidelines, the proposal would not be a "Demonstration". It would be a report of accepted State Standards and Processes that are known and established.

The Plan the Co-Operative envisions is to conduct a "Demonstration" that will ultimately lead to beneficial reuse of recyclable materials that are now transported to a distant landfill and going into landfill waste.

It would simplify discussion if I were to outline our proposed "Demonstration".

Virtually all recyclables will be utilized; construction debris and demolition waste, excluding all hazardous waste materials and medical waste.

The "Demonstration" may well show this plan is one method that will be profitable.

It is difficult to respond to questions, seeking answers, when that is why we want to conduct the "Demonstration". Some, if not most, questions can not be realistically answered until the "Demonstration" provides positive answers to these same questions.

At this point, we can only give a qualified guess, and suggest the results will differ between summer and winter conditions, and also depend upon availability of differing materials.

I believe the Department has sufficient latitude to allow a "Demonstration" that involves and/or includes most, if not all, materials set forth as acceptable in the O.A.R. for a municipal or a non-municipal landfill.

We want to "Demonstrate" there are environmentally sound alternatives to utilization and recycling of solid waste and that landfilling should be the last resort.

Integral to this "Demonstration" will be Land Reclamation and Land Improvement, to increase agriculture productivity, through

use of source separated (recycable) material that is now wasted in Regional Landfills.

I have attempted to provide the Department with all the answers that I can reasonably respond to. Hopefully a more accurate and detailed response will be forthcoming midway through the "Demonstration Process".

The O.R.S. 459 and other Statutes provide the Department with an adequate array of authority to approve the requested "Demonstration" through a Letter or Authorization as you suggested.

I also believe this same authority extends to anyone or any combination of the Department's existing permit authorizations. The permit can be issued to include:

°Source separated materials for purposes of material recovery, for recycling, for shredding or grinding, for utilization in providing soil amendmets, landscaping, erosion control and compost.


°Source separation of construction debris, demolition debris, clean fill, including inert materials that can be used in Land Reclamation.

It may well be the "Demonstration" may indicate new solutions to old problems and several rule categories can be reduced, combined or simplified.

Our interest is more inclined to determine a practical, economic, cost effective solution through Reycling, Reuse and Land Reclamation.

The response in the following attachments are in numerical order of the respective questions on O.A.R.

Sincerely,


J. Val Toronto, P.E.
General Manager URGC

A DEMONSTRATION FOR
ALTERNATIVE RECYCLING

There is a need to explore alternative solutions and practices to the County/City solid waste problem. Recycling and re-use can provide a potential solution and save valuable landfill space.

Since early 1994, illegal and promiscuous dumping had increased by over 500% by mid 1995. The amount of calls to the Sheriff's Department by concerned citizens regarding pernicious waste piles exceeded the Sheriff's Department's ability to respond. The County Sheriff's Department no longer provides this service and illegal and pernicious dumping of refuse is apparent along the highways, by-ways, stream banks, roadside shoulder areas, down highway and County road embankment slopes, vacant lots, dead end isolated roadways and gullies. During "Perk-up Pendleton Week", 5000 cubic yards of surplus refuse that had been stored locally in backyard areas, all within the boundaries of the City, were delivered for free disposal to the Transfer Station. This statistic clearly identifies that a serious disposal problem exists and the practice causes nuisance conditions, potential hazards to public health and safety and pollution of the air, water and land environment.

OAR Policy requires and promotes planning, utilizing and emphasizing recovery and re-use of solid wastes and insuring highest and best practicable protection of the public health and welfare and air, water and land resources.

Maximum participation of local government in the planning, siting, development and operation of a needed non-municipal construction-demolition debris landfill was excluded and suppressed during the very limited number of Public hearings held in early 1994. There was very little public participation encouraged. There was no discussion by local government regarding how best to attain the State/Federal mandated recycling goals or of alternatives to encourage recycling and re-use of products. There was a statement that local government had requested and received a reduction in the previous mandated 30% recycling goal to 15%. There was limited discussion that by raising rates to new highs of 80% over previously charged collection/disposal fees, it would encourage a reduction in the waste load. There was inadequate preparation, investigation and public participation in exploring the above philosophy and this clearly has become evident by virtue of the 5000 cubic yards of stored refuse hauled to the Transfer Station during one Perk-up week in Pendleton last year (1995).

Also, the pervasive and pernicious dumping throughout the region is a strong indicator that the public disagrees with the efforts, choices and fee schedules approved by local government as it relates to yard waste, demolition waste, construction debris and land clearing. Numerous other quantities of solid waste are stored for later disposal.

During the above limited public discussions there were no alternative proposals for recycling or re-use of yard waste, demolition and construction debris. There were no alternative proposals to re-use separated commercial waste and separated waste from the public and private sectors. There were no alternative proposals to reduce the need for the dependency on landfill capacity, either now or in the future. There were no alternative proposals to utilize any or all of the above in producing a soil amendment, mulch or compost. There were no alternative proposals to encourage and /or explore the feasibility of land reclamation. There were no alternative proposals to reducing the need for long haul trucking distance of 98 miles round trip, air quality degradation, loss of irreplaceable fuel resources or loss of equipment and manpower resulting from the preferred solution proposed by local government.

The choices were few, the public hearing discussion controlled and limited and alternatives pre-selected.

The following proposal and required approvals are in keeping with the legislative intent of O.R.S. 459.015 and the goals outlined in State of Oregon S.W.M. Plan for 1995-2005.

With the approval of the Department, the Umatilla Recycling Group, a non-profit association, will undertake a 2 1/2 year "Demonstration" collecting source separated recyclables from the commercial sector; and the Umatilla Refuse Group will be responsible for materials recovery, re-use, product utilization and land reclamation. All in accordance with the Land Reclamation Resource Conservation Recovery Act as amended. (RCRA)

NON-PROFIT BASIS. we also realize the political pressure to
eliminate any possibility of competition in the Recycling/Compost
of material now going
49 miles (one way) to Finlay
Butte in Harney County.
C.V.T.

EXTENSION SERVICE

Umatilla County Office



OREGON STATE UNIVERSITY

721 SE Third Street, Suite 3 • Pendleton, Oregon 97801-3056

Telephone 503•278•5403

FAX 503•276•7541

October 10, 1995

Umatilla Recycling Group
J. Val Toronto, General Manager
4231 S.W. Broadlane Ave
Pendleton OR 97801

Dear Mr. Toronto:

Composting of yard and garden waste would be an excellent option in my opinion. Pendleton should not be landfilling this kind of material if there is another viable option. It would seem composting could be a viable option.

I have reviewed the brief synopsis of the Integrated Refuse Management Program dated July 1, 1995. This includes some short references to composting which I would support.

As I have observed the amount of tree trimmings and yard waste going to the dump it is obvious that few people have the chippers, etc. to do their own composting. As a community we could encourage more composting but I think the cost of these machines probably preclude a high percentage of the Pendleton population implementing composting.

Therefore, a community sponsored composting program seems to be the best option and would result in almost all suitable materials being utilized.

In theory I would strongly support a composting program for Pendleton and I believe a demonstration project would be in order.

Sincerely,

A handwritten signature in black ink that reads "Michael Stoltz".

Michael Stoltz
County Extension Agent



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A COST EFFECTIVE COMMERCIAL & INDUSTRIAL RESOURCE

CONSERVATION RECYCLING PROGRAM

PROGRAM NEED: The Program need is set out in the attached six (6) page summation of Oregon Statutes, Federal Regulations, Department of Environmental Quality, Administrative Rules and subsequent goals of the above governmental agencies.

The City of Pendleton and the County of Umatilla has NO municipal commercial or industrial recycling program. It also has no yard waste, no construction debris, no demolition debris and no land clearing pick up and disposal service.

The reported recycling rate of 15% is very inaccurately high because it does not include all of the illegal dumping or any of the stored refuse materials in backyards and vacant storage areas.

"Perk Up Pendleton Week" took in 5000 cubic yards of accumulated refuse which was not included in Pendleton's yearly overall refuse quantity. A realistic recycling rate for Pendleton collection is closer to 10% or lower, which is 20 points below the mandated 30% goal established by D.E.Q.. The State mandated recycling goal of 50% for the year 2000 will never be attained within the existing privately held, politically regulated operating systems. This goal can be attained if lower profits and lower priced reasonable tipping fees are available. The considerable distance, the inconvenience of lost time and the enormous expenses attributed to traveling the required 100 mile round trip distance. It also is a major deterrent to any effective recycling program.

BACKGROUND OF NON-MUNICIPAL LANDFILLS:

The City's Comprehensive Plan and the County's Comprehensive Plan reference only previous Solid Waste Management Plan documents that have not indicated needed future facilities for recycling and non-municipal landfill purposes. Both the City's and the County's previous S.W.M.P. prior to 1994 assessed all municipal landfills in the County as adequate well into the next century. Recent politically motivated changes have been instrumental in encouraging the closures of municipal landfills with very little effort devoted to sustaining, upgrading, revising, or locating alternate landfill locations.

The previous Plans and the more recent S.W.M.P. made no effort to distinguish the material differences between municipal and non-municipal landfill uses. Very little information was attributed to recycling and absolutely nothing regarding a proposed plan for recycling of Commercial and Industrial waste,

Page 1

composting and nothing regarding Resource Conservation as it affects land conservation, as set out in Federal Regulation 40 CFR-257 and 258.

FEDERAL AND STATE LEGISLATION:

Many provisions of Oregon's Solid Waste Management Plan, adopted in 1979 (the State's 2nd S.W.M.P.) was accomplished to satisfy the "Resource Conservation and Recovery Act" of 1976 (R.C.R.A.). A State plan was a prerequisite for Federal funding to State and local agencies under Sub Title "D" of R.C.R.A."

State legislation in 1983 (ORS 459) authorized the Department of Environmental Quality to move forward on the waste management hierarchy and focus on "RECYCLING".

This report refers to the attached 6 page summation of Oregon's Statutes, Federal Regulations, Department of Environmental Quality, Administrative Rules (OAR) and subsequent Goals of each of the above Governmental Agencies. The 57 references, though not a complete treatise is sufficiently encompassing to illustrate the legislature's intent of pushing forward (mandating) on an effective recycling hierarchy goal.

Hence, to facilitate planning, the Oregon Legislature established a local grant program to help fund recycling and solid waste management planning.

The 1st two recent studies completed in Pendleton, under this appropriation found that the local landfill was adequate for a period of 39 years. The 3rd study, completed by an off-shore solid waste collection firm, suggested closure and a transfer station. None of the 3 recently completed studies discussed the need for or the practical solution or implementation of establishing a "non-municipal landfill" recycling to meet the 30% State mandated goal. Recycling of Commercial and Industrial materials. Construction Demolition. Composting of the above materials to meet compliance with the "Resource Conservation and Recovery Act" (R.C.R.A.).

FORMATION OF THE UMATILLA REFUSE GROUP CO-OPERATIVE ASSOCIATION

On September 7, 1994, a group, representing local business, met in the Red Lion Motel, Pendleton, Oregon. This organizational meeting was for the purpose of exploring alternative solutions to the City's solid waste management crisis and the recently imposed increase of 80% on business collected refuse (M.S.W.).

At this well publicized mass meeting a Board of Directors, a President, Secretary, Treasurer and General Manager were voted on to fill these necessary positions. The Organization of the Umatilla Refuse Group Co-Operative Association, U.R.G.C.A, was established.

Page 2

Approximately two months later the Articles of Incorporation and By-Laws were approved on November 15, 1994. On October 20, 1994 the Articles of Incorporation were received and filed officially with the Secretary of State.

The General Manager, J. Val Toronto, accompanied by Vera Simonton, Treasurer, who is familiar with the ranches and farms in the outlying Pendleton region, explored eight (8) potential suitable locations for a private non-municipal landfill for the Co-Operative's use.

The Co-Op selected a 40 acre site situated about 3½ miles West, Southwest of Pendleton on the Torco Ranch. The site selected had been a State Solid Waste Facility since the beginning operation of the now defunct State Dairy Farm for the Eastern Oregon State Mental Hospital. The Ranch had in possession current permits to utilize the same region for disposal of animal carcasses.

The Ranch also contains a feedlot and provides daily feed for up to 1300 head of cattle. The site is well removed from public view, public use, and is in an environmentally sound setting. For additional information refer to the enclosed topographical and soils survey.

The Co-Operative filed for a City Business License, paid the required fee of \$50.00 for operation on July 6, 1994, under the City's SIC Code 4212.

Subsequently an application was submitted to the Sanitary Regulatory Board, and the County Planning Department. Three month delays followed submittal of the applications and a blizzard of questions were received from both units of government. After numerous meetings, phone conversations and an unlimited quantity of correspondence from the above, the Co-Op decided to seek legislative relief from the onerous line of continual questions and continued and obvious delaying tactics.

The more questions the Co-Op responded to, the more questions the City and County required.

In mid 1993, Mr. Toronto had asked Mr. Bob Perry, County Planner, to include the remaining solid waste sites in the County's upcoming (18 months ago) revisions to the Comprehensive Plan.

They have jointly discussed the lack of an over lay zone and many other important information regarding the continuation of the County's Sanitary Landfills and the absence of any non-municipal landfills.

The Comprehensive Plan of 1983, amended, stated in the Development Ordinance (page XIV-6) 21. Solid Waste needs into the next century. Protect existing solid waste sites and identify and protect future sites through the use of a landfill overlay zone. Use the County's adopted "Solid Waste Management Plan" as the major document for Solid Waste Management taken from Comprehensive Plan "Public Facilities Chapter", page XIV-6 and the purpose and description and protection afforded sanitary landfills through use of the overlay zone Page 1, section 3.550, 3.552, 3.554, 3.566 and 3.558 are attached for reference and verification.

The events setting out the County's procedural delays and omissions of these facilities from the presently upgraded 5 year plan are detailed separately and included as part of this report.

One of the probable reasons that the Planners don't want to upgrade any reference to the S.W.M. Plan of 1977 is that it allows the Planning Department to assist the local franchise holders in maintaining a strictly controlled monopoly of the Solid Waste Management business.

What better way is there to eliminate any semblance of competition?

Through lack of updating a 1977 S.W.M. Plan, the Planners have reserved, to themselves, the option of following a Plan completed 19 years ago or merely rejecting the same Plan as obsolete.

A formal request was made February 17, 1995, to include the Co-Op's non-municipal landfill into the 5 year upgraded Plan. The County Planners have exercised administrative power and personal persuasion to keep the landfill issue off and out of the County Plan.

In order to achieve the Co-Operative's original purposes and goals the non-profit Umatilla Recycling Group was incorporated with the Secretary of State, September 7, 1995.

The Co-Operative will own and control the site activities and the non-profit Recycling Group will provide the recycable materials with reduction, re-use and recycling the primary goal. Recycled material will be source separated and bio-degradeable materials composted. Inert materials and surplus compost will be used in Land Reclamation and in a Land Improvement Project. It will be used first on the 40 acre tract, 2nd on the next 40 acre tract with later use applied to the remaining 940 acre ranch.

Cover Letter and
Proposed Programs

SUMMARY

The Department of Environmental Quality, in past correspondence, indicates they had difficulty knowing what the Umatilla Refuse Group Co-Op (U.R.G.C.) was seeking.

Our goal from the very beginning was to open a privately operated non-municipal landfill that would process various types and classes of refuse. The proposed operation was intended to provide a cost effective solution to the County's ongoing waste disposal problems.

As a non-municipal landfill it would not take, dispose or bury municipal solid waste or putrescible material.

I do not know why this classification created such a dilemma with the Department. 40 C.F.R. 257 defined our intent and purposes for the non-municipal landfill. Meetings with the local staff did not recognize the differences between 40 C.F.R. 257 non-municipal landfills and 40 C.F.R. 258 municipal landfills.

Senate Bill 1119-a Non-Municipal Landfill Bill was prepared by the Co-Op, which allowed the general intent and purposes of 40 C.F.R. 257 for a non-municipal landfill.

As you know, the Department aligned themselves with the nation's largest municipal refuse landfill owners to defeat the Bill. S.B. 1119 would have allowed 400 or more small mill town landfills situated in an environmental safe setting to have continued operation. Literally thousands of Oregonians will ultimately be unemployed when these mills close down because of the high cost of disposal associated with transfer stations and their 100 to 200 mile haul distances.

The delegation from the U.R.G. Co-operative were advised that a permit would be forthcoming in less than 90 days. This has not happened, it has been more than 7 months since the 1st application was submitted and then rejected by the local D.E.Q. office. It would have helped had staff recognized or had been familiar with the Federal Resource Conservation and Recovery Act (R.C.R.A.) of 1976 as amended.

I mention that now, because the Federal Act (R.C.R.A.) fully described all of the intended purposes and objectives in our original request to the Department.

We had to re-categorize our purpose to Recycling, as a means of finding a common ground that staff would accept in Pendleton

and The Dalles.

The above information can be relegated to history if we are able to move expeditiously through the implementation portions of the Resource Conservation and Recovery Act as amended.

I have prepared three (3) applications for your review and approval:

Application #1 will allow the Co-Op to receive, store, and reduce the size of the following source separated materials. These materials would not be blended, but would retain their original source separated composition.

- °Animal manure and soil (cured)
- °Source separated construction debris
- °Source separated demolition debris
- °Inert materials and cleanfill would be stored or used in land leveling and land reclamation
- °Yard waste and yard cleaning materials
- °Lawn clippings and leaves
- °Plant and tree branches and shrubbery, under 6" in diameter
- °Large branches, shrubbery and trees over 6" in diameter will be cut for firewood and sold at cost to the elderly

Your approval of this process would allow the U.R.G. Co-Op to commence operations.

Application #2 will allow recycling and composting of vitally needed food stock. This recycable material will be source separated twice. Material will consist primarily of small, selected quantities of food waste. No grease, bones, meat, butter, food oils, or rotting food will be incorporated into the food stock process.

This food stock will be blended with appropriate ratios of the materials in application #1 to produce an agricultural mulch that through biological process can become a compost product. The product, will in turn, be sold wholesale only to members of the Co-Operative and to members of the non-profit Umatilla Recycling Group. No private sales will be made to non-businesses. Most of the mulch will be used in a major reclamation project on the Co-Op's 40 acre leased land to improve the Class 5,6 and 7 soils to Class 3 or 4.

We first need your approval of #1 or #2 in order to obtain approval from the County.

Of interest to me was that the County Comprehensive Plan transfers the Plans requirements for solid waste to the Solid Waste Management Plan of 1977.

The Management Plan in turn excludes Agri-Business from the

onerous requirements of or need for a Land Use Compatibility Statement on agricultural land performing an agricultural business. Strange that the Pendleton region did not include the Torco Ranch when this 1300 head cattle feedlot and 940 agri-business ranch had been in operation for the past 50 years.

The 1977 S.W.M. Plan excludes all agri-business from the L.U.C. requirements. I originally brought this up with Umatilla County's Planning Department 2½ years ago and with the Department staff in Pendleton 1½ years ago.

This information might help you in your appraisal of our 2½ year request for a Demonstration Project.

- °The proposed Demonstration is consistent with the State of Oregon's Revised Statutes for experimentation and alternative solutions by private individuals and private business associations.
- °Implementation of Resource Conservation and Recovery Act as amended.
- °The Demonstration is consistent with the goals outlined in the Oregon's Solid Waste Management Plan for 1995-2005.
- °The Demonstration will help the County achieve the mandated State Recycling Goal of 30%.
- °The Demonstration will help the County achieve the mandated State Recycling Goal of 50% by the year 2000.
- °The Demonstration will be in accordance with State and Federal laws to implement Land Reclamation. Currently, no such Land Reclamation project has been undertaken in the County with the intended purposes of achieving this goal.
- °The Demonstration will encourage business to REDUCE, REUSE, and TO RECYCLE.
- °Recycling, composting and land reclamation is a major component of R.C.R.A., and will save valuable and expensively constructed land fill volume for future generations.
- °The Demonstration will assist in complying with the Statutes for Clean Air by reducing fuel emissions and concurrently save a valuable and irreplaceable product.
- °Commercial and small industrial would working business, a goal of the Department's 1995-2005 S.W.M. Plan, will be encouraged to REDUCE, REUSE AND RECYCLE.

It should be noted that the City and surrounding County region does not have a practical alternative solution for the materials the Co-Operative will RECYCLE & REUSE. The City and County do not have a Land Reclamation Plan and most construction and demolition debris can be seen protruding from the filled in areas on the highway approaches to the City. Other debris areas dot the City's vacant land, is dumped over side hills and in general creates a health hazard, increase runoff potential and is a perpetual eyesore at best.

of pernicious dumping areas in and around the City of Pendleton. There are more than is included in the attached list.

The proposed Demonstration Site and Land Reclamation Unit is located in an area that annually receives about 12" of precipitation per year. Substantially less than the 25" requirement.

The proposed Demonstration will recycle less than 20 tons a day and should be exempt from Sub Parts D. & E. as the geological formation consists of 5 layers of basalt, varying in thickness from 30' to 60'. The State Geological Department describes this area as situated in the same geological formation underlying the City's recently abandoned landfill West of the City Airport.

The first evidence of any ground water is estimated to be 600' or 700' below existing ground.

IMPORTANT NOTES:

The Umatilla County Comprehensive Plan refers to the S.W.M. Plan which in turn exempts Agri-Business from the L.U.C. permit process.

The same County Plan with reference to the County's S.W.M. Plan exempts existing uses from the L.U.C. process.

Therefore, under the exemptions, the U.R.G. Co-Op in conjunction with the Torco Ranch, never should have suffered the delays and lost revenue attributed to the County and State delays. The exemption could easily have been made, because the Project is a Demonstration Project mandated to the State, County, and City under Federal and State Statutes, Rules and Goals.

Each time the Group attempted to reconcile our request for a Demonstration in accordance with Statutes and Federal Regulations, we were handed a filing fee application with prescribed fees from \$100.00 to \$5,000.00.

The County's average fee schedule was \$350.00. There was no allowance for the fact that the Project benefits would be available to the same governmental unit charging a fee for a mandated study

A U.R.G.C. INTEGRATED REFUSE MANAGEMENT PROGRAM
July 1, 1995

Successful Refuse Management consists of FOUR interrelated steps that constitute the basic elements for integrated waste management.

- 1) Reduce the amount of Refuse e.g. Reusable bottles and packaging.
- 2) Recycle, including composting, as much as economically possible.
- 3) Combust safely, using energy recovery where economically justified.
- 4) Landfill the unused portion through land reclamation.

A significant portion of the waste stream can be reduced through recycling and composting.

The market for these items will depend upon the location and the need by wholesalers/suppliers/consumers.

Combustion, if allowed, could further reduce the waste load and the remainder placed in an environmentally safe land reclamation area or landfill site.

AVERAGE REFUSE COMPOSITION /

°Paper & Paperboard-----	40%
°Yard Waste-----	18%
°Rubber, leather, textiles--	8%
°Metals-----	9%
°Glass, Plastic-----	15%
°Food Waste-----	8%
°Miscellaneous Morgonics----	2%
°Household Hazardous Waste--	.5% (less than)

The per capita generation of refuse is about 3.5 lbs. in rural settings and 5 lbs. in large urban areas.

Recycling is probably the most positive solution to a refuse reduction program. Followed by composting of the remaining material that can be degraded through environmentally acceptable processes.

Toxic contaminants need to be removed and properly managed.

Successful Refuse Management consists of the following four basic steps in an integrated Refuse Management program:

- ° Reduce the amount of refuse through source reduction.
- ° Recycle and Compost
- ° Combust safely, with energy recovery, when practical.
- ° Landfill for land reclamation.

The U.R.G.C. will implement 3 of the 4 basic refuse management steps, and with County fire marshall approval, perhaps all of the 4 can be utilized in an integrated refuse management solution.

SOURCE REDUCTION: Source reduction reduces the volume of refuse material through a) return of empty bottles, b) reuse of bottles and containers, c) reconstruction and refurbishing thrown away household items of furniture, chairs, bedding, mattresses, cabinets, sofas, etc..

- 1) Repair of washers, driers, electrical appliances.
- 2) Rebuilding small electrical motors, fans, pumps, etc..

RECYCLING: Recycling may be the most practical method of a refuse reduction program. Recycling can return raw materials to market by separating re-usable products from the refuse stream.

COMPOSTING: Composting consists of yard waste such as grass clippings, leaves, pruning, landscaping debris, bark, wood chips, sawdust, saturated paper, and miscellaneous organic material that will bio-degrade.

Composting is a bio-chemical process whereby organic material is gradually decomposed under controlled conditions to form humus-like material.

I wish to comment on Permit Requirement OAR 340-93-950 (2)(e). Facilities which receive only Source Separated Materials for purposes of Material Recovery or for Composting, except when the Department (DEQ) determines the nature, amount or location of the materials is such they constitute a potential threat of adverse impact on the waters of the State or Public Health. NOTE: The existing area has demonstrated for the past 50 years there is no adverse impact on the waters of the State or to Public Health. The location is not adjacent to any waterway, pond, lake, or drinking water sources. The site location is not adjacent to residential housing units, habitation, or any sub-division.

A properly supervised operation will have few, if any odors. We need more objectivity in a process conducted in a semi-arid, low rainfall area vis Multnomah County, with 60 inches of precipitation, utilizing very restrictive and limited resources.

Composting Facilities OAR 340-96-020:

(2)(a) Reference page 9,10, and 11 for detailed sketches and drawings. The shredder/grinder will be a portable unit, and there will be no permanent plant installation. There is no evidence of ANY occurrence of surface drainage. An upper ditch will be constructed to control run ons and a lower berm constructed to control run off.

There is no need for waste water facilities.

The 40 acre site is fenced on the East.

The location is far removed from the City and residential neighborhoods.

The entire 160 acre field is in CRP, no cattle grazing is permitted on the 40 acre premise.

Residual mulch disposal will be plowed into the soil for soil amendment.

The process will not produce odors, significant to be a problem.

Equipment has yet to be purchased, subject to obtaining a Permit to conduct operations. Equipment will be selected, in our opinion, to provide the quality of mulching materials needed for soil amendment, landscaping and erosion control.

This is a function of the "Demonstration". Methods used depend strictly on availability of materials and seasons.

(2)(b) The soil mulch will be used as an amendment to upgrade sub-marginal land for land reclamation and to improve the quality of Class 2 and 3 land for improved agricultural purposes.

(3)(a) All materials that can not be utilized or reduced to provide a soil mulch, will be used in the land reclamation program and covered with 2' to 3' of soil mulch.

(b) The 40 acre site is far removed from any habitation and upwind from a feed lot with 1300 cattle on the 940 acre Torco Ranch. No uncontrollable odors are anticipated.

(c) The area is in a semi-arid area of Northeastern Oregon. Annual precipitation is 12". Overall evaporation 85" annually. Drainage control has been answered above and elsewhere in this report. The down hill berm will control leachate, if necessary. No leachate is anticipated, because strict moisture controls will be implemented in the process.

(d) There will not be any waste water discharge and none is anticipated.

(e) The access road is strictly private and is controlled $\frac{1}{4}$ mile distant from the site. Entry is restricted to the Co-Op workmen.

(f) Surface drainage has been addressed in the beginning portions of this report.

(g) There are no buildings or structures on the site. The entire area has been scrubbed clean of grass or burnable residue. A high pressure water truck will be used to apply controlled moisture and for fire protection purposes. The area is not in a Fire Protection District. The Ranch provides its own fire protection through use of a water truck and high pressure hose. Under normal operations, NO fires are anticipated, that can not be controlled with available standby ranch equipment.

(h) Access is not available to the Public. Public access is excluded $\frac{3}{4}$ mile N.E. of the site. A locked entrance exists $\frac{3}{8}$ mile N.E. of the site. The site is PRIVATE and NO PUBLIC ACCESS is allowed.

(i) Sewage disposal is not available and will not be required for the part time operation. At some later convenient date a mobile trailer will be located to provide an office for records. A mobile trailer will be selected with self-contained facilities, if and when conditions warrant the installation.

(j) Truck washing facilities will be utilized at Woodpecker Trucking and Wash facility Pendleton.

4 (A) The design and construction engineer, a registered engineer in four States, with extensive background in design, research and operation will be in charge.

(A) Pilot Plant Study was conducted on November 7, 1995. The combined materials produced an excellent quality of soil mulch. Good controls and an adequate supply of food stock is essential to achieving a high quality product.

(B) All waste shall be subjected to complete processing in accordance with the equipment manufacturer's operating instructions.

(b) All processed materials will be removed no later than one year and incorporated into the soil for land improvement and

land reclamation. Some material may be utilized for landscaping, bedding, soil mulch, or erosion control. Material will not be sold directly to the public. Most, and probably all, material will be utilized on the 940 acre Torco Ranch, primarily for land reclamation. First on the 40 acre tract, 2nd on the additional 40 acres, 3rd on the balance of the 940 acre ranch.

(c) No materials will be available to the general public.

(d) (A) All Solid Waste deposited at the site shall be confined to the designated dumping area.

(B) Accumulation of Solid Wastes and undisposed residues shall be kept to minimum practical standards.

(e) (A) Recovery of materials, such as metal, paper and glass will be conducted in a planned and controlled manner. Glass containers and metal cans will be wholesaled locally. Paper and paper products will be utilized in the mulching, shredder process.

(B) Salvaging shall be controlled so as to not interfere with optimum disposal operations and to not create unsightly conditions or vector harborage.

(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site.

(f) Records will be maintained as required and reasonably necessary to ensure compliance with the conditions of the permit.

The following page numbers reference are to assist in reviewing the report's response to the Department's required information for a Letter of Authorization, 24-Div.93.

24-Div.93 (1)

- (a) Refer to Page 3 for quantity and types of materials, including Appendix page 7 & 8.
- (b) Refer to Page 1 and 2,4, *sect 3* for need and justification.
- (c) Expected period requested to conduct a Demonstration that will allow time to study, evaluate and determine optimum operating procedures is estimated to be 2½ years, when actual blending of materials occur, a moisture content of 50% attained and the combined matrix creating a biological process.
- (d) Source Separation into three categories will be required from all commercial businesses who participate in the recycling program. Additionally, the materials will under go a second source separation process during storage or during the grinding, reduction process. Inert, refer to the soils investigated for hydrological and geological data. This hill region is in CRP (grass) and no evidence of run on or run off have occurred. An uphill ditch and down slope berm will control precipitation and run off.
- (e) The Site Plans are shown on pages 9,10 and 11 *and 12*
- (f) The applicant has a lease on 40 acres and an option for additional 40 acres. The applicant is in control of the property and is the responsible person to contact on all matters referring to the application, site conditions or operation.
- (g) Refer to Page 1 through 5 *Section 1 of The application*. The County/City has not complied with previous approved S.W.M.Plans, L.C.D.C.s objections for updated facility plans. The above referenced Statute's Goals and Legislative intent. Reference also O.R.S. 215-283 (2) (j).

The County Comprehensive Plan transfers all policies and responsibilities for planning of future solid waste and recycling programs to the 1974 County S.W.M. Plan. This Plan stresses that "all existing facilities in the County are adequate well into the next century." It calls for updating the S.W.M. Plan at regular intervals and provides authority, encouragement and provisions to promote alternative treatment procedures, innovation in waste reduction, re-use, recycling and composting of the solid waste stream.

It also recommends that additional solid waste site locations be identified and protected for future use as needed. The County Planners have instructed the Co-Op to utilize the 1974 S.W.M. Plan as the authoritative document for Planning.

I have been advised that there have been NO official amendments, changes or alterations to this document, and no public hearings have been suggested to change or alter the 1974 County S.W.M. Plan. It therefor has the full authority of establishing criteria need and goals in 1996, as it had when adopted in 1974

by the County Commissioners.

Two important and major considerations in the County S.W.M. Plan are: All existing Agri-Businesses are exempt from the Land Use Compatibility (L.U.C.) requirements and all pre-existing uses are exempt from the Land Use Compatibility requirements. Originally the Torco Ranch was operated as a State Dairy facility and later sold as an Agri-Business. The 940 acre ranch (including the 40 acre lease) has been operated for over 50 years in a continual ongoing Agri-Business capacity.

(h) The site location selected for the Co-Operative's Demonstration has been USED as a Solid Waste Disposal Area for over 50 years with no adverse or notable environmental problems. The Torco Ranch has a permit to continue disposing of animal carcasses in the same vicinity and immediate area. Current annual livestock production is maintained at 1300+ animals per year.

On August 24th, Oregon Supreme Court decision raised questions about the authority of Counties and perhaps even L.C.D.C. to regulate certain uses on Land in Exclusive Farm Use (EFU) zones.

Chapter 215 of the Oregon Revised Statutes specifies allowed uses in EFU areas. ORS 215.283 (2) lists 20 types of uses that "may be established in any area zoned for exclusive farm use". Sub-Item (j) of the allowed uses is a Solid Waste Disposal Site.

Supreme Court Justices, however, agreed with Mr. Brentman's argument that it was the Legislature's intent that "the uses be USES AS OF RIGHT" which may not be subjected to additional local criteria.

ORS 215-283 (2) (a) Non farm uses may be established----- in any area, zoned for Exclusive Farm Use subject to ORS 215-296 (a) Commercial activities that are in conjunction with the farm use.

The Torco Ranch Company agreed to use of the existing land fill area for a non-municipal land fill and recycling because of the need to disperse of accumulated stockyard waste from the production of 1300 cattle daily. Therefore, this use is essential to the continued operation of the Torco Ranch Agri-Business operation.

ORS 215-283 (2) (j): A site for the disposal of solid waste approved by the governing body of City or County or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment facilities or building necessary for it's operation.

The following list briefly describes only a few applicable Statutes that apply to a non-municipal landfill, a materials recovery project or recycling.

Alternative Application #1 for letter Authorization. OAR 340-93-050(4)

Reference: OAR 340-93-050(2) and ORS 459.015 for requested Demonstration

Alternate Application submitted for approval by the Department of Environmental Quality.

- * Animal manure and soil (cured) 2 tons per day
- * Source separated construction debris 2 tons per day
- * Source separated demolition debris 2 tons per day
- * Inert materials and clean fill stored or used in land leveling and land reclamation 3 tons per day
- * Yard waste 3 tons per day
- * Lawn clipping and leaves (seasonal) 3 tons per day
- * Plants, tree branches, shrubbery under 6" diameter (seasonal) 2.5 tons per day
- * Large branches, shrubbery and trees over 6" diameter. In general, will be salvaged and cut for firewood (seasonal) 2.5 tons per day

*Winter conditions will dictate availability and uses of materials. Cured, dry animal manure could be 1) stockpiled for blend or 2) used directly in agricultural land reclamation.

*Recyclable source separated construction debris could be 1) stockpiled for shredding or grinding 2) used for animal bedding 3) used as a mulch for erosion control.

*Recyclable source separated demolition debris could be 1) stockpiled for shredding or grinding 2) used for animal bedding 3) used as a mulch for erosion control.

*Inert materials and clean fill could be stored for future use in constructing a secondary access road to the east and for clean fill over the 6' diameter culvert for land reclamation and elsewhere to create useable agricultural land (when topped with a soil, mulch mix).

*Recyclable yard waste could be 1) stockpiled for shredding or grinding 2) used for a soil mulch 3) used for erosion control. Winter conditions will dictate availability and uses of materials.

*Lawn clippings and leaves could be 1) stored for shredding and grinding and 2) combined with clean soil, cured dry animal stockyard waste (manure) to create a mixed soil amendment or topping for land reclamation or landscaping. The use of these materials when combined could reduce the dependency of chemical fertilizers. Seasonal conditions dictate availability and uses.

*Plant and tree branches and shrubbery under 6" in diameter could be stored for shredding and grinding and combine with dry animal stockyard waste and soil to create a mixed soil amendment or topping for land reclamation or landscaping.

*Large branches, shrubbery and trees over 6" in diameter will be trimmed, sorted and stockpiled. The smaller portions used as in recyclable yard waste, and the larger sections salvaged and cut for firewood. A sufficient quantity of cut wood could allow sales to the elderly at cost. e.g. \$50.00 per cord vis \$100.00 a cord. It would be required that this transfer of recycled wood be only to Cooperative members.

Umatilla County Solid Waste Management Plan

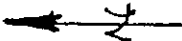
The County Comprehensive Plan references the County's S.W.M. Plan as the recognized document of authority on solid waste and Agri-business (farm) matters. This document, which has not been amended, allowed and allows all existing Agri-business (farms) to continue operations and excludes the "Land Use Compatibility" requirement that the Department and County have attempted (attempting) to enforce.

Because no L.U.C. was (is) required according to the above referenced S.W.M. plan document, there should be no fee, certainly not the large fee currently assessed for a recognized pre-existing, on-going Agri-business (farm) operation. This exception should have also applied to the site location and its historical use as a pre-existing refuse area. Note that the Co-op has thoroughly cleaned up all refuse in accordance with Federal requirements and DEQ approval.

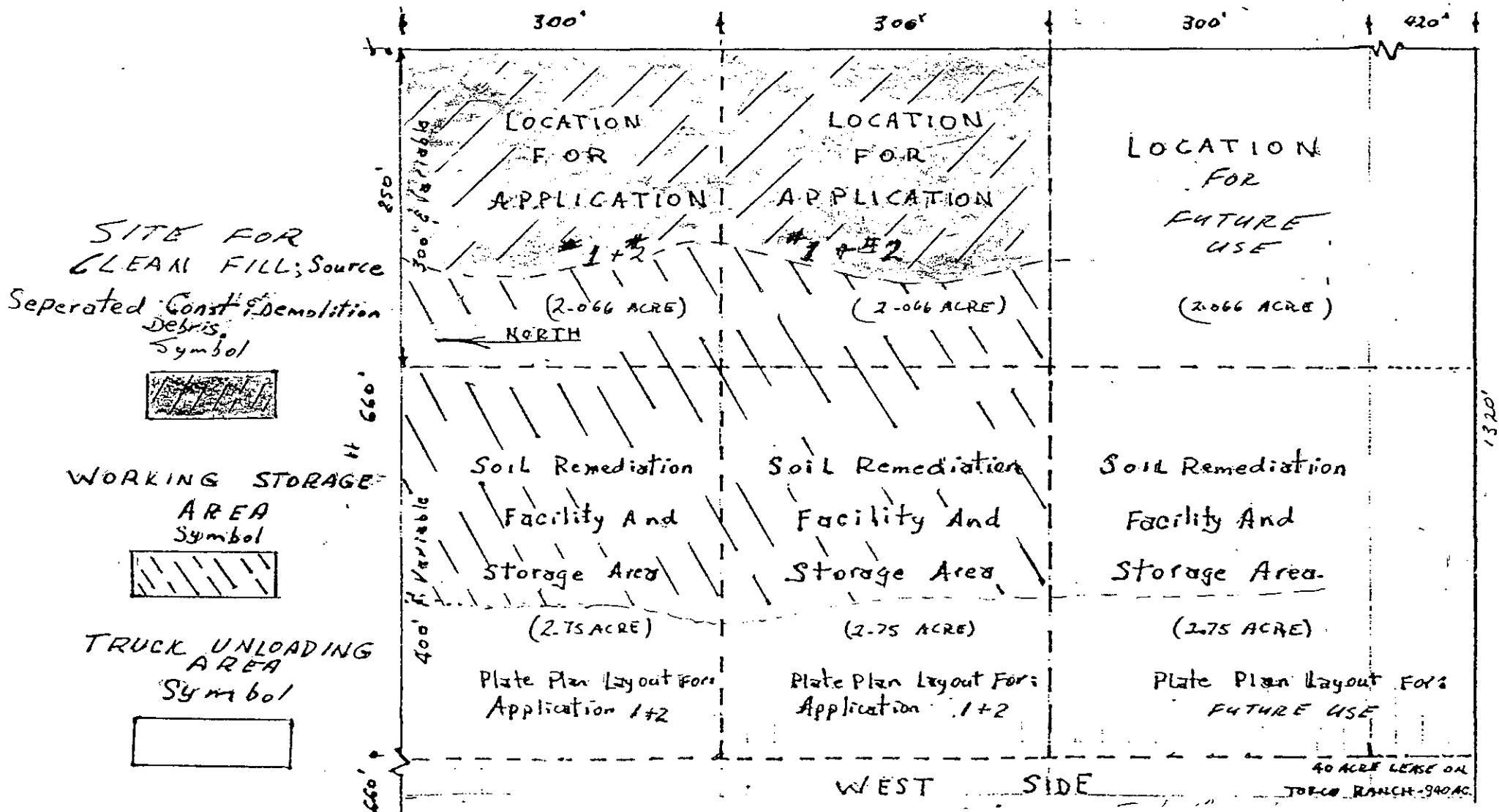
Land Reclamation:

The Land Reclamation phase of the Agri-business proposal for the Torco Ranch consists of installing a large diameter culvert, placing compacted material as shown on Plate Application #1, placing clean fill (for fill) and install 3' feet of soil amendment topping as the final surface to improve agriculture productivity as part of the land reclamation phase.

Summary: Approval of Alternate Application #1 will help in reducing the large quantities of recyclable materials that are now being landfilled or stored. Large quantities of these materials are being illegally disposed in vacant lots adjacent to stream beds, ravines and down the slopes of the County/City highways and by-ways. In 2 years, illegal dumping increased over 500%. "Perk-up Pendleton week" collected nearly 5,000 cubic yards of stored backyard debris and refuse in 1995.



PLAN LAYOUT FOR AGRI-FARM USE DEMONSTRATION IMPLEMENTING ROCK EAST SIDE



UMATILLA COUNTY COMPREHENSIVE PLAN

ADOPTED

May 9, 1983

AMENDED

August 29, 1983

June 28, 1984

September 6, 1984

June 12, 1985

November 6, 1985

December 2, 1987

The preparation of this document was financed in part through a planning assistance grant from the Oregon Department of Land Conservation and Development.

UMATILLA COUNTY PLANNING DEPARTMENT
COURTHOUSE, PENDLETON, OREGON 97801

Printed 1993

I-1

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UMATILLA COUNTY
DEVELOPMENT
ORDINANCE

1983, Amended

Umatilla County Planning Department
Pendleton, Oregon

*J. H. ...
...
County Planner - 11
60 1*

unless an agreement is reached between the ditch company and the property owner/developer that a buried pipe would be more appropriate.

19. Utility facilities can remove valuable resource lands and create development problems for new developments and detract from existing development.

19. Where feasible, all utility lines and facilities shall be located on or adjacent to existing public or private rights-of-way so as to avoid dividing existing farm or forest units; and transmission lines should be located within existing corridors as much as possible.

20. Needless utility and other service facility damages may be averted through cooperation with Unatilla County Utility Coordinating Council.

20. Consider incorporating their recommendations into the Development Standards.

21. Solid waste disposal sites and facilities are adequate to handle needs into the next century.

21. Protect existing solid waste sites and identify and protect future sites through the use of a landfill overlay zone. Use the County's adopted "Solid Waste Management Plan" as the major document for solid waste management.

22. Increasing demands on library services exceed county ability to provide publications to municipal libraries resulting in some cities' dissatisfaction.

22. Identify local service needs and seek stable funding to initiate appropriate funding.

23. Emergency service delivery is hampered by poor road and building identification.

23. Identify and assign numbers to buildings, and name and post roads as part of the Transportation Master Plan and Rural Address System.

LF LANDFILL OVERLAY ZONE

SECTION 3.550

PURPOSE AND DESCRIPTION. The purpose of the LF Landfill Overlay Zone is to allow for the utilization of designated landfill areas in a manner that is consistent with the County Comprehensive Plan and allows the greatest flexibility for operators of licensed sanitary landfills. This overlay zone is to provide some security for landfill operators where there will be a minimum of conflicts with existing uses without requiring a public hearing for each expansion.

SECTION 3.552

APPLICATION. The LF Zone may apply to an area that has been identified in a long range plan for sanitary disposal purposes consistent with DEQ regulations upon the request of the landowner or the county to the Planning Commission. Upon receive of a request for a LF Overlay, the Planning Commission shall hold a public hearing within 40 days pursuant to Section 16.050.

SECTION 3.554

CRITERIA FOR ESTABLISHING LF OVERLAY. At the public hearing the Planning Commission shall determine if the following criteria can be met:

- (1) The proposed overlay would be compatible with surrounding land use.
- (2) The proposed overlay would comply with the policies of the Comprehensive Plan.
- (3) Evidence is presented indicating that the site is suitable for landfill activities to occur. This evidence could be in the form of a report or letter of concurrence from the Oregon Department of Environmental Quality (DEQ) or testimony from a qualified engineer, hydrologist, agronomist, or other professional in the field of waste disposal.
- (4) Adequate screening, either natural or man-made, is provided to protect the site from surrounding land use.

If the Planning Commission finds that the proposed site meets all of the above criteria, it shall approve the LF Overlay.

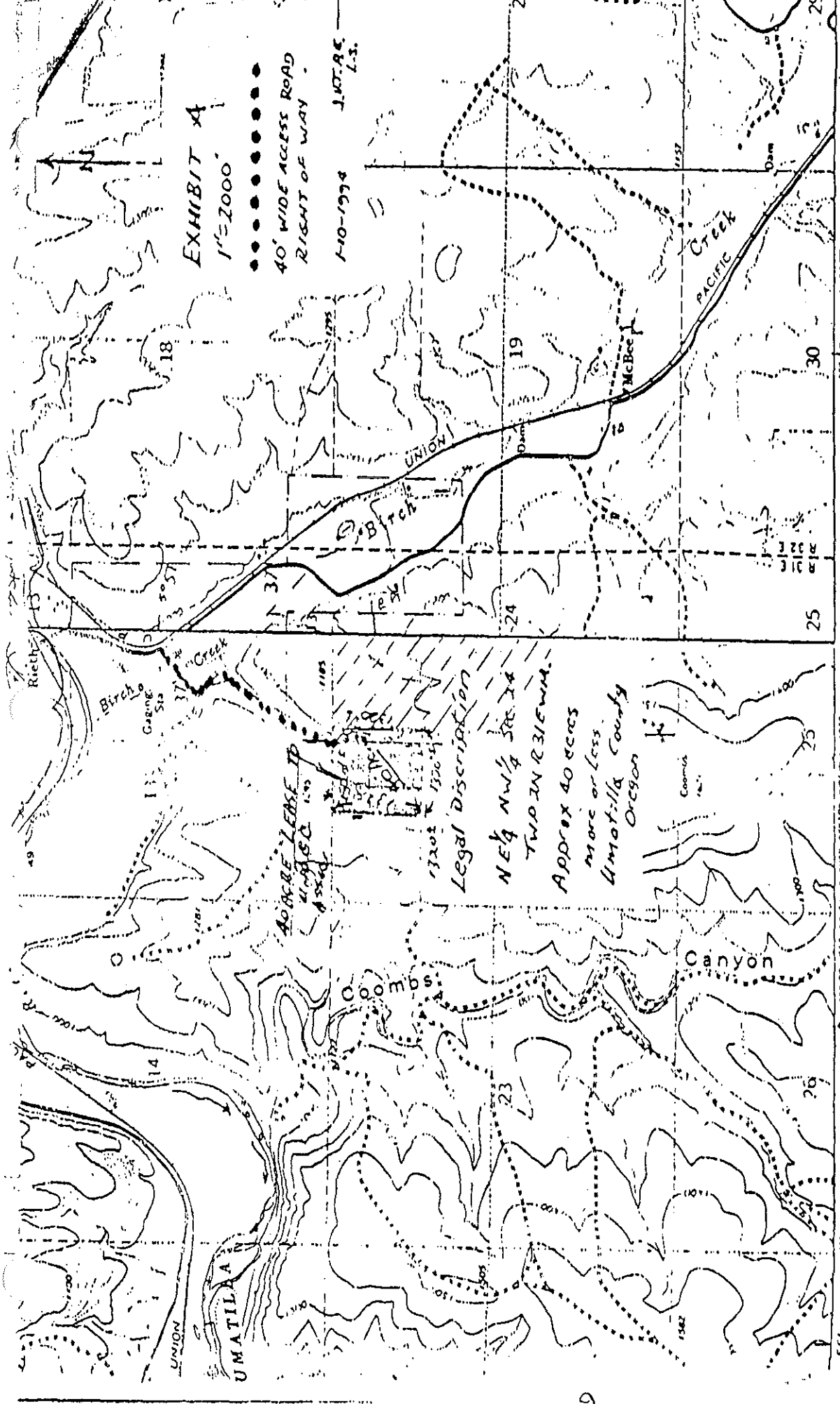
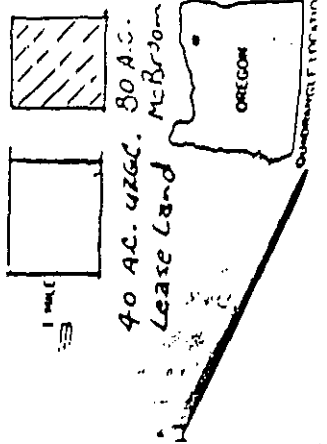


EXHIBIT A
1"=2000'

- 40' WIDE ACCESS ROAD
- RIGHT OF WAY

1-10-1974 J.M.T.R.E. L.S.

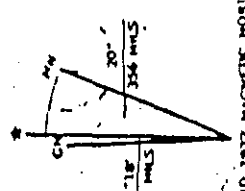
Legal Description
NE 1/4 NW 1/4 Sec. 24
Twp. 31 N. R. 11 W. 11 E.
Approx 40 acres
more or less
Umatilla County
Oregon



ROAD CLASSIFICATION

- Heavy-duty
- Medium-duty
- Light-duty
- Unimproved dirt
- Interstate highway

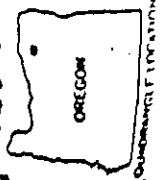
Mapped, edited, and published by the Geological Survey
Control by USGS, NOS/NOAA, and State of Oregon
Topography by photogrammetric methods from aerial
photographs taken 1964. Field checked 1966
Polyconic projection. 1927 North American datum
10,000-foot grid based on Oregon coordinate system,
north zone
1000-meter Universal Transverse Mercator grid ticks,
zone 11, shown in blue



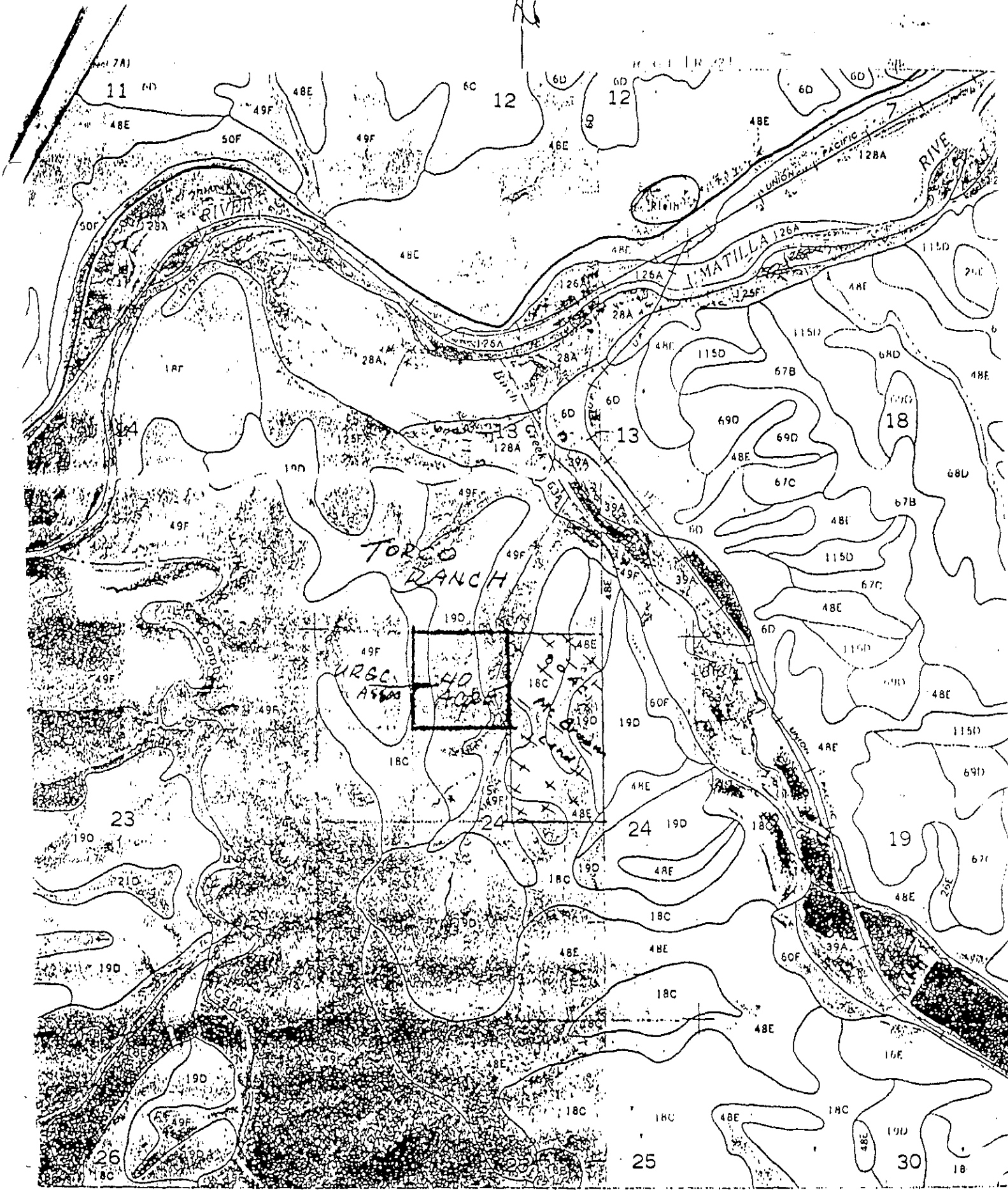
UTM GRID AND 1927 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

BARNHART, OREG. Red tint indicates areas in which only landmark buildings

40 AC. UZGC. 80 A.C.
Lease Land
Umatilla County
Oregon



BOUNDARY LOCATION



(Join sheet 93)

Soils Legal Description of 40 ACRE LEASE SITE
 TO MATILLA REFUSE GROUP CO-OP ASSOC.
 Source: 1985 Soil Study, NE 1/4 NW 1/4, Sect 24
 TWP 24 N, R31 E, NM
 MATILLA COUNTY, OK

TYPICAL X-SECTION FOR AGRI-FARM USE
 Implementation of The
 Resource Conservation and Recovery Act. [amended]
 FOR: A NON-MUNICIPAL LANDFILL
 300' To 400' (Variable).

WEST SIDE →

← East SIDE

250' ± Variable.

400' ± Variable.
 Soil Remediation
 Facility And
 Storage Area.

EL. 1073' ± TO
 1098' ±

3 (min) mixed soil Remediation for improved agriculture

CLEAN FILL
 H = 95' TO 100'

EL. 1020' ±

4' ±

Culvert
 Dia.
 4' min

Densely Compacted
 Impervious soil
 4' over Culvert

EL. 1010' ±

10' - 16'
 Variable Width.

TYPICAL X-SECTION FOR AGRI-Farm USE
 Land Reclamation By
 Soil Remediation (RCRA) [amended]

PLATE FOR APPLICATION #1

Prepared By: J. Val TORONTO A&E
 General Manager U.R.G. Co-op

1-28-1996

Location: 40 ACRE LEASE
 TO U.R.G. CO-OPERATIVE
 + 40 ACRE LEASE OPTION
 ON TORCO RANCH. 940 AC.

12

Alternate Application #2 for letter Authorization. O.A.R. 340-93-050(4)

Reference: OAR 340-93-050(2) and ARS 459.015 for requested "Demonstration"

Alternate Application #2 submitted for approval by the Department of Environmental Quality.

Alternative Application #2 includes the materials and applications approved by the Department in Alternate Application #1 for the "Demonstration" plus including recyclable materials such as; soiled paper, paper products, small quantities of vegetable and fruit waste that are not decomposed including suitable food stock products that can be incorporated and combined with shredded or ground materials enumerated in Alternate Application #1.

A pilot study test conducted November 7th of 1995 blended previously source separated materials of miscellaneous paper, cure livestock waste (dry manure), bark, vegetable and fruit waste and unused baled hay. The final combined materials were recycled into a soil mulch exhibiting excellent qualities for landscaping, erosion control and most of all for the potential of improving the agricultural soil value and productivity of the Torco Ranch Agri-business.

The qualities of the blended mixture would provide an excellent soil amendment or topping for land reclamation, erosion control or landscaping. The use of these materials when combined could improve the environment by reducing the dependency of chemical fertilizers on the soil.

Umatilla County Solid Waste Management Plan

The County Comprehensive Plan references the County's S.W.M. Plan as the recognized document of authority on solid waste and agri-business (farm) matters. This document, which has not been amended, allowed and allows all existing agri-business (farm) to continue operations and excluded the "Land Use Compatibility" requirement that the Department and County have attempted (are attempting) to enforce.

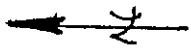
Because no L.U.C. was (is) required according to the above reference S.W.M. plan document, there should be no fee, certainly not the large fee currently assessed for a recognized pre-existing, on-going agri-business (farm) operation. This exception should have also applied to the site location and its historical use as a pre-existing refuse area. Note that the Co-op has thoroughly cleaned up all refuse in accordance with Federal requirements and DEQ approval.

Land Reclamation:

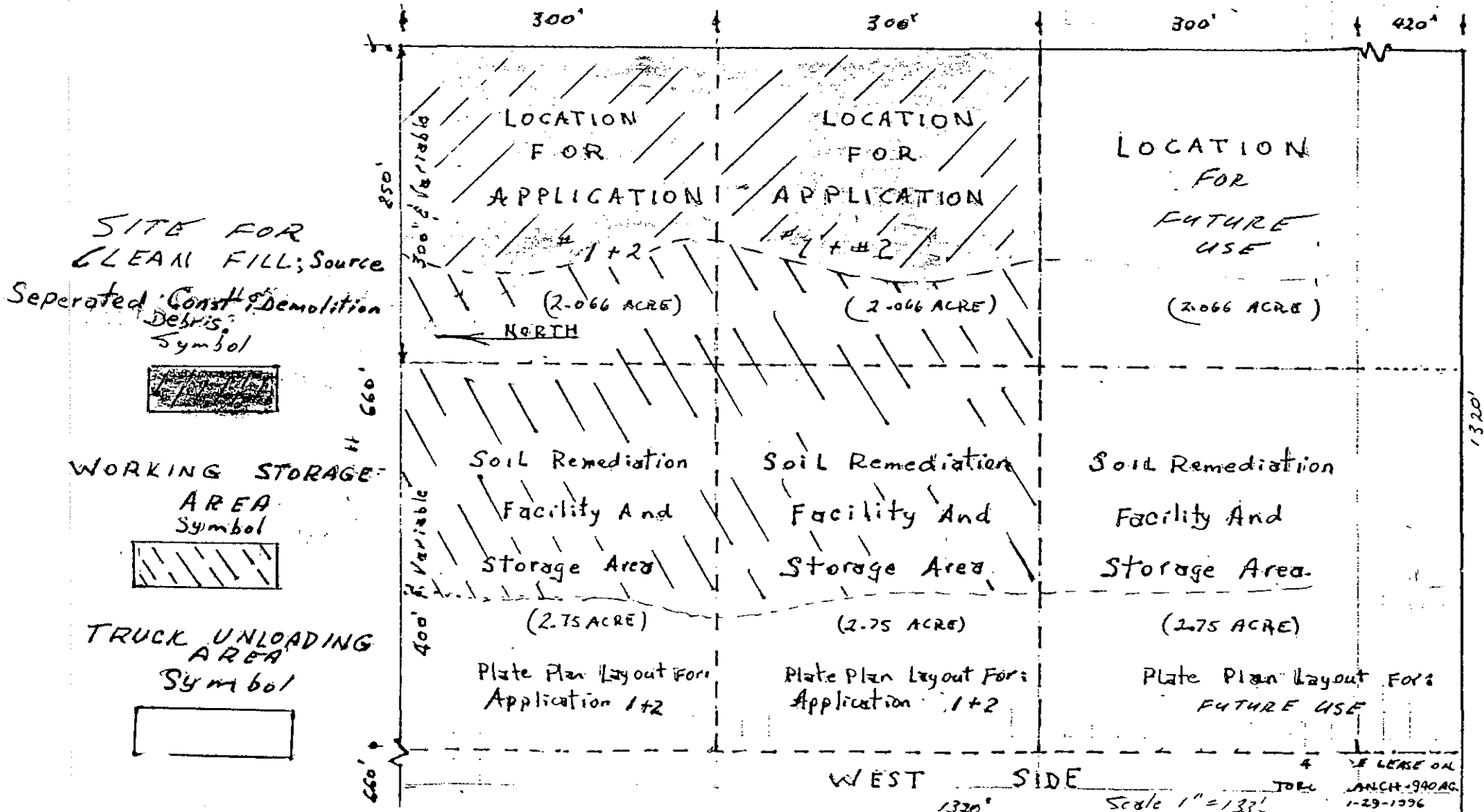
The Land Reclamation phase of the Agri-business proposal for the Torco Ranch consists of installing a large diameter culvert, placing compacted material as shown on Plate Application #1,

placing construction and demolition waste (fill) and install 3' feet of soil amendment topping as the final surface to improve agriculture productivity as part of the land reclamation phase.

Summary: Approval of Alternate Application #2 will help in reducing the large quantities of recyclable materials that are now being landfilled or stored. Large quantities of these materials are being illegally disposed in vacant lots adjacent to stream beds, ravines and down the slopes of the County/City highways and by-ways. In 2 years, illegal dumping increased over 500%. "Perk-up Pendleton week" collected nearly 5,000 cubic yards of stored backyard debris and refuse in 1995.



PLAN LAYOUT FOR AGRI-FARM USE DEMONSTRATION - IMPLEMENTING ROCK EAST SIDE



ALTERNATE 1 & 2 COMBINED

TYPICAL X-SECTION FOR AGRI-FARM USE
Implementation of the
"Resource Conservation and Recovery Act"
FOR: A NON-MUNICIPAL LANDFILL

250' ± Variable to 400'

300' ±

150' ±

PORTABLE TAG GRINDERS

TRUCK UNLOADING AREA

WEST SIDE

250' ± Variable to 400'

WORKING STORAGE AREA
300' ± Variable

1' High Earth Berm

CLEAN FILL AND CONSTRUCTION AND DEMOLITION WASTE

See Enlarged Detail "A" BELOW

Densely compacted impervious soil 4' over subvert.

10'-16' Marble

TYPICAL X-SECTION FOR AGRI-FARM USE
LAND RECLAMATION BY SOIL REMEDIATION BY (RCRA) [amended]

PLATE FOR APPLICATION #2 (Combined)

Prepared By: J. Del Toro to R.S.
General Manager - U.S. EPA
1-28-89
Location: [unclear] U.S. EPA
[unclear] option

Scale
H 1" = 100'
V 1/4" = 16'

300' ±

100' ±

4' ±

Slope Berm 5 ± 2% ±

WORKING STORAGE AREA

TYPICAL DETAIL A ENLARGED

DEMOLITION AIO #1
Shredded Material Pile
12 1/2 Dry; 8 1/2 Wet; 5 Cured
19 1/2 Dry; 13 1/2 Wet; 8 1/2 Cured
Movable
Portable Discharge Conveyor

Movable Discharge Conveyor

LOADING AREA FOR MOVABLE PORTABLE TAG GRINDER (Use front end loader.)

Scale
H 1" = 50' ±

J-9-96

AST 100'

EL 1040' ±

EL 1020' ±

EL 1010' ±

meeting in the Dalles

2/8/96

Apply for SWLA → MRF (maybe later)

Alt 1 3 2 combined

Div. 96 items etc in val's report

- Balster ~~some~~ detailed level - just compost Area

* Important → Not option 3

* LUES first signed/approved by county

D. Presto

J. Jaranto

Kal Gatta

Silvia Carlson

John Dado

S. Hallock

V. Simonton

PERMIT FEE SCHEDULE

340-97-120 [Renumbered from 340-61-120]

(1) For purposes of this rule:

- (a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site.
- (b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial disposal site."
- (c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-93-090. The amount of the fee shall depend on the type of facility and the required action as follows:

- (a) A new municipal solid waste landfill facility, incinerator, energy recovery facility, (composting facility for mixed solid waste) solid waste treatment facility, off-site industrial facility or sludge disposal facility:
 - (A) Designed to receive over 7,500 tons of solid waste per year: \$10,000
 - (B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000
- (b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000
- (c) A new transfer station or material recovery facility -
 - (A) Receiving over 50,000 tons of solid waste per year: \$500
 - (B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200
 - (C) Receiving less than 10,000 tons of solid waste per year: \$100

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Umatilla Refuse Group Cooperative Association

President

Kal Barton

Vice-President

Secretary

Vera Simonson

Boarders

Erny Smith

Steve Barton

Lucky Myers

Jud Bradley

Allen Kay

Yvonne Taylor

Bill Cole

Don Brinkell

Feb. 20, 1995

Subject: Soils Investigation

Kal Garton, President
From: J. Val Toronto, P.E.
General Manger

To: Kal Garton and Board of Directors,

A soil survey and nine test pits have been excavated and examined on a 10 acre site owned by Mr. and Mrs. Taylor. The 1000 acre ranch is called the Torco Ranch.

The area investigated is a gently sloping site, free of shrubs, trees and natural obstructions.

A portion of the site, consisting of 3 acres has been in use as a private landfill for the past 3 decades (30 years).

Use of this area as a non-putrescible privately operated cooperative landfill would not materially change the present use of the land or the environmental affects of the area. The site in particular is in C.R.P. and hence can be classified as non-productive farm land.

The soil classification in general for the 9 test pits that were excavated to a depth of 6' to 7' can be categorized as fine silt and claying silt. Material below 6' and 7' was generally silty gravel with some clay fraction. This material could be excavated and salvaged for under layment of the final cover when each section of trench has been completely utilized and the final 24" of cover is placed. The plan I envision is to open and close a portion of the non-municipal (Industrial landfill) each 4 to 6 months. This would allow for restoration of the site and its replacement or return to the agricultural CRP program.

I have checked with the state hydrologist and Geologist and subsurface conditions and the incidence of basaltic layers of rock are in the same geological formation under laying the Pendleton Airport and Pendleton landfill.

J. Val Toronto P.E., - General Manager (503)276-0579

Kal Barton - President

(503)276-0931

F.A.X.

503)276-0459

225 S. E. 2nd Street, Pendleton, Or 97801

440 S. W. 1st Street, Pendleton, Or 97801

The Pendleton landfill was tested to depths of 300' and penetrated 5 layers of basaltic flow. Thickness of the rock formations were recorded as being 30' to 70' each, and no water was found. The land to the South and East is in grass and pasture, while the land North and West remains in CRP. The site is well screened from the protected view from wind and can not be seen from the county road, the ranch house or any other habitable buildings. It was reported by the ranch owner that the adjacent canyon usually does not carry runoff from the uphill grass pasture areas. The canyon ends at the base of the hill and there is little to no evidence of runoff. The base of the hill and bottom of canyon start and stop on the westerly edge of a pasture. There is no drainage or evidence of drainage to Birch Creek or any other creek.

The location is ideally suited for a non-municipal and/or industrial type landfill.

A topographical USGS plat 1"=2000' indicating the site location and providing the legal description has been submitted to the planning department. On February 17, 1995 with a request to be included in the county comprehensive plan update. I also offered to prepare justification of need for the planning department and suggested a review of ORS 459.015 to planning personnel, as the U.R.G.C. is planning to implement these laws with the assistance of the planning dept.

In summary because of the private nature of the existing and proposed facility and:

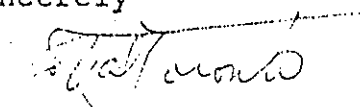
- 1) Based on historical geological data no ground water monitoring is or will be required.
- 2) The site is not on any published or recorded aircraft flight path.
- 3) There are no known geological faults in the vicinity of the site
- 4) All of the EPA small community landfill exemptions apply (if needed)
- 5) soil material will be salvaged for agricultural restoration of the landfill
- 6) no bird hazards exist, and no endangered species of birds or animals reside on the site
- 7) Water for dust suppression and renewed agricultural uses are nearby and a irrigation system will be installed
- 8) Premises and access is private and will be available only to the owner and lessee (URGE Assoc.)
- 9) A useable entrance road and service road is in place
- 10) Yearly annual precipitation is 12" or less and the area is classified as semi-arid for landfill purposes under 40 CFR-258
- 11) A truck weigh scale is on the ranch premises and available to weigh the loads of incoming vehicles.
- 12) No hazardous waste, will be permitted.
- 13) Up slope drainage and all other potential drainage will be controlled

- 14) Land will be reclaimed in accordance with ORS 459.015 & 459.055.
- 15) A site-specific design will be based on performance standards.
- 16) Closure and post closure plans will be submitted to the planning dept. as applicable.
- 17) The adjacent ranch owner Mr. McBroom, who owns some 400 acres to the South and East has expressed support for the landfill and wishes to have the county include or designate the adjacent 80 acres of land East of this proposed landfill.

The co-operative intends to comply with all of the Federal RCRA (Resource Conservation and Recovery Act of Aug 1991) as they apply to a non-municipal, non-putrescible industrial landfill operation.

The co-operative with assistance from the planning commission and planning staff will undertake to meet the objectives outlined by the 1993 Oregon Legislature in the enactment of ORS. 459.015.

Sincerely


J. Val Toronto, P.E.

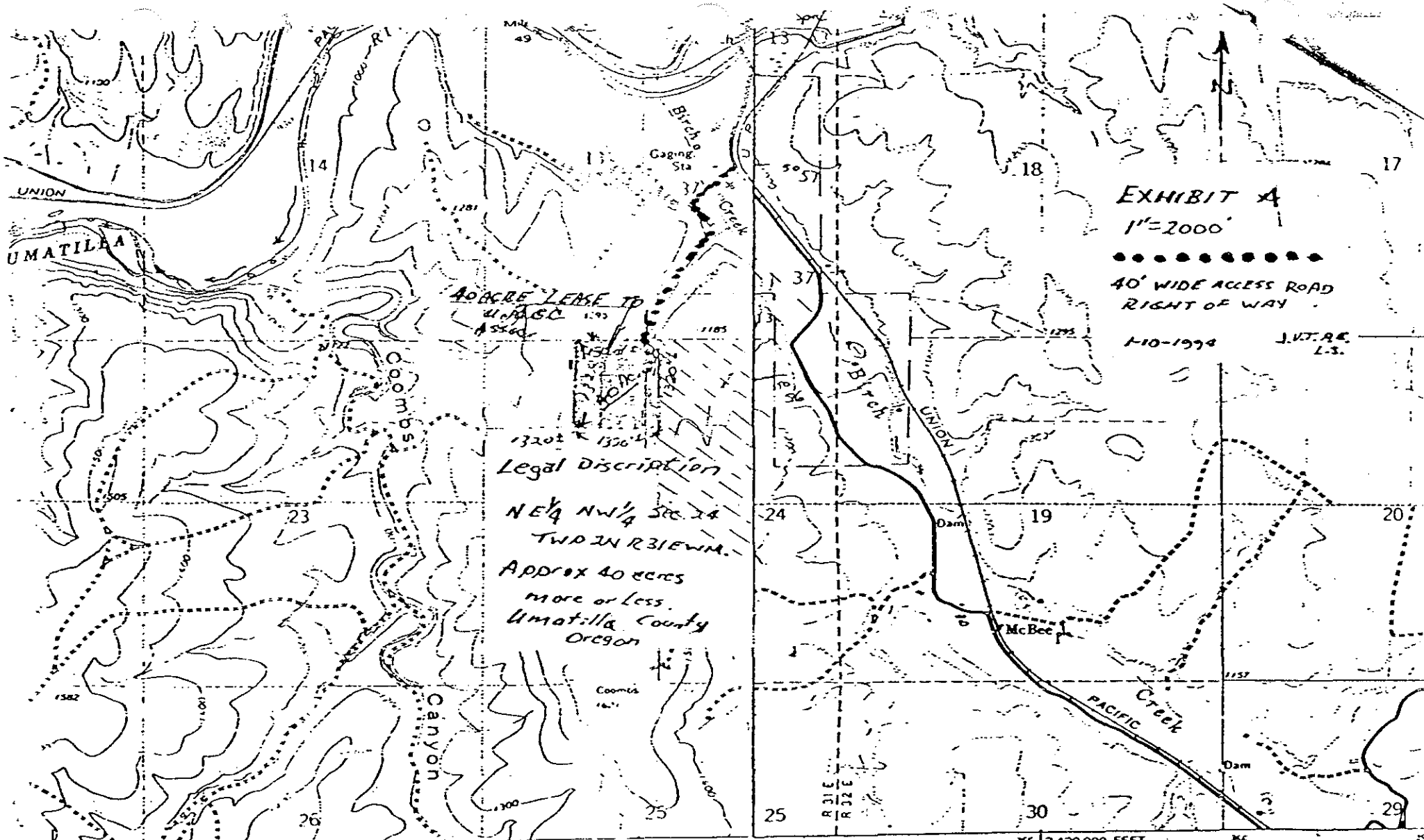


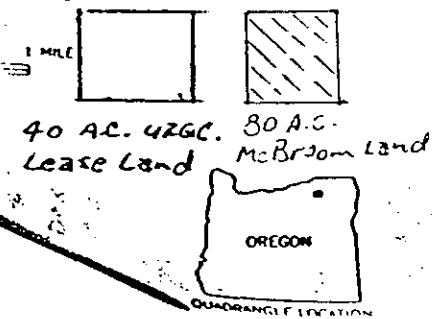
EXHIBIT A
 1"=2000'
 ●●●●●●●●●●
 40' WIDE ACCESS ROAD
 RIGHT OF WAY
 1-10-1994 J.V.T.R.E.
 L.S.

40 ACRE LEASE TO
 U.M.A.S.C.
 A 5560

Legal Description
 NE 1/4 NW 1/4 Sec. 24
 T24N R31E W11E
 Approx 40 acres
 more or less
 Umatilla County
 Oregon

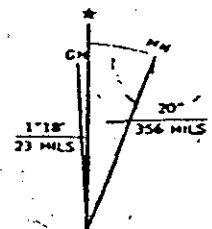
INTERIOR GEOLOGICAL SURVEY, RESTON, VIRGINIA 20126
 1:242000 FEET
 118°52'30"

Mapped, edited, and published by the Geological Survey
 Control by USGS, NOS/NOAA, and State of Oregon
 Topography by photogrammetric methods from aerial
 photographs taken 1964. Field checked 1966
 Polyconic projection. 1927 North American datum
 10,000-foot grid based on Oregon coordinate system,
 north zone
 100-meter Universal Transverse Mercator grid ticks,
 zone 11, shown in blue
 Red tint indicates areas in which only landmark buildings



ROAD CLASSIFICATION

Heavy-duty ——— Light-duty - - - - -
 Medium-duty - - - - - Unimproved dirt - - - - -
 Interstate Route ○



UTM GRID AND 1977 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET

BARNHART, OREG.

A REPORT ON AN INTEGRATED
RECYCLING DEMONSTRATION PROGRAM
FOR PENDLETON

August 1995

Prepared by: J. Val Toronto, Consulting Engineer
Vera Simonton, Secretary/ Analyst
Pendleton, Oregon

August 18, 1995

John Dadoly, Environmental Specialist
Department of Environmental Quality
700 S.E. Emigrant
Pendleton, Oregon 97801

Dear John,

The following letter report has been prepared to provide final data and information regarding start up and operation of the Recycling program undertaken by the Umatilla Recycling Group.

The "Group" is appreciative of the Department's approval of our "1st Phase Demonstration" to construct a demolition, landclearing and yard debris facility.

The conference in your office, the morning of August 17, 1995, was very informative and based on your suggestions and recommendations, we have made plans to undertake needed site preparation.

As you are aware, the second phase of our proposed Demonstration Project is Recycling.

Briefly listed are Oregon's 1993 Legislative Mandates that we need to implement. They are essential to the successful integrated phase of our recycling "Demonstration".

The following is in addition to other previous referenced legislative goals submitted in prior correspondence.

OREGON'S REYCLING GOALS:

ORS 459.005 (6) COMPOST means the controlled biological decomposition of organic material or the product resulting from such a process. (16) MATERIAL RECOVERY means any process of obtaining from Solid Waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be re-used or recycled for some purpose.

Our plan requires SOURCE SEPARATION prior to pickup, and includes a definitive secondary separation by chemical composition and/or reuse. (19) RECYCLABLE MATERIAL means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

ORS 459.005 (20) RECYCLING means any process by which Solid Waste materials are transformed into new products in a manner that the original products may lose their identity.

Soiled paper products and paper products with no end value will be utilized as an essential ingredient in the composting process. (26) "SOURCE SEPARATE" means that the person who last uses recyclable material separates the recyclable material from solid waste. All commercial/business participants will be required to source separate.

(29) "YARD DEBRIS" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

Residential property owners will not have access to the site.

We have previously requested and by this letter report request authorization under the Department's State Administrative Powers ORS 459.025 (1) Shall promote and coordinate research, studies and demonstration projects on improved methods and techniques in all phases of solid waste management.

Our request is to obtain the Department's approval to undertake a two (2) year Recycling Demonstration of source separated material.

Our objective is to meet the State's 30% recycling goal for 1995 and the recycling goal of 50% by the year 2000.

We are confident we can easily exceed the above goals with a composting operation and need the Department's concurrence to proceed with the Demonstration.

- 1) Composting is an environmentally acceptable method of recycling waste while producing a commodity that can be beneficially used.
- 2) Compost is superior in all categories to peat moss for home gardening.
- 3) Is the preferred replacement to the current overuse of chemicals for farm operations.
- 4) Compost can supply the needed soil amendment to replace diminishing supplies of peat moss.
- 5) Allowing composting will extend the life of expensively constructed landfills.
- 6) The State/County/City should consider the actual avoided costs of landfill construction and provide subsidies to compost operations.
- 7) The State/County/City should consider the avoided costs associated with long haul and transport trucking costs and provide suitable subsidies to encourage compost operations.
- 8) The State/County/City should perform an in depth environmental impact study to fully evaluate all of the social, health and economic impacts associated with air pollution and gas emissions created by long haul trucking to a Regional Landfill 48 miles one way and 96 miles distance both directions from Pendleton.

A fair evaluation, free of political favoritism and personal financial gain, will readily support answers #5 through #8 and the demonstration programs recommended in 40 CFR-257, 40 CFR-258 and Oregon's revised statutes 459.015 encourage a positive approach to recycling.

This demonstration is on privately leased land, for a private group.

No public admittance will be allowed. The site is in a semi-arid region, 12" or less annual precipitation. There is no drainage or water way or wetlands present.

There is no evidence of any free storm water collecting and flowing from, onto, or into the lower lying area. A 6' diameter culvert will be installed to provide for Noah's 2nd flood, and for a secondary future access into and out of the site.

Compost materials will be stored on site for private use. The suggested maximum compost application of 8 pounds per square foot will allow the 1st time application of 348,480 lbs. of compost per acre.

Composting 5 tons per day for a 270 day year would provide compost for 1.6 acres.
Composting 10 tons per day for a 270 day year would provide compost for 3.2 acres.
Composting 20 tons per day for a 270 day year would provide compost for 6.4 acres.

Our objective is to produce 10 tons per day after 2 months start up with an optimistic outlook, we might be producing 20 tons per day after 6 to 8 months of operation.

The 1st phase land reclamation project involves restoring totally unusable land with clean fill followed by applying compost with selected clean fill over a (350' x 1000') 8 acre area.

Producing 20 tons per day will take 1½ years to reclaim the proposed 8 acre strip.

The Group has a 40 acre lease with an additional 40 acre option on the 940 acre ranch. Approximately ½ of the 940 acre ranch could be upgraded with the compost soil amendment.

We anticipate that there would be sales to wholesalers, to the City and County for parks and other land stabilization uses. This market will need to be developed and depends entirely on the success of the "RECYCLING DEMONSTRATION".

TOPOGRAPHY: The 40 acre site is ideally suited for recycling/composting operations. The land slopes a gentle -3% to -4% from West to East to an unused agricultural gulch

which will be reclaimed for agricultural purposes after a secondary road has been constructed.

The dry gulch has no indication of surface water flow. A minimum 6' diameter culvert will be installed to satisfy potential drainage concerns. All upland areas are in C.R.P.

There are no signs of water or wind erosion on the 40 or 80 acre site.

HYDROLOGY: Assuming a rainfall intensity of 2.25" per hour for a 45 minute duration (which has never been recorded in the area) a 54" culvert would adequately convey potential runoff of 23.3 cubic feet per second. (No head on culvert)

It would take the entire potential run off area of 189 acres (1700' x 4800') to develop this quantity of flow. Some portions of the 189 acres would never contribute, however, in the interest of being conservative this total area was used in the compilation. Also, because of availability, a 60" or 72" culvert will be installed for the proposed secondary road.

Annual rainfall is 12" and total yearly evaporation rate about 6 times precipitation. Evaporation during seasonal high temperatures can be 3/4" per day or 20" in a single month.

GEOLOGY: The geological structure, underlying the entire abandoned City of Pendleton Airport old landfill area, extends Southwest and continues under the 940 acre Torco Ranch. This geological structure has been defined by geologists and is established by geologists in the Department of Water Resource's geological maps.

The underlying basaltic strata are 30' to 70' in thickness, contain no known water bearing formations from ground surface to depths of 600'.

The site contains no surface water and no ground water to 600'. The State of Indiana draft rules describes the "Water Table" as meaning water below the surface in the zone of saturation. The rules further require a minimum distance of five feet between compost and the water table. We refer to the Indiana draft rules as a means of acquainting the Department that composting provides a very safe method of recycling and that the geological structure and ground water at the Torco Ranch is at least 100 to 120 times the minimum required depth suggested by the State of Indiana.

OPERATION AND MANAGEMENT: A previously submitted topographical plat to the Department out lined in general the proposed secondary access road, culvert location and the primary and secondary areas for land reclamation and has not been duplicated for this report.

The Group cannot purchase the needed operating equipment until we receive assurance from the Department that we will be permitted to operate a recycling program.

The following are general guidelines of operation, which may be altered, depending on numerous factors, including a late fall start up.

EQUIPMENT: Of necessity, all equipment purchasing has been held in abeyance until receipt of the Department's approval.

- 1-All material will be source separated into three basic material categories.
 - a) Paper Products
 - b) Metal Products
 - c) Food Stock and Soiled Paper
- 2-These three items will be additionally hand sorted at the recycling center to ensure no hazardous waste is included.
- 3-Paper Products and Metal will be wholesaled and transported to Pasco, Seattle or Portland, depending upon market conditions.
- 4-Food Stock will consist of 1 part of green or vegetable material to 2 parts of wood fiber and/or soiled paper products. Seasonal variations are expected and can be balanced with wood chips, sawdust, ground bark dust, dry cured manure and sand or soil.
- 5-The area is protected from the Westerly prevailing winds and dust or blowing material will not create a problem. For best Fall/Winter sunlight exposure the static piles will, in general, be laid out in parallel rows perpendicular to the existing ground slope.
- 6-Static piles will, in general, be about 6' to 8' high and 10' to 12' wide. Some hand turning will occur until we are able to install a forced air plenum, which will reduce the amount of hand labor. Static piles will be placed on 8 to 10 mil material to ensure that no runoff occurs into underlying soils.
An 8" deep 90° ditch will parallel the piles to intercept surplus moisture or water runoff.
The previously submitted plat shows the uphill cutoff ditch that will intercept if any occurs.
- 7-Initially a 1000 gallon water truck will provide needed moisture control to the static piles, which in time will be replaced by a soaker hose/sprinkler water line.
- 8-Summer compost time will be 8 to 12 weeks, with air systems, and much longer during fall and winter seasons.

SUMMARY:

The aggressive recovery goals legislated by Oregon require an innovative approach to extending the useable life of existing landfill operations.

The Department of Environmental Quality should rethink the limitations that are imposed on composting ONLY single source materials. There currently exists about 62 compost operations in the Nation that utilize a variety of recycable material that can be beneficially composted.

Every cubic yard of material recycled through composting saves

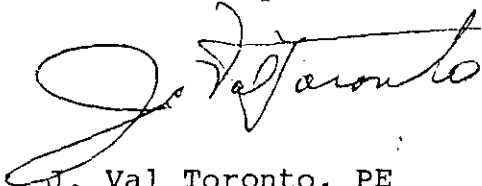
1.0 cubic yard of landfill volume for the use of future generations.

It is illogical to transport and haul recycable material 100 miles or more to a landfill, when this same material can be composted locally and used for agricultural purposes.

A composite breakdown of the average composition of refuse nationally indicates that 8% or less of the Municipal Solid Waste is putrescible. Our demonstration project proposes to use from 1/3 to 1/4 of 10% or 2.5 to 2% of the food stock. This small quantity, when mixed with yard debris, grass clippings, wood chips, dry cured animal manure, bark, branches and paper products will produce a superior grade of compost. Cans, metal, plastic and non biodegradable material will be source separated and rejected prior to shredding.

Uncompostable putrescible material will be disposed of at a DEQ approved landfill.

Submitted by:

A handwritten signature in cursive script that reads "J. Val Toronto". The signature is written in black ink and is positioned above the typed name.

J. Val Toronto, PE
General Manager Umatilla Recycling Group

STATE SOLID WASTE MANAGEMENT PLAN

Plan 1995-2005 That Mandates Recycling

- Pg. 7--Indicates sites closed up to 1992
What about sites closed up to 1995 and yr. 2005
What about industrial sites closed up to 1998-2005
- Pg. 8--Shows municipal/private landfills
Why not show the 400 industrial wood mill landfills
scheduled for closure.
- Pg.10--DEQ responsibilities:
(1) Enforcement at local & state recovery rate: and the
opportunity to RECYCLE ACT.
(3) Development of rules and regulations governing solid
waste management and recycling.
(10) Local recycling and survey date management
- Pg.11--LOCAL GOVERNMENT.....recycling,....."opportunity to
recycle"
assure accessible disposal options.....
assure cost efficient sold waste and RECYCLABLES
COLLECTION.....
- Pg.16--1976 Resource Conservation and Recovery Act enacted
Pg.16--1983 Oregon Recycling Opportunity Act enacted
Pg.16--1983 Curbside residential collection of recyclables
provided in 69 of 70 cities over 4000 population
Pg.16--1991 Recycling Act passed by the Oregon Legislature
Pg.17--Goal 2...insuring that all residents of the State were
provided the opportunity to "recycle"
Pg.17--Legislation in 1983 (ORS459) authorized DEQ to move
forward on the waste management hierarchy and FOCUS ON
RECYCLING
- Pg.18--1989.....to help fund recycling
Pg.18--A weakness of the overall program (recycling).....
(ignored) other areas of opportunity, such as commercial
and multi-family recycling
Pg.18--Goal 3.....DEQ Regional Staff.....and the public on
recycling and disposal issues
Pg.19--Plan Authority ORS459.A.020. ORS requires DEQ on or
before Jan.1, 1994. The statute is prescriptive,
stipulating that the Plan shall include, but not to be
limited to, the following topics: Source reduction,
recycling, solid waste collection and processing,
composting
Pg.19--DEQ established 13 work groups through out state
Pg.20--The local work groups were instrumental in ensuring that
both rural and urban issues and local recycling market
development needs were addressed in the Plan.
Pg.20--Industry needs to be updated in Plan every 2 years....
industry disposal trends, material recovery and waste
composition will be included
Pg.21--.....Annual statewide and local recovery rates for target
materials.....

- Pg.21--Annual statewide and water shed recovery rates.....this should demonstrate a continuing effort to utilize solid waste as a secondary resource.....toward the 50% recovery rate statewide.
- Pg.23--Waste Prevention-The 1983 Opportunity to Recycle Act places source reduction at the top of the waste management priority list followed by recycling, solid waste collection and processing, composting.....The state recovery goal and public commitment to recycling have saved valuable resources from being disposed of in landfills and instead recycled into new products.
- Pg.23--.....Oregon Plan integrates waste prevention and re-use with recycling and disposal into a comprehensive material.....
- Pg.24--.....Reducing the cost of disposal and building greater efficiencies in manufacturing and business practices makes good sense.
- Pg.27--EPA 1988 Agenda for actions established the solid waste management hierarchy of source/reduction/reuse/recycling incineration and landfill
- Pg.27--In Oregon the 1983 Opportunity to Recycle Act, modified by the 1991 Recycling Act, established that the state wide integrated solid waste management plan will include: Source reduction, recycling, composting and energy recovery, incineration and disposal
- Pg. 35--.....Recycling is one technique for managing solid waste once it is generated. This technique is generally viewed as a preferred option over solid waste disposal, energy recovery, and mixed waste composting. (Note: We will not be mixing/using mixed solid waste, but source separated, then amended with controlled additional materials; stock yard waste, wood chips, brush, yard waste, etc.).....In an integrated solid waste management system, recycling is a key component. Ultimately, the goal is for recycling to be the primary method of waste management once waste has been generated. Recycling is preferred because, under management techniques, the material that has been generated as a waste takes on value as a resource and is utilized as a resource material, conserving virgin materials and non-renewable resources. Recycling goal is 50% by year 2000. In 1992 recycling rate was 27%
- Pg.37--.....Oregon has emphasized that source separation of recyclables is the preferred method of collection because the material generally retains higher market value and can be.....
- Pg.40--.....Source separation of recyclables material produces higher and more consistent quality materials for market
- Pg.40--°Promote research and development of recycling processes..
°Adopt policies which will encourage the utilization of recycling materials. Emphasize separation of

recyclables from the commercial waste stream.....
Encourage and assist private investment.....in recycling infrastructure to increase processing.....in addition to building markets for recyclables, this will build the local economy by creating new businesses and increasing employment.

Pg.41--Commercial collection of solid waste and recyclables may.....be handled by the business or a private agreement between the business/industry and the collector

Pg.42--References to utilizing business with recycling programs

Pg.43--Most commercial solid waste and recyclables collection is provided by private collectors under agreement between the GENERATOR and the COLLECTOR. Very few commercial collection programs are under local government contractor franchise.

Pg.43--It is important to collect materials in a source separated manner. High quality materials will bring a better market price.....

Pg.43--Low cost landfilling, waste reduction, recycling and composting preferred

GOVERNMENT'S ROLE

STATE GOVERNMENT:

°Make market development for secondary materials a function of the state economic development agency

°Promote research and development of recycling processes.....

°Adopt policies which will encourage the utilization of recycling materials.....

°Emphasize separation of recyclables from the waste stream

°encourage and assist private investment in recycling infrastructure to increase processing and manufacturing capacity locally and manufacturing capacity locally and regionally.

Pg.41--In addition to building markets for recyclables this will also build the local economy by creating new businesses and increasing employment.

40-- Cities and Counties:

°Devote a balanced level of financial resources to recycling as to disposal.

°Maximum quality and stabilize quantity to ensure competitiveness of secondary materials.....

41--*Commercial collection of solid waste and recyclables was not administered through local government contract or franchise, but may be handled by the business or a private agreement between the business/industry and the collector.

41--Focus commercial recycling programs on key business or industry in the community. If the community has a very large industry which is a significant generator of solid waste, work with that generator to develop a good recycling program for target materials.

43--It is important to collect material in a source separated

Page 3

manner.....

Rural communities should consider working together to form a co-operative marketing arrangement..... Co-operatives can result in higher market prices due to larger "guaranteed" quantities, and they can share the cost of transporting to markets.

43--*Most commercial solid waste and recyclables collection is provided by private collectors under agreement between the generator and collector. Very few commercial collection programs are under local government contract or franchise.

Cost efficiencies can be realized in collection programs as a result of more competition for collection contracts and franchises.

It is more important to collect materials in a source separated manner. High quality materials will bring a better market price and more consistent marketability.

Sustainable Business & Economic Growth

Recycling and maximizing the value of solid waste as a secondary resource in today's world means that recycling needs to be viewed as business rather than a government regulated activity.

Recycling of solid waste will thrive and prosper if it makes economic sense.....

Pg. 41--SUSTAINABLE BUSINESS

°Our ability to capture maximum value from solid waste will depend on our willingness to undertake the more complex financial and logistic processes needed to create successful business ventures.

°.....Unless a community is located near a high capacity, low cost landfill; waste reduction, recycling and composting are the most cost effective strategy. The per ton costs of start-up and pilot programs may be higher, but as the programs expand the cost will come down. Meanwhile, in the long run, disposal costs will only rise.

Pg.44--*.....It is important to understand and realize "avoided disposal costs" as an economic benefit to recycling or providing secondary materials as a manufacturing resource.

Pg.47--*Targeting food waste to maximize recovery. Food waste is a significant component of the commercial waste stream that historically has not been targeted for recovery.

°Communities with the highest recovery rates nationwide are communities with high tipping fees for disposal, weight or volume based collection rates for garbage often have mandatory solid waste collection and ban certain materials from disposal.

°.....Currently there is not an emphasis on recovery of materials from commercial waste streams or on the development of stable and strong markets for materials that are collected.

Pg.48--Continue to show preference for source separated collection programs instead of mixed waste collection.

°Place emphasis on commercial collection programs for target materials to be carried out by local governments and business/industry generators.

°Encourage recycling and waste prevention by continuing to

Page 4

establish disposal fees that reflect the true cost of disposal.....

Pg.48--State and local government will place primary emphasis on education rather than regulation.

Pg.77* Residential Disposal is last on the solid waste management hierarchy.

Pg.59* Legislative History: The 1991 Recycling Act (S.B.66) passed unanimously out of the Oregon Senate and House. The overall purpose of this act is to increase the materials from Oregon's waste stream and to stimulate recycled material markets.

Pg.78-- Illegal disposal is a common occurrence in every state in the nation. Incidence of illegal disposal is linked to increased disposal costs.

Pg.80--Alternative Technology: Composting includes individual backyard decomposition of food and/or yard waste. Community composting operations for leaves and chipped brush. These processes are considered waste prevention and recycling respectively. The composting of mixed municipal solid waste (MSW) is another waste management alternative.

Pg.81* Programs will be devised at every level of government to reduce the amount of residuals that need disposal. Continuation of recycling programs and a focus on waste prevention will be paramount in the next decade.

Pg.141* Waste prevention reuse, recycling, composting, incineration, and disposal makes up today's management practices in the next decade.

Pg.146*and in other cases are strictly a private enterprise, determining processing needs and providing the necessary processing facilities can occur with or without local government involvement.

Pg.194* ORS 459.095 Restrictions on authority of local government units-no ordinance, order, regulation or contract may conflict with ORS 459.095 or DEQ approved solid waste management plans/programs of a MSWDS

Pg.195* ORS.459.025.....as mandated, studies, research and demonstration project for solid waste management.

ORS.459.035.....and practices and recycling programs.

Pg.196--ORS.459.005 recycling and source separation by last user.

Pg.200

Pg.201

Pg.202* ORS.259 90.318 landlords, five or more units or manufactured dwellings, providing-criteria for landlord's provision of certain recycling services, including recycling collection area.....regular collection service of source separated materials.

Pg.202* ORS 459.015 Policy and priorities of Legislative Assembly includes recycling programs being state wide concern providing all Oregonians with recycling opportunity, encouraging these chances for extending useful life of sold waste disposal sites.....

Pg.202--ORS 459.035.....DEQ development and implementation of Solid Waste Management Plans and practices and recycling

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programs.

Pg.202* ORS 459.055 Landfills in farm use areas.....source reduction, recycling, reuse and resource recovery has opportunity to recycle program.....meets/exceeds requirements in ORS 459.250, 459.005 ro 459.A.665.

Pg. 203*459.095 Local government regulations may not conflict with regulations of other governmental units, restrictions on district/authority of those units to be supplemental to EQC rules.

Pg.203-- 459.A.005 Opportunity to recycle....each person a recycling opportunity and encouraging source separation..

Pg. 203--459.A.010 Statewide goals: Opportunity to recycle program.....

Pg.204--.....Effective yard debris collection/composting program....Statewide integrated S.W.M.P.....to include source reduction, recycling, solid waste collection/processing, composting

Pg203*--459.A.010 State wide goals: Opportunity to recycle program elements, rates by 1-1-2000, general recovery rates of solid waste in Oregon to be 50%, opportunity to recycle to be implemented by 7-1-1992, by providing one recycling container per residence by 1-1-93, weekly collection of source separated (residential) recyclable items along with solid waste collection, an expanded education/promotion program (specifics listed); collecting four principle recyclables materials, or as required, from each family complex with 5 or more units; effective yard debris collection/composting program (specifics given) regular on-site collection frmom commercial/institutional generators specified size (10 persons per 1000 sq.ft.) per site, expanded recyclingdepots for principle waste reduction, reuse and recycling/ by 7-1-1992 for cities with populations 4,000 to 10,000.....

Pg.204--459.A.020 State wide integrated solid waste management plan-for next 10 years to be adopted by EQC 1-1-94; to include source separation, recycling, S.W. collection/processing, composting/energy recovery, incineration, disposal, disposal capacity/facility, siting and transportation.....

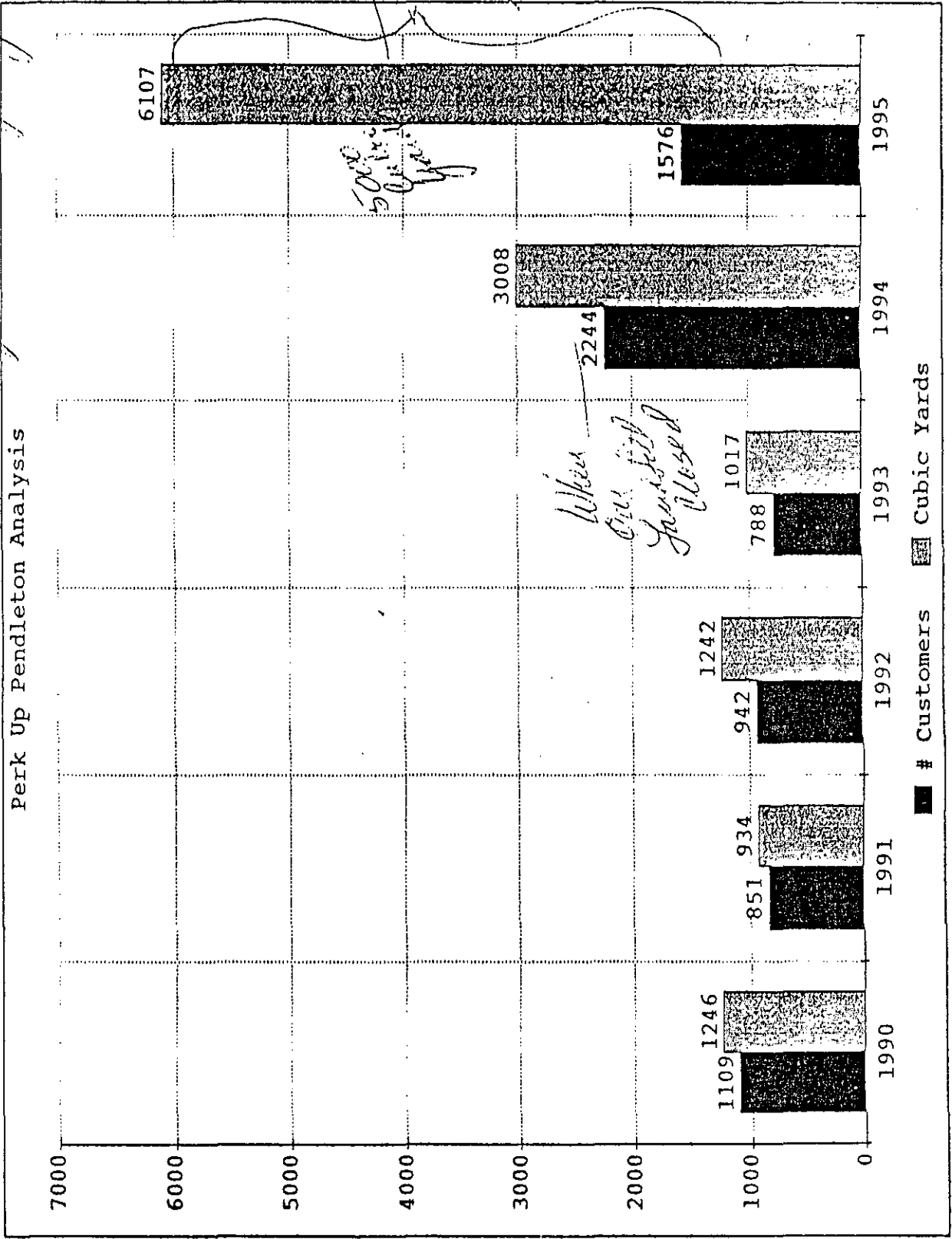
Pg.223 ORS 459.153.....Legislature intends that County not discourage/hinder recycling.

Pg.223 ORS 459.025 Public and private agencies to satisfy statute for carrying out, as mandates, studies/research/demonstration projects for Solid Waste Management.

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One Week of Top Rollin' disposal each Spring

Perk Up Pendleton Analysis



STATE AND FEDERAL REQUIREMENTS & DEFINITIONS

340-93-050 (2) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Div. 93 through 97,.....

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

Refer to the Co-Operative's narrative under Umatilla County Solid Waste Management Plan and the specific reference to a 50 year demonstration, and the soil survey previously given to the Department and included in this report by reference.

The Department's personnel, during the 1st few of several conferences, recommended the Co-Operative pursue this method of disposal, but later reneged on those same recommendations, without any substantive investigative reasons.

Nothing would be gained by preparing an application that later was verbally rejected. Correspondence requiring preliminary approval for acceptance of a "clean fill facility" went unanswered!

Reference 40 CFR Part 258 1 (f) for small landfill exemption 20 tons per day or under in rural, arid regions.

Reference 257.1 (a) in determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment.

257.1 (a) (1) Facilities failing to satisfy criteria adopted for purpose of section 4004 (a) will be considered OPEN DUMPS for purposes of solid waste management planning under the Act. NOTE: The City of Pendleton and Umatilla County is dotted with open dumps.

256.42 Recommendations for assuring facility development Article (a) (b) (c) (1) (2) (3) (4) have not been met and most have been thwarted or resisted by the Department, the County and the City.

257.1 (2) Practices failing to satisfy criteria adopted for purposes of Section 1008 (a) (3) constitute open dumping, which is prohibited under Section 4005 of the Act.

(C) These criteria apply to all solid waste disposal facilities and practices with the following exceptions:

(1) The criteria do not apply to agricultural wastes, including manures and crop residues, returned to the soil as fertilizers or soil conditioners.

The facility operated by the Co-Operative will process only Source Separated Recyclable Materials from commercially licensed businesses.

Page 223 ORS 459-153-----Legislature intends that County not discourage/ hinder recycling.

Page 223 ORS 459.025-----Public and private agencies to satisfy Statutes for carrying out, as mandated, studies/research/demonstration projects for Solid Waste Management

ORS.459.045 Rules (4).....Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005-459.105 and 459.205-459.305.

ORS 459.095 Restrictions on authority of local governmental units.

459.247 May accept for storage and recycling or recovery:

- a)discarded or abandoned vehicles
 - b)discarded large home or industrial appliances
 - c)tires or
 - e)lead acid batteries
-

Government to use compost 459 A.600, 459A.605, 459A.615

State Supreme Court Ruling May Mean Less Regulation of Farmland

An August 24th Oregon Supreme Court decision has raised questions about the authority of counties, and perhaps even LCDC, to regulate certain uses on land in Exclusive Farm Use (EFU) zones.

In the case of *Brentmar v. Jackson County*, Olafur Brentmar appealed a denial of his application for a private school, arguing that the county had misinterpreted state law. Jackson County turned down the application because, according to the hearings officer, it failed to meet a number of criteria required for approval of such a conditional use permit. The criteria include:

That the location, size, design, and operating characteristics of the proposed use will have minimal adverse impact on the livability, value, or appropriate development of abutting properties and the surrounding area; and

The proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly or the nature of the use requires a rural setting, such as an aggregate operation, even though the use may not provide primarily for the needs of rural residents.

By way of background, Chapter 215 of the Oregon Revised Statutes specifies two sets of allowed uses in EFU areas. ORS 215.283(1) lists the following 20 types of uses that "may be established in any area zoned for exclusive farm use":

1. Public or private schools
2. Churches and cemeteries in conjunction with churches
3. Propagation or harvesting of a forest product
4. Utility facilities necessary for public service
5. A dwelling occupied by a relative of the farm operator whose assistance in the

- management of the farm is or will be required.
6. Dwellings and other buildings customarily provided in conjunction with farm use.
7. Operations for the exploration for and production of geothermal resources.
8. Operations for the exploration for minerals.
9. A solid waste disposal site.
10. The breeding, kenneling and training of greyhounds for racing.
11. Climbing and passing lanes within a right of way existing as of 7/1/87.
12. Reconstruction or modification of public roads and highways.
13. Temporary road and highway detours.
14. Minor betterment of existing public road and highway related facilities.
15. A replacement dwelling if an existing dwelling has been listed as a historic property.
16. Seasonal farm-worker housing.
17. Creation of, restoration or enhancement of wetlands.
18. A winery.
19. Farm stands (under certain circumstances).
20. Alteration, restoration or replacement of a lawfully established dwelling.

Twenty other uses are specified in ORS 215.283(2) that may also be established, but unlike those listed above, are "subject to the approval of the governing body or its designate."

At the heart of Brentmar's appeal was how the phrase "may be established" is to be interpreted. The county's denial was upheld by both the Land Use Board of Appeals and

*For answers to your questions about 1995 legislation or other state regulations, call OAR's Government Affairs staff:
Genoa Ingram-Read
Kelly Ross or
Richard Day-Reynolds
at
1-800-252-9115*

Court of Appeals, which found that the wording grants authority to counties to approve the uses, but does not prevent them from also adding conditions.

Supreme Court Justices, however, agreed with Mr. Brentmar's argument that it was the Legislature's intent that "the uses be uses as of right," which may not be subjected to additional local criteria." According to the Court's opinion, because 215.283(2) included the specific additional phrase "subject to the approval of the governing body," the implication was that the uses in (1) could not be subject to any supplemental county regulations.

A question now raised by the *Brentmar* decision is what impact it will have on the additional criteria imposed by LCDC administrative rules. One of the "uses as of right" allowed in 215.283(1) is "dwellings and other buildings customarily provided in conjunction with farm use." And although the statutes define "farm use" as "the current employment of land for the primary purpose of obtaining a profit" in a variety of specified agricultural or livestock enterprises, LCDC in 1994 adopted supplemental rules requiring a \$80,000 gross income test (earned during the last two years or three of the last five years prior to application) for high-value farmland areas and \$40,000 in all other areas.

The LCDC rules also flatly prohibit new approvals of four uses on high-value farmland that are authorized under 215.283(1). These are the breeding, kenneling, and training of greyhounds for racing; solid waste disposal sites; public or private schools; and churches and cemeteries in conjunction with cemeteries.

In a September 6th memo to DLCD Director Richard Benner, Assistant Attorney General Celeste Doyle addresses this question by saying simply, "The Court did not discuss LCDC's authority, pursuant to ORS chapter 197, to adopt Statewide Planning Goals and administrative rules



MEMO

January 26, 1996

TO: Land Use Committee
Water Policy Committee
Executive Committee
Other interested parties

FROM: Kelly Ross, Land Use Consultant

SUBJECT: COURT OF APPEALS DECISION IN LANE COUNTY V. LCDC

On Wednesday, January 24th, the Oregon Court of Appeals finally issued their long awaited decision in Lane County's challenge to the farmland rules adopted in 1994 by LCDC. I'm pleased to report that the decision is exactly what we had hoped for.

As background, Section 28 of HB 3661 passed by the 1993 Legislature was the statement that any portion of a rule inconsistent with the provisions of a long list of statutes "shall not be implemented or enforced, and has no legal effect." In floor debate on the bill, both Sen. Jim Bunn and Rep. Ray Baum explained the intent of the section as a preventive measure to stop LCDC from subsequently adopting rules that would be contrary to their objective of allowing more flexibility in the use of farmland statewide. Both legislators said flatly, "... it eliminates any rules that take away uses that the legislature authorizes on farmland."

In 1994, LCDC adopted administrative rules to implement the provisions of HB 3661. Lane County appealed the rules on the grounds that they violated Section 28 of HB 3661 in two ways--(1) they made marginal lands counties (Lane and Washington) subject to the high-value restrictions (including the \$80,000 gross income test for new farm dwellings); and (2) flatly prohibited seven types of uses on high-value land in all counties that were specifically allowed in statute. The seven uses are:

- public or private schools
- churches and cemeteries in conjunction with churches
- private parks, playgrounds, hunting and fishing preserves, and campgrounds
- golf courses
- dog kennels
- sites for disposal of solid waste that have been ordered by the Environmental Quality Commission
- sites for disposal of sold waste that have been approved by the governing body of a city or county

In defending its rules before the Court, LCDC argued that the limitations imposed by Section 28 on its rulemaking powers could not "be reconciled with the agency's broad policy-making authority." The Court of Appeals strongly disagreed strongly, saying "statutory language cannot simply be treated as if it does not exist." "In each instance," the Court went on to say, "the 1994 rules... impose

LEGISLATIVE

conditions that cannot be tethered to any language in ORS 215.213(1) and (2) and create requirements of the counties that flatly contradict what the statute permits."

In a unanimous opinion, the three appellate judges relied on the Supreme Court's opinion last year in *Brentmar v. Jackson County* which was described in detail in the last *Land Use Bulletin*. This is very significant because LCDC had previously maintained that *Brentmar* applied only to counties and not to their administrative rules.

In a unanimous opinion, the three appellate judges relied on the Supreme Court's opinion in *Brentmar v. Jackson County* which was described in detail in the last *Land Use Bulletin*. This is very significant because LCDC had previously maintained that *Brentmar* applied only to counties and not to their administrative rules.

DLCD issued a statement yesterday expressing disappointment with the ruling ("We believe that the court overlooked or misunderstood some significant points in a complex case") and saying that they will ask the Court for a reconsideration to get clarification. If the request for reconsideration is granted (they usually aren't), it would probably take about two months to issue a clarification. After that, DLCD says that it "may very well appeal the ruling to the state's Supreme Court." The Supreme Court, however, is under no obligation to accept the case, and since it deals with a matter (*Brentmar*) that has already been ruled on, I think there is a good chance that the Supreme Court will simply let the Court of Appeals decision stand without review.

What are the immediate effects of *Lane County v. LCDC*?

1. First, understand that the decision does not actually become effective until an appellant judgment is issued in 35 days. If DLCD exercises its right to request reconsideration within 14 days or later files an appeal with the Supreme Court, the appellant judgment is stayed until those actions are resolved.
2. Assuming that the decision does eventually become effective, it will invalidate the enforcement order that LCDC imposed last month on Washington County. Washington County had taken the position that LCDC's \$80,000 test did not apply to them and was instead using the \$20,000 test allowed by HB 3661.
3. Contrary to claims by DLCD that the decision applies only to Lane and Washington Counties, it will once again reinstate the seven uses in all counties."
4. Unfortunately, it is still unclear whether the \$80,000 test is valid for the other 34 counties.

Please do not hesitate to call me if I can answer any questions.

(q) Creation of, restoration of or enhancement of wetlands.

(r) A winery, as described in ORS 215.452.

(s) Farm stands, if:

(A) The structures are designed and used for the sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds

(d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(e) Golf courses.

(f) Commercial utility facilities for the purpose of generating power for public use by sale.

(g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Department of Transportation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Department of Transportation.

(h) Home occupations as provided in ORS 215.448.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(l) Transmission towers over 200 feet in height



Note: County Solid Waste Management

Plan promotes/encourages Recycling and Compost.
The Plan also recommends Landfilling in lieu of Transfer Station.

Umatilla County Development Ordinance
EFU Zone: 3.015: Conditional Uses Allowed

ORD.#84-03(amended)
Page 3-EFU-7

service, excepting as provided in Section 3.011.4 and 3.011.5.

.24 Wineries.

3.016 LIMITATIONS ON CONDITIONAL USES. The following limitations shall apply to all conditional uses in an EFU Zone except as noted for Non-farm Dwellings in Section 3.017:

This is a Agri-Business and Farm Operation Note: This function and is necessary for a 3500 cattle ranch operation. Also is needed for the economy and productivity of the Agri-Business ranch operation.

.1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

.2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses, nor interfere with other resource operations and practices on adjacent lands, and will not:

- 2.a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- 2.b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)

.3 Does not materially alter the stability of the overall land use pattern of the area.

.4 Is situated upon generally unsuitable land for the production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract.

Reference:
Recycling Operation Plan and State DEQ Plan Mandated by Fed/State Statutes

.5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone.

.6 Alternative sites within acknowledged urban growth boundaries or "exceptions areas" were evaluated and found not to be acceptable.

.7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as

What Can I Landfill Without A Permit?

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 10, 1994

To: Persons filling with "Clean Fill"
From: E. Patricia Vernon, Manager
Solid Waste Policy and Program

Subject: Landfilling without a Permit from DEQ

The purpose of this memo is to assist contractors and landfill operators in understanding Oregon environmental law and regulation as it relates to operating a "clean fill" landfill. Such landfills are not regulated by the Department. If "solid waste" is accepted, the facility is then subject to permit requirements and possible enforcement action by the Department.

1. Materials which may be landfilled without a permit under Oregon solid waste rules.

Oregon Administrative Rules (OAR) 340-93 define "clean fill" as exempt from regulation as a solid waste. "Construction and Demolition Waste" is not exempt and must be disposed of in a Department permitted facility. Specific sections of the rules are quoted below for your information:

DEFINITIONS

340-93-030

- (10) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.
- (17) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other

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

PERMIT REQUIRED: 340-93-040

- (1) No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-93-050(2) from the requirement to obtain a solid waste permit.

CLEAN FILL EXEMPTION: 340-93-050

- (1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.
- (2) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Divisions 93 through 97, but shall comply with all other provisions of OAR Chapter 340 Divisions 93 through 97 and other applicable laws, rules, and regulations regarding solid waste disposal:
 - (c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety;

Based on the above, solid waste rules allow you to landfill the following materials without a permit from DEQ:

- * **Clean Soil, but not soil contaminated by any hazardous constituent.** Limited quantities of soil which have been cleaned to Level I clean up standards and specifically approved by the Department for disposal may be accepted.
- * **Concrete, including that which contains reinforcing bar or rod**
- * **Rock**
- * **Brick**
- * **Weathered and consolidated asphalt paving which does not show evidence of fresh oil and which is not so broken as to expose numerous unweathered surfaces.**

2. Asphalt.

While solid waste rules exempt some asphalt paving from a requirement to be disposed of in a permitted solid waste facility, that exemption does not apply to asphalt which has not been applied as paving and does not exempt asphalt paving which may pose a threat to the waters of the state or public health. Any asphalt which shows evidence of fresh oil or is not clearly weathered and consolidated does not qualify for the exemption and may not be placed as clean fill. Soil loads which contain fresh asphalt are not eligible for the clean fill exemption unless the asphalt is removed.

3. Other constraints.

Wetlands. It is possible that land proposed for filling with clean fill may be or have become wetlands. Before filling, you should obtain clearance from the Army Corps of Engineers or the Oregon Division of State Lands to ensure that you are not filling in a wetland.

Local Land Use Laws/Regulations. It is prudent to ensure that filling activities do not conflict with local regulations.

FOR MORE INFORMATION, CALL:

Portland, North Coast	- Dave Kunz 503 229 5061
Willamette Valley, Mid Coast	- Bob Barrows 503 378 8240 x269
Southern Oregon, South Coast	- Bob Guerra 503 776 6010 x236

The Supreme Court in numerous decisions has ruled that in the case of solid waste as an article of commerce, local government interference with freedom of enterprise, in the waste management business "is an unconstitutional, impermissible burden upon interstate commerce." See for example:

1. Fort Gratiot Sanitary Landfill, Inc. v/ Michigan Dept. of Natural resources, 504 US 353, 359, 112 S Ct 2019, 2023, 119L Ed2d 139, (1992).
2. Commerce clause (article 1, section B, Clause 3 of the United States Constitution) the commerce clause grants Congress the power "to regulate commerce..... among the States". It is an affirmative grant of power to Congress to regulate Interstate Commerce and has long been recognized as a self-executing limitation on the power of the states to enact laws imposing substantial burdens on such commerce. South Central Timber Development Inc. v/ Wunnicke 467 USB2, B7,104SCT2237,81 L Ed2d 71 (1984)
3. This commerce clause also "prohibits States from advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the State". National Solid Waste Management Association v/ Meyers (NSWMA*), 63 BD652 (7TH Cir 1995) This aspect of the clause applies with full force to State regulation of the collection, transportation, processing and disposal of solid waste. NSWMA
4. The Supreme Court has recently held "what makes garbage a profitable business is not its own worth but the fact that its processor must pay to get rid of it". "In other words, the article of commerce is not so much the solid waste it self, but rather the service of processing and disposing of it". C & A Carbone Inc v/ Town of Clarkstown, 511 US 383, 114 S CT 1677, 1682, 128 L Ed2d 399 (1994).
5. The primary affect of the City of Pendleton "Franchise" is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. Adjacent City's and the Reservation use the same highway with no Franchise hauling solid waste, into and through the City. Preferential contractors haul construction / demolition and yard waste on County / City roads with no enforcement actions! Over forty companies haul recyclable all in violation of the "Franchise". The Franchise determines not the manner of use but the persons whom may use the highways to haul solid waste. The Franchise prohibits such use to some persons while permitting it to others for the same purpose and in the same manner". Buck, Supra at 267 US 315-16 as applied to Pendleton.

Ex. 38

AGRICULTURE-RECYCLING-COMPOSTING-LAND RECLAMATION

February 11, 1997

The amendments to the Resource Conservation and Recovery Act (1977) promoted new untried methods of utilizing solid waste as a means of reducing the waste stream by preserving land and landfills through recycling procedures. At least 50% of the waste stream load now going to landfills could be utilized and manufactured into compost for land reclamation, a substitute for fertilizer, and many other productive uses. It has been over 20 years since amendments were made to the Resource Conservation and Recovery Act. Legislative approval of a Compost Bill that allows a six year demonstration for agriculture, recycling, and compost will help move Oregon forward in its recycling goals.

Each area of the state with a contributing population of 10,000 to 20,000 people could economically sustain one (1) construction/demolition landfill and one (1) commercial compost facility. Both of these facilities could often be combined and operate in a complementary program to produce valuable agricultural land from wasteland and unproductive land. The reason Oregon has a shortage of landfills is because the rules, franchise agreements, license requirements, county/city planning regulations and requirements pre-empt any chance of securing a permit. Several dozen recycling statutes, and state wide recycling goals contain meaningless legislation. Solid waste/recycling most often is restricted to only the sole franchise in a given area. The current waste disposal crisis has created (ORS 459-015) a need for alternative uses of disposal. Composting will create an opportunity for farm operators to collect processing fees by composting certain off-farm waste materials.

On occasion the exclusive franchise operator controls all potentially recyclable material in the entire city and the surrounding urban growth and county areas. Excessively high franchise fees (and other fees) paid to units of government ensure that there is little or no competition in this highly protective monopolistic industry. When the sole franchise controls all solid waste, source separated or combined, and can charge \$55.00 per ton or \$86.50 per ton at the scale house there is absolutely no incentive to use this material in a compost operation that requires additional equipment and additional management to produce a product that takes eight (8) weeks to six (6) months to produce. With only five permitted construction/demolition landfills and only six permitted compost operations in the entire State, it is obvious that there is a void in implementation (of ORS 459-015) and administration of Oregon's recycling objectives.

Most recycling data is over inflated and usually does not include back yard burning, construction/demolition waste or illegal disposal along highways drainage basins, ravines, vacant lots, or other materials privately disposed of on farms/ranches or otherwise.

Many rural areas of the State have achieved only a 15% reduction during the past five (5) years and to expect an additional reduction of 35% in the next three (3) years will require significant changes in procedures that control solid waste and the potential recyclable materials in Oregon's tightly controlled solid waste flow.

1974 County Solid Waste Management Plan

(Excerpts for Reference) Page

Subject

Littering/Open Dumping	111-1
Storage - does not include "in process storage"	1V-2
Regulating can be accomplished several ways	1V-11; 12, 21
Open Dumping not approved for putrescible waste	1V-23
Landfill - Reclamation sites	1V-23
Local Solid Waste Regulation shall be adopted by local government if such regulation "conflicts with regulations adopted by the "Commission" (DRC) ORS 459.045 459.095(1)	1V-26
Prevent Conflicts of Interest - No <u>one</u> Agency should be assigned more than one (1) Responsibility under:	
• OPERATING AGENCY • PLAN ADMINISTRATION	
• CONTROL AND REGULATION	VI-31
Stumps and Construction Debris Recommended:	
• CHIPPING FOR GARDEN, AGRICULTURAL PURPOSES • SPECIAL DISPOSAL SITE	VI-11
Franchise and Municipal Operation when <u>Full Competition</u> <u>Does Not Exist</u>	VI-13
Controlling Costs	VI-14
Offensive Littering, local jurisdiction ORS 16A.805	
Wind Blown Soil - Wind Erosion Control Districts ORS 568.810	
Petition to County Court ORS 565.820	
Service Districts ORS 451.410; .010(7); 451.420	
Cities may Own and Operate Transportation and/or Disposal Facilities ORS 459.075	
Health Dept. ORS 431.416;	
Police Powers 431.440	
Pollution Prohibition 495.105	
Restrictions on Trash and Motor Vehicles ORS 449.107; 0.109	
Prohibitions against untreated garbage ORS 60.150	
Salvage Sites ORS 459.085(2)	
Automobile Wrecking Sites ORS 481.345	
Agricultural Practices - Recycle residue 61-060 pg 705	

Landfills thru the Landfill Overlay zone or otherwise.

Plan "C" in the 1974 S.W.M. Plan was recommended (then) for adoption. This plan did not indicate any Construction/Demolition sites, nor those locations that should be reserved for future additions or future locations. When Hermiston, Pendleton, Athena, Weston, Pilot Rock, Ukiah and the Indian Reservation selected Transfer Stations for Waste Disposal this system was not discussed at the County/Public hearing level. The selection process was accomplished thru Private A/E firms representing Private Garbage Collectors/Disposal Operators in concert with full approval by D&W Field/Office management personnel.

There was no effort to persuade continuation of the use of any landfill, thru expansion, extensions, modifications, or by locating new sites. There was no "environmental assessment" performed to determine social, health, economical, aesthetics and all ^{other} relevant environmental problems that can be attributed to the high tipping fee due to Transfer Station costs and long haul trucking costs. The tipping fees at all Regional Landfills has been much higher than was ever needed (or paid) at the smaller, closer private/municipal landfills in rural areas such as Clatsilla County.

1974 UMATILLA COUNTY SOLID WASTE MANAGEMENT PLAN

NOTE: I cannot find any data or changes and amendments to the plan, nor can the County provide or recall if any amendments have been added since the initial approval in 1974.

From 1993, 1994 and through 1995, I requested that the Planning Document be re-opened to further discuss the Landfill Overlay Processes that appear to have been overlooked since 1974. I provided the Planning Department with a copy of the landfill discussions and overlay zone from Clackamas County which consisted of approximately 16 pages devoted to detailed discussion of each landfill in Clackamas County.

Recently this year, the Umatilla County Planning staff took a renewed position that the Planning Commission had, through administrative process, accomplished the public hearing process established in the 1974 plan. That the Commission substituted for the suggested/recommended five year upgrade in the Plan. However, there still has been no upgrade or discussion of protecting, surveying and providing future landfill sites in the County Comprehensive Plan (LCDC).

The County Planning Commission recently, in a letter, advised there would be no public discussion regarding the above landfill subject, nor was it to be part of the five year county planning process now underway through Umatilla County. It becomes obvious that the County does not want to discuss the recommendations in the Solid Waste Management Plan for ensuring and protecting existing and needed future landfills through the landfill overlay zone or otherwise.

Plan "C" in the 1974 Solid Waste Management Plan was recommended (then) for adoption. This plan did not indicate any construction demolition sites, nor those locations that should be reserved for future additions or future locations. When Hermiston, Pendleton, Athen, Weston, Pilot Rock, Ukiah and the Indian Reservation selected transfer stations for waste disposal, this system was not discussed at the County/Public Hearing level. The selection process was accomplished through private A/E Firms representing private garbage collectors/disposal operators in concert with full approval by DEQ field/office management personnel.

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*Comments by David Toronto P.E. 2/10/95
Review of essential parts of
Umatilla County Plan wherein the
County Plan called for protection of
ALL County Landfills plus designating
FUTURE LANDFILLS for Protection.*

*CITIES CAN NOT LEGALLY
BIND ITS CITIZENS, RESIDENTS
TO A CITY APPROVED TRANSFER
STATION.*

LEGAL ASPECTS OF PUBLIC WORKS

The U.S. Supreme Court at *C&A Carbone Inc. vs. Town of Clarkston, New York*, US Supreme Court, No. 92-1402, held that the local ordinance violated the commerce clause of the U.S. Constitution. An ordinance violates the commerce clause if it discriminates against interstate commerce or imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits. The commerce clause invalidates "local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of state." The vice in this flow control ordinance, as with similar ordinances that hoard local resources, is that out-of-state waste businesses and in-state businesses that send waste out-of-state are discriminated against for the benefit of the preferred facility. The court said that this type of discrimination against interstate commerce in favor of local business or investment is per se invalid. Clarkston had other nondiscriminatory alternatives for addressing the problems.

City Preferential Bidding Ordinance Upheld

The city of Zanesville, Ohio, appealed from a judgment of a lower court finding a local public contracting ordinance granting a preference to local contractors

Dec. 8, 1994: Pendleton Sanitary Regulatory Board of recommendation of Larry Row - Pendleton Sanitary Collector/Disposal Service & Hauling - ignored U.S. Supreme

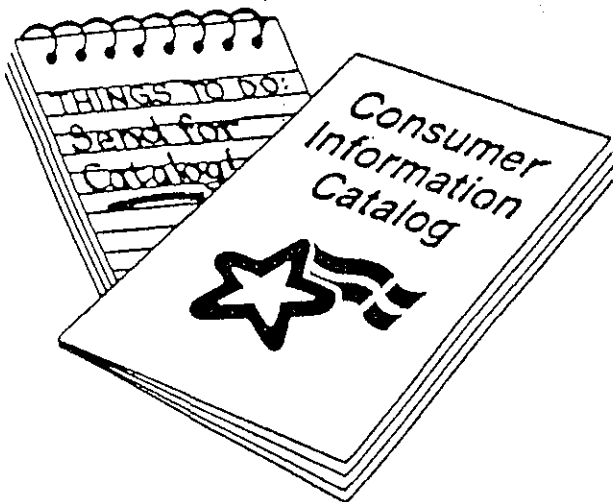
Thomas P. Vest, Esq. Court No. 92-1402
Attorney at Law

Flow Control Ordinance Violates Commerce Clause

The U.S. Supreme Court has held that a town's flow control ordinance requiring nonhazardous solid waste be deposited only at the town's transfer station violated the commerce clause. Clarkston, New York entered into a consent decree with the state to close its landfill and build a solid waste transfer station. The cost of building the transfer station was estimated at \$1.4 million. A local private contractor agreed to build the transfer facility and operate it for five years, after which the town would buy the facility for \$1. The town agreed to guarantee a minimum waste flow for which the contractor could charge a tipping fee of \$81 per ton. If the station received less than 120,000

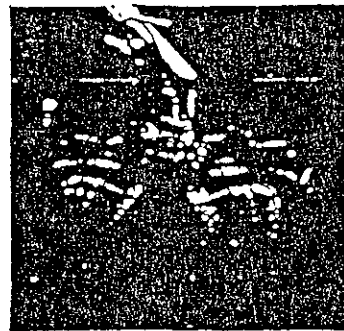
tons in a year, the town had to make up the tipping fee deficit. To make sure sufficient waste was sent to the facility, the town passed a flow control ordinance requiring all nonhazardous waste within the town to be deposited at the facility. Noncompliance was punishable by a fine of up to \$1,000 and up to 15 days in jail. C&A Carbone Inc. and other local companies were engaged in the processing of solid waste. Under the ordinance, Carbone could continue to receive and sort solid waste but the nonrecyclable waste had to be taken to the town-sponsored facility and the tipping fee paid. By requiring Carbone to send its waste to the facility, the flow control ordinance had the effect of driving up the cost for out-of-state interests to dispose of its solid waste. Carbone was later found violating the ordinance by shipping nonrecyclable waste out of state. The town filed a state action against Carbone.

Put Our List On Your List



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**Consumer Information Center
Department LL**



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The trashing of Umatilla County

Deputy battles illegal dumping, backyard eyesores

By SHIRLEY WENTWORTH
of the East Oregonian

HERMISTON — Something smelled bad.

An anonymous donor has already dropped off a dead calf at the popular illegal dump site off Highway 207 and Diagonal Road, on which the county recently spent several thousand dollars to clean up.

The dead calf is badly decomposed, providing a breeding site for disease.

And that's not all.

A couch, dresser, mattress, several enormous tree stumps and a mess of basic garbage are also part of the mound, inviting other pieces of trash to join them.

Glen Diehl sighed.

He's the code enforcement officer for Umatilla County. It's part of his job to patrol the county, checking out nuisance complaints.

"Without help from citizens, we're never going to solve this problem," he said.

It's an expensive problem.

"Citizens need to come forward and tell us when they see someone illegally dumping, take down license plate numbers, and tell us if they recognize where the items came from," he said.

And it's a difficult problem.

The west side of Umatilla County is pimpled and pock-marked with trash. In some areas, it's a downright acne eruption.

Diehl's first stop of the day was in one of those places. Off Quick Road, in the midst of one of the most beautiful spots on the Umatilla River,



Staff Photos by Shirley

Littered lots such as this one in the Hermiston area are the target of Umatilla County code enforcement efforts.



Umatilla County Sheriff's Deputy Glen Diehl examines an illegal dump site near Highway 207 in west Umatilla County.

is a junkyard of astounding proportions. The inhabitants of the house across the river are treated to the view.

The junkyard's owner was not at home, but a friend of his was in the shop.

This place has been on the

books for more than two years. Diehl dropped by to inform the owner that the county has received yet another complaint signed by numerous citizens, and that a lawsuit is pending because of lack of progress.

"I suppose it's those guys over there who complained," the scrap pile owner's friend said, jerking his thumb in the direction of the house across the river.

He tried to tell Diehl how much progress has been made, but Diehl didn't buy it. He's been there too many times.

Each time he makes a trip he photographs the evidence for historical documentation. Looking back through his photo album he can see

more junk is entering the place than leaving.

Diehl is surprising understanding about the problem. "We all do it some way," he said. "If you have a garage you keep some things you think you use someday and pretty soon it overflows. These are just bigger cases."

The next stop is on Cottwood Bend off Sheric Road, where a mother and daughter live among a staggering amount of squandering junk.

They were not home, but Diehl took pictures to update his files.

See Trash/

WHAT IS FLOW CONTROL??

- *Flow control: How is it implemented
- *Why flow control!?
- *What economic benefit accrue to government units from flow control?
- *Supreme court ruling that flow control is unconstitutional!
- *The franchise myth!
- *County solid waste committee in violation of L.C.D.C. guidelines for public participation, contrary to recommendations in 1974 Solid Waste Management Plan!
- *Contrary to guidelines for committee composition in county ordinance 90-07

- Part I - HISTORY - LAW - OBJECTIVES*
- II ACCOMPLISHMENTS & RESTRAINTS FOR FAILURES.*
- III OREGONS FUTURE SOLID WASTE DILEMMA.*
- IV WATER QUALITY, SOLID WASTE DISPOSAL ALONG HWYS, RIVERS, STREAM BEDS AND DRAINAGE AREAS.*

PRESS CONFERENCE ON SOLID WASTE DISPOSAL PROBLEMS IN
UMATILLA COUNTY

DATE *Sept. 17-97* TIME *10⁴⁵ A.M.*

LOCATION *E-0 Pendleton
Press. Office
J.V.W. RE.*

Problem: Increased dumping of solid waste since
elimination/closure of county/city landfills

*Increased costs to tax payers for enforcement
occasioned by the higher costs of transportation
to regional out of county landfills.

*Increased costs to tax payers/residents/business
because of lack of competition in collection, trans-
portation, use, reuse or disposal.

*Increased cost to tax payers/residents/business
because of the lack of innovation practices

*City landfill disposal methods!??

*county landfill disposal methods!??

*Private contractors disposal methods!??

*Individual property owner disposal methods!??

*Institutional disposal methods!??

*state disposal methods!??

*Increased burning of residue and solid waste,
and increased air pollution!??

*Hillside dumping and disposal of solid waste
along or in drainage way, creeks and riverbanks!??

*Lack of implementation of Senate Bill #66-1992
"The Recycling Bill" by DEQ, county and city!??

*Lack of implementation of ORS 459-015 objectives!??

*Need for additional county landfills!??

(7) In granting a collection service franchise, the city or county may:

(a) Prescribe the quality and character of and rates for collection service and the minimum requirements to guarantee maintenance of service, determine level of service, select persons to provide collection service and establish a system to pay for collection service.

(b) Divide the regulated area into service areas, grant franchises to persons for collection service within the service areas and collect fees from persons holding such franchises.

(8) The rates established under this section shall be just and reasonable and adequate to provide necessary collection service. The rates established by the city or county shall allow the person holding the franchise to recover any additional costs of providing the opportunity to recycle at the minimum level required by ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665 or at a higher level of recycling required by or permitted by the city or county. The rates shall also allow the person to recover the costs of education, promotion and notice of the opportunity to recycle provided by a person holding a franchise.

(9) Instead of providing funding for the opportunity to recycle through rates established pursuant to subsection (8) of this section, a city or county may provide an alternative method of funding all or part of the opportunity to recycle.

(10) In establishing service areas, the city or county shall consider:

(a) The policies contained in ORS 459.015;

(b) The requirements of ORS 459.250 and 459A.005 to 459A.665;

(c) Any applicable local or regional solid waste management plan approved by the department;

(d) Any applicable waste reduction plan approved by the department; and

(e) The need to conserve energy, increase efficiency, provide the opportunity to recycle, reduce truck traffic and improve safety.

(11) A city or county may further restrict competition by permitting one or more collection service franchise holders to cooperate to provide the opportunity to recycle if the city or county finds that such cooperation will:

(a) Improve collection service efficiency;

(b) Guarantee an adequate volume of material to improve the feasibility and effectiveness of recycling;

(c) Increase the stability of recycling markets; or

(d) Encourage joint marketing of materials or joint education and promotion efforts.

(12) The provisions of this section are in addition to and not in lieu of any other authority granted to a city or county. A city or county's exercise of authority under this section is not intended to create any presumption regarding an activity of the local government unit not addressed in this section. This section shall not be construed to mean that it is the policy of Oregon that other local government activities may not be exercised in a manner that supplants or limits economic competition. (Formerly 459.200; 1993 c.560 §84)

459A.100 Definitions for ORS 459A.100 to 459A.120. As used in ORS 459A.100 to 459A.120:

(1) "Domestic solid waste" includes but is not limited to residential, commercial and institutional wastes generated within this state.

(2) "Domestic solid waste" does not include:

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

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(c) Source separated recyclable material, or material recovered at the disposal site;

(d) Waste going to an industrial waste facility;

(e) Waste received at an ash monofill from an energy recovery facility; or

(f) Other material excluded by the commission in order to support the policies of ORS 459.015. (Formerly 459.292; 1993 c.560 §85)

459A.105 Policy. The Legislative Assembly finds and declares that:

(1) Domestic solid waste disposal capacity is a matter of statewide concern;

(2) The disposal in Oregon of domestic solid waste generated both outside and within Oregon will reduce the total capacity available for disposal of domestic solid waste generated in this state;

(3) The disposal in Oregon of domestic solid waste generated outside Oregon and within Oregon will add to the level of environmental risk associated with the transportation and disposal of those wastes; and

(4) It is in the best interest of the public health, safety and welfare of the people of Oregon to reduce the amount of domestic solid waste being generated in Oregon in or-

215.253 Restrictive local ordinances affecting farm use zones prohibited; exception. (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state. [1973 c.503 §8; 1983 c.826 §12; 1985 c.565 §31; 1995 c.703 §10]

215.260 [Amended by 1955 c.652 §3; repealed by 1957 s.s. c.11 §4 (215.261 enacted in lieu of 215.260)]

215.261 [1957 s.s. c.11 §5 (enacted in lieu of 215.260); repealed by 1963 c.619 §16]

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties. (1) The following uses may be established in any area zoned for exclusive farm use:

(c) The propagation or harvesting of a forest product.

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(2) The following nonfarm uses may be established subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation

215.296 Standalone for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

Demonstrate

IT has been 2 1/2 + years that
URGR has tried to obtain
& approval from DEQ and
Grantville County for a 2 1/2 year
Demonstration to test and find
a practical method of using
Farm/Ranch residues with other
materials for Composting.
Each time, their delay would be
based on frivolous questions and/or
questions we had hoped to obtain
from the Demonstration which
was also for the purpose of Land
Reclamation. After 35 to 40 letters
to each County and DEQ and
submitting over 150 to 200 answers
we realized that neither unit
of government would EVER
approve our request.
Then on Feb-9-1996 The Dolles
Stephanie Helluck approved a
54 page Demonstration/Land
Reclamation Report, and
Combined Alternate 2+3.
2-weeks later that Verbal
approval was followed by a
Letter that typified the previous
and prior 2 1/2 years of obfuscation
by DEQ - Eastern Region. J.V.T.

From ORS 215.203,

DEFINITIONS:

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. It does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (1)(e) or 321.415 (5).

permitted outright

From ORS 459.005,

DEFINITIONS:

(24) "Solid waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish; refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

Solid waste is not wood chips

(a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

other local government unit responsible for solid waste management.

[(16)] (18) "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under this chapter and ORS chapter 268.

[(17)] (19) "Periodic collection event" means the collection of household hazardous waste or conditionally exempt small quantity generator hazardous waste at a temporary facility.

[(18)] (20) "Permit" includes, but is not limited to, a conditional permit.

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

[(20)] (22) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

[(21)] (23) "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

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

[(22)] (24) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

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

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties [after serving a specific purpose] and can, therefore, be reused or recycled for [the same or other] some purpose.

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

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

[(23)] (25) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business operated under a certificate issued under ORS 822.110.

[(24)] (26) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited

to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals, infectious waste as defined in ORS 459.387 and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of [fowls or] animals.

[(25)] (27) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

[(26)] (28) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

[(27)] (29) "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

[(28)] (30) "Waste" means useless or discarded materials.

[(29)] (31) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

(32) "Yard debris" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

SECTION 7. ORS 459.015 is amended to read:

459.015. (1) The Legislative Assembly finds and declares that:

(a) The planning, development and operation of recycling programs is a matter of statewide concern.

(b) The opportunity to recycle should be provided to every person in Oregon.

(c) There is a shortage of appropriate sites for landfills in Oregon.

(d) It is in the best interests of the people of Oregon to extend the useful life of [existing] solid waste disposal sites by encouraging recycling and reuse of materials [whenever recycling is economically feasible], and by requiring solid waste to undergo volume reduction through recycling and reuse measures before disposal in landfills to the maximum extent feasible. Implementation of recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the

(E) Fifth, to recover energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and

(F) Sixth, to dispose of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other method approved by the department.

(b) Clearly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of this section and ORS 459.125 and 459A.005 to 459A.085.

(c) Retain primary responsibility for management of adequate solid waste management programs with cities, counties or metropolitan service districts, reserving to the state those functions necessary to assure effective programs, cooperation among cities, counties or metropolitan service districts and coordination of solid waste management programs throughout the state.

(d) Promote, encourage and develop markets first for reusable material and then for recyclable material.

(e) Promote research, surveys and demonstration projects to encourage material or energy recovery.

(f) Promote research, surveys and demonstration projects to aid in developing more sanitary, efficient and economical methods of solid waste management.

(g) Provide advisory technical assistance and planning assistance to affected persons, in the planning, development and implementation of solid waste management programs.

(h) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities.

(i) Provide for the adoption and enforcement of recycling rates and standards as well as performance standards necessary for safe, economic and proper solid waste management.

(j) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service in the field of solid waste management.

(k) Encourage utilization of the capabilities and expertise of private industry.

(L) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(m) Promote application of material or energy recovery systems which preserve and enhance the quality of air, water and land resources. [1971 c.648 §1; 1975 c.239 §2; 1983 c.729 §15; 1989 c.541 §1; 1991 c.385 §7; 1993 c.560 §3]

459.017 Relationship of state to local governments in solid waste management.

(1) The Legislative Assembly finds and declares that:

(a) The planning, location, acquisition, development and operation of landfills is a matter of statewide concern.

(b) Local government units have the primary responsibility for planning for solid waste management.

(c) Where the solid waste management plan of a local government unit has identified a need for a landfill, the state has a responsibility to assist local government and private persons in establishing such a site.

(2) It is the intent of the Legislative Assembly that any action taken by the Environmental Quality Commission to establish a landfill under ORS 459.049 be recognized as an extraordinary measure that should be exercised only in the closest cooperation with local government units that have jurisdiction over the area affected by the proposed establishment of a landfill. [1979 c.773 §2; 1993 c.560 §4]

459.020 [1967 c.248 §1; repealed by 1971 c.648 §33]

STATE ADMINISTRATION

459.025 General powers and duties of department. Subject to policy direction by the commission, the department:

(1) Shall promote and coordinate research, studies and demonstration projects on improved methods and techniques in all phases of solid waste management.

(2) May apply to and receive funds from the Federal Government and from public and private agencies to carry out studies, research and demonstration projects in the field of solid waste management.

(3) May enter into agreements with the Federal Government, state agencies, local government units and private persons to carry out ORS 459.005 to 459.105, 459.112 to 459.121 and 459.205 to 459.385. [1971 c.648 §4; 1973 c.835 §136; 1993 c.560 §5]

459.030 [1967 c.428 §3; 1969 c.593 §43; repealed by 1971 c.648 §33]

459.035 Assistance in development and implementation of solid waste management plans and practices and recycling programs. Consistent with ORS 459.015 (2)(c), the department shall provide to state

agencies, local government units and persons providing collection service, advisory technical and planning assistance in development and implementation of effective solid waste management plans and practices, implementation of recycling programs under ORS 459.250, 459A.005 to 459A.120 and 459A.600 to 459A.620, and assistance in training of personnel in solid waste management. The department shall report to the Legislative Assembly from time to time on further assistance that will be needed to develop, implement and administer effective solid waste management programs or recycling programs. The department shall assist in surveys to locate potential disposal sites. The department may request the assistance of other state agencies. [1971 c.648 §3; 1983 c.729 §16; 1993 c.560 §6]

459.040 [1967 c.428 §4; 1969 c.593 §44; repealed by 1971 c.648 §33]

459.045 Rules. (1) The commission shall adopt reasonable and necessary solid waste management rules governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, transmission of diseases to humans or animals, air pollution, pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

(b) Location of disposal sites, giving consideration to:

(A) The adaptability of each disposal site to the population served, topography and geology of the area and other characteristics as they affect protection of ground and surface waters and air pollution;

(B) Minimum standards of design, management and operation of disposal sites; and

(C) Salvage operations at disposal sites.

(c) Construction, loading and operation of vehicles used in performing collection service to prevent the contents of the vehicles from dropping, sifting, leaking or escaping onto public highways.

(d) Definition of other "wastes" subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.385 and 459.992 (1) and (2).

(e) Closure and post-closure maintenance of land disposal sites.

(2) The commission may by rule:

(a) Exempt a class of land disposal sites other than those receiving domestic solid waste from the requirement to provide financial assurance under ORS 459.272; or

(b) Establish criteria that a land disposal site must meet to be exempted from the requirement to provide financial assurance under ORS 459.272.

(3) The commission shall adopt rules on other subjects as necessary to carry out ORS 459.005 to 459.105 and 459.205 to 459.385.

(4) The commission shall adopt rules which have modified or limited application in different geographic areas of the state when special conditions prevail in specified geographic areas. Special conditions that shall be considered include, but are not limited to, climatic conditions, zone classification of the area, population characteristics, methods and costs of solid waste management, solid waste management plans and other conditions in the area. Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105 and 459.205 to 459.385.

(5) All rules adopted under this section shall be adopted after public hearing and in accordance with ORS 183.310 to 183.550.

(6) Unless a rule adopted under this section is adopted pursuant to the authority granted by ORS 183.335 (5), the commission shall mail copies of the proposed rules to all persons who have requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by subsection (5) of this section. [1971 c.648 §5; 1973 c.835 §137; 1981 c.709 §2; 1983 c.766 §6; 1993 c.560 §§7,7a]

459.047 Landfill assistance from department; solid waste disposal site certificate for landfill; effect of issuance. Upon request by a city or county responsible for implementing a department approved solid waste management plan which identifies a need for a landfill, and subject to policy direction by the commission, the Department of Environmental Quality shall:

(1) Assist the local government unit in the establishment of the landfill including assisting in planning, location, acquisition, development and operation of the site.

(2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a landfill within the boundaries of the requesting local government unit. Subject to the conditions set forth in the permit, any permit for a landfill authorized by the Environmental Quality Commission under this subsection shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the landfill, subject only to condition of the site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the

permit, license or certificate. [1979 c.773 §3; 1993 c.560 §8]

459.049 Mandated landfills in certain counties; establishment by state. (1) Upon its own motion or upon the recommendation of the department, the Environmental Quality Commission may determine that a landfill within the counties of Marion, Polk, Clackamas, Washington or Multnomah must be established in order to protect the health, safety and welfare of the residents of an area for which a local government solid waste management plan has identified the need for a landfill. In making its determination on the need for a landfill or, where applicable, on the location of a landfill, the commission shall give due consideration to:

(a) The legislative policy and findings expressed in ORS 459.015, 459.017 and 459.065, and particularly the policy that action taken under this section be exercised in cooperation with local government;

(b) The provisions of the solid waste management plan or plans for the affected area;

(c) Applicable local government ordinances, rules, regulations and plans other than for solid waste management;

(d) The statewide land use planning goals as defined in ORS 197.015;

(e) The need for a landfill;

(f) The availability and capacity of alternative disposal sites or material or energy recovery facilities;

(g) The time required to establish a landfill;

(h) Information received from public comment and hearings; and

(i) Any other factors the commission considers relevant.

(2) If the commission makes a determination under subsection (1) of this section that there is a need for a landfill within a plan area, the commission may issue an order directing the local government unit responsible for implementing the plan to establish a landfill within a specified period of time. The order may specify a time schedule for the completion of the major elements required to establish the site. A local government unit directed to establish a landfill under this section may request assistance from the department or request that the department establish the disposal site as provided in ORS 459.047.

(3) If the commission determines that the establishment of a landfill ordered by the commission under subsection (2) of this section is not being accomplished or that the completion of major elements has fallen be-

hind the time schedule specified in the order, the commission may direct the department to establish the landfill or complete the establishment of the landfill undertaken by the local government unit. The commission may direct the department to establish or complete the establishment of a landfill under this section only if the commission finds that:

(a) The action is consistent with the statewide planning goals relating to solid waste management adopted under ORS chapters 195, 196 and 197 and any applicable provisions of a comprehensive plan or plans; and

(b) The responsible local government unit is unable to establish the landfill ordered by the commission under subsection (2) of this section.

(4) If the commission directs the department to establish or complete the establishment of a landfill under subsection (3) of this section, the department may establish the site subject only to the approval of the commission and the provisions of the solid waste management plan adopted for the area and in consultation with all affected local government units. Notwithstanding any city, county or other local government charter or ordinance to the contrary, the department may establish a landfill under this subsection without obtaining any license, permit, franchise or other form of approval from a local government unit. [1979 c.773 §4; 1983 c.827 §54; 1985 c.565 §74; 1993 c.560 §9]

459.050 [1967 c.428 §5; 1969 c.593 §45; repealed by 1971 c.648 §33]

459.051 Procedural rules. In accordance with the requirements of ORS 183.310 to 183.550 and after public hearing, the commission shall adopt rules:

(1) To establish a procedure for local government units to request assistance from the department in the establishment of a landfill under ORS 459.047, and to give notice of such requests.

(2) To establish a procedure for obtaining public comment on determinations of need for a landfill made by the commission under ORS 459.049.

(3) To provide for public hearings in the area affected by a proposed landfill to be established by the department under ORS 459.049. [1979 c.773 §5; 1993 c.560 §10]

459.053 Powers of department regarding landfills. Subject to policy direction by the commission in carrying out ORS 459.017, 459.047 to 459.065, 459.245 and 468.195 to 468.260, the department may:

(1) By mutual agreement, return all or part of the responsibility for development or operation of the landfill to the local govern-

ment unit within whose jurisdiction the landfill is to be established, or contract with the local government unit to establish the landfill.

(2) To the extent necessary, acquire by purchase, gift, grant or exercise of the power of eminent domain, real and personal property or any interest therein, including the property of a public corporation or local government unit.

(3) Lease and dispose of real or personal property.

(4) At reasonable times and after reasonable notice, enter upon land to perform necessary surveys or tests.

(5) Acquire, modify, expand or build landfills.

(6) Subject to any limitations in ORS 468.195 to 468.260, use money from the Pollution Control Fund created in ORS 468.215 for the purposes of carrying out ORS 459.047 and 459.049.

(7) Enter into contracts or other agreements with any local government unit or private person for the purposes stated in ORS 459.065 (1).

(8) Accept gifts, donations or contributions from any source to carry out the provisions of ORS 459.047 and 459.049.

(9) Establish a system of fees or user charges to fund the operation and maintenance of a department owned landfill and to repay department costs. [1979 c.773 §6; 1983 c.826 §22; 1993 c.560 §11]

459.055 Landfills in farm use areas; waste reduction programs. (1) Before issuing a permit for a landfill established after October 3, 1979, in any area zoned for exclusive farm use, the department shall determine that the site can and will be reclaimed for uses permissible in the exclusive farm use zone. A permit issued for a landfill in an exclusive farm use zone shall contain requirements that:

(a) Assure rehabilitation of the site at the termination of the use for solid waste disposal to a condition comparable to its original use;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the landfill on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

(2) Before issuing a permit for any disposal site, including a landfill established under ORS 459.047 or 459.049, the department shall require:

(a) Any person who sends more than 75,000 tons of solid waste a year to the disposal site to prepare a waste reduction program accepted by the department; and

(b) That any contract or agreement to dispose of more than 75,000 tons of out-of-state solid waste a year in an Oregon disposal site established under ORS 459.047 or 459.049 provides for a waste reduction program accepted by the department.

(3) A disposal site subject to the requirements of subsection (2) of this section may not accept solid waste from any person disposing of solid waste originating in any local government unit that does not have a waste reduction program or a contract accepted by the department. The department shall review the local government programs and the contract programs in the manner provided in subsection (6) of this section. A waste reduction program shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and energy recovery;

(b) An opportunity to recycle that:

(A) Includes a program for recycling that achieves a recovery rate at least equivalent to the recovery rate achieved in a comparable county in Oregon; and

(B) Meets or exceeds the requirements of ORS 459.250 and 459A.005 to 459A.085;

(c) A timetable for implementing each portion of the waste reduction program;

(d) Energy efficient, cost-effective approaches for waste reduction;

(e) Procedures commensurate with the type and volume of solid waste generated in the area; and

(f) Legal, technical and economical feasibility.

(4) If the waste reduction program required under subsection (2) of this section is not implemented, the commission may, by order, direct such implementation, or may prohibit the disposal site from accepting waste from the person responsible for preparing the waste reduction program.

(5) The department shall report to each Legislative Assembly on the use made of this section, the level of compliance with waste reduction programs and recommendations for further legislation.

(6) A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed in subsection (3) of this section.

(7) Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted.

(8) No contract or agreement for the disposal of solid waste made between an owner or operator of a disposal site and a person shall affect the authority of the commission to establish or modify the requirements of an acceptable waste reduction program under subsection (2) of this section.

(9) Notwithstanding any other provision of law relating to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of such solid waste in Oregon. [1979 c.773 §8a; 1989 c.541 §2; 1991 c.765 §8; 1993 c.560 §12]

459.057 Department to limit wastes allowed in landfills in certain counties. (1) Before issuing a permit for a landfill to be established under ORS 459.047 or 459.049 or for a disposal site established as a conditional use in an area zoned for exclusive farm use within the boundaries of Clackamas, Marion, Multnomah, Polk or Washington County, the department shall require that, to the extent legally, technically and economically feasible only solid waste from transfer stations or solid waste residues from material or energy recovery facilities will be deposited in the disposal site. As used in this section, "transfer station" means a site established for the collection and temporary storage of solid waste pending shipment in a compact and orderly manner to a disposal site.

(2) Nothing in this section shall be construed to prohibit the department from allowing other solid waste to be deposited in the disposal site in order to protect the public health and safety or the waters of this state during a temporary emergency condition. [1979 c.773 §86; 1993 c.560 §13]

459.060 [1967 c.428 §6; 1969 c.593 §46; repealed by 1971 c.648 §33]

LOCAL ADMINISTRATION

459.065 State preemption; intergovernmental agreements authorized. (1) The Legislative Assembly finds that solid waste disposal is a matter of statewide concern. The Legislative Assembly finds that carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.385 and 459A.005 to 459A.085 by local government units is a matter of statewide concern. In carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.385 and 459A.005 to 459A.085, a local government unit may, as one of its author-

ized functions, enter into any agreement which the local government unit determines is desirable, for any period of time, with the department, any local government unit or other person:

(a) For joint franchising of service or the franchising or licensing of disposal sites.

(b) For joint preparation or implementation of a solid waste management plan.

(c) For establishment of a joint solid waste management system.

(d) For cooperative establishment, maintenance, operation or use of joint disposal sites, including but not limited to energy and material recovery facilities.

(e) For the employment of persons to operate a site owned or leased by the local government unit.

(f) For promotion and development of markets for energy and material recovery.

(g) For the establishment of landfills including site planning, location, acquisition, development and placing into operation.

(2) Authority granted by ORS 459.005 to 459.105, 459.205 to 459.385 to a local government unit is specific and is in no way intended to restrict the general authority granted under ORS 190.010 to 190.030, 190.110, 203.010 to 203.075, 203.111, 203.145 to 203.810 and ORS chapters 268, 450 and 451 and is in addition to and not in lieu of such authority. [1971 c.648 §14; 1973 c.835 §138; 1975 c.239 §3; 1977 c.95 §6; 1979 c.773 §7; 1993 c.560 §14]

459.070 [1967 c.428 §7; 1969 c.593 §47; repealed by 1971 c.648 §33]

459.075 Acquisition of property for disposal sites by cities and counties. Subject to the requirements of ORS 459.005 to 459.105, 459.205 to 459.385, a county or a city may acquire real or personal property by lease, purchase, exercise of the power of eminent domain or otherwise for the purpose of operating and maintaining disposal sites. With the consent of the city involved, a county may acquire property for a site within the limits of a city. With the consent of the county having jurisdiction, a city may acquire property for a site outside the limits of the city. [1971 c.648 §15]

459.080 [1967 c.428 §8; repealed by 1971 c.648 §33]

459.085 County authority outside cities; effect of annexation; interagency agreements. (1) With respect to areas outside of cities, a board of county commissioners may, by ordinance or by regulation or order adopted pursuant to an ordinance or regulation:

(a) Prescribe the quality and character of and rates for collection service, and the minimum requirements to guarantee maintenance of service.

(b) Divide the unincorporated area into service areas, grant franchises to persons for collection service within service areas, and establish and collect fees from persons holding franchises.

(c) Prescribe a procedure for issuance, renewal or denial of a franchise to a person providing or proposing to provide collection service.

(d) Establish an agency to be responsible for investigation or inspection of collection service proposed or provided under a franchise or proposed franchise, such agency to have authority to order modifications, additions or extensions to the physical equipment, facilities, plan or service as shall be reasonable and necessary in the public interest.

(e) Regulate solid waste management.

(2) With respect to areas outside of cities, a board of county commissioners may adopt ordinances to provide for:

(a) The licensing of disposal sites as an alternative to franchising of service.

(b) The regulation, licensing or franchising of salvage businesses or the operation of salvage sites where such action is found necessary to implement any part of a solid waste management plan applicable in the county. Such an ordinance shall grant the same authority and prescribe the same procedures as provided for other franchises or licenses under this section.

(3)(a) When a city annexes all or a portion of a service area previously franchised by a county, the city, county and affected persons or local government units providing collection service shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the city, to protect the quality of service within the city and to protect the rights of affected persons or local government units providing collection service.

(b) A city and county may, with permission of the city collector and the county franchisee, provide by prior agreement that an area, or portion of an area, annexed by the city but previously franchised by the county shall continue to be served by the county franchisee for at least 10 years after the effective date of the annexation.

(c) A city with permission of the city collector, or a city-regulated collector with permission of the city, may provide by prior agreement that an area, or portion of an area, annexed by the city but previously served by a collector located in an unfranchised area of the county shall continue to be served by the county collector or shall be transferred to the city collector with com-

pensation from the city collector to the county collector.

(d) Where no agreement has been reached under paragraph (a), (b) or (c) of this subsection, upon annexation of territory to a city the county-franchised collector may continue to serve the annexed area until:

(A) The county collector is compensated by the city collector for the collection service in the annexed area, which compensation shall be the sum of the fair market value of the service at the time of the annexation and applicable severance damages; or

(B) The expiration of the longer of the county franchise term or the term of the current city license, contract or franchise regulating solid waste collection. However, the term shall not include any renewals or extensions made after the effective date of the annexation and the total term shall not exceed 10 years after the effective date of the annexation.

(e) Nothing in this subsection shall restrict the right of a county to franchise, license or regulate solid waste management or any portion thereof as otherwise provided in subsections (1) and (2) of this section. [1971 c.648 §16; 1977 c.639 §1; 1993 c.357 §1; 1993 c.560 §15a]

459.095 Restrictions on authority of local government units. (1) No ordinance, order, regulation or contract affecting solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with rules adopted by the commission under ORS 459.045 or 459A.025 or with a solid waste management plan or program adopted by a metropolitan service district and approved by the department or any ordinances or regulations adopted under such plan or program.

(2) Solid waste management regulations adopted by a sanitary district or sanitary authority shall be limited to regulations supplemental to the rules adopted by the commission under ORS 459.045 or 459A.025 and necessary to meet special local conditions. [1971 c.648 §17; 1973 c.835 §139; 1977 c.95 §7; 1993 c.560 §16]

459.105 Regulations on use of disposal sites. A local government unit may regulate the use of each disposal site owned or operated by the local government unit, governing the volume or type of solid wastes that will be received at the site and the particular class of person that may use the site. [1971 c.648 §18; 1993 c.560 §17]

459.108 Civil penalty to enforce ordinance prohibiting action described in ORS 164.775, 164.785 or 164.805. (1) A city or county may impose a civil penalty to enforce the requirements of an ordinance that

prohibits any action or conduct described in ORS 164.775, 164.785 or 164.805.

(2) An ordinance described in subsection (1) of this section may establish a maximum or minimum amount for the civil penalty imposed under the ordinance for each violation. The total amount of the civil penalty may be increased to include all of the costs incurred by the city or county in removing the refuse or offensive substance unlawfully placed on property and in eliminating the effects of such unlawful placement.

(3) A civil penalty imposed for violation of an ordinance prohibiting any action or conduct described in ORS 164.775, 164.785 or 164.805 shall be an alternative to criminal enforcement of the ordinance. A city or county that commences and maintains a civil action to collect such a civil penalty from any person shall not cause a criminal prosecution to be commenced or maintained against that person for the same violation of the ordinance.

(4) When a city or county ordinance prohibits any action or conduct that is described in ORS 164.775, 164.785 or 164.805, a name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation of the ordinance constitutes rebuttable evidence that the person whose name appears on the items has violated the ordinance. However, the rebuttable presumption created by this subsection exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope. [1991 c.653 §7]

Note: 459.108 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.110 [1969 c.509 §1; repealed by 1971 c.648 §33]

459.111 [1991 c.653 §11; repealed by 1993 c.560 §107]

REGIONAL ADMINISTRATION

459.112 Findings; fee for disposal of solid waste generated outside region. (1) The Legislative Assembly finds:

(a) Solid waste management is a regional concern;

(b) Management of solid waste among the states of Idaho, Oregon and Washington and those counties in California and Nevada that share a common border with Oregon is interconnected and decisions related to solid waste management in one state can affect solid waste management in the other two states;

(c) It is appropriate that solid waste be managed on a regional basis; and

(d) It is not Oregon's responsibility to manage solid waste for states outside the region.

(2) Therefore, the Legislative Assembly finds it is appropriate that Oregon impose a fee for the disposal of solid waste in Oregon that was generated outside the region in order to:

(a) Compensate Oregon for managing solid waste for states outside the region; and

(b) Assure that the disposal of solid waste in Oregon is not less expensive for a state outside the region than for the state to dispose of the solid waste within the state. [1991 c.765 §3]

459.114 Out-of-region fee differential. When allowed by federal law, the Legislative Assembly may assess an out-of-region fee differential that is consistent with the policy set forth in ORS 459.112. [1991 c.765 §4]

459.116 Intent not to limit right to ban disposal of solid waste generated out of region. Nothing in this chapter or ORS 459A.005 to 459A.665, 459A.675 to 459A.685, 459A.750 or 459A.775 to 459A.785 shall be interpreted to restrict any right the State of Oregon may have to ban solid waste from outside the region. [1991 c.765 §5; 1993 c.560 §18]

459.118 Study of transportation routes and modes of transportation for transport of out-of-region solid waste. Before any disposal site operator enters into a new contract to receive more than 75,000 tons per year of solid waste from outside the region, the person proposing to transport the solid waste to the disposal site shall conduct or have conducted a study of the alternative transportation routes and modes of transportation that may be used to transport the solid waste to the disposal site. The study conducted under this section shall be made available, upon request, to any person. [1991 c.765 §6]

459.120 [1969 c.509 §2; 1971 c.648 §29; repealed by 1981 c.81 §3]

459.121 Legislative committee hearing on transportation study. Upon completion of the study required under ORS 459.118, the appropriate legislative committee shall conduct a hearing on the proposed contract and transportation study to allow the public to discuss the adequacy of the study and the best transportation route and mode to be used to transport the solid waste under the proposed contract. [1991 c.765 §7]

MARION COUNTY AUTHORITY

459.125 Authority of Marion County over products or by-products of county sites. (1) Subject to ORS 459.145 and the requirements of ORS 459.005 to 459.426 and

VIRGINIA

REGULATIONS BEING REVISED

The Department of Environmental Quality, Waste Management Division, is working on draft regulations to address vegetative waste management and yard waste composting. The state already has yard waste composting regulations; they've been reopened in order to add vegetative waste, which includes stumps and heavy brush.

On May 23, the Waste Management Board approved the revised regulations. When they are approved by the Department of Planning and Budget and the Secretary of Natural Resources, then a public comment period will begin, including hearings.

Land clearing and mining activities are exempt from these rules. On-site composting is exempt if it accepts no off-site waste and uses the compost on-site. Farms accepting up to 6000 cubic yards per year of yard waste generated off-site, and using the compost on-site, are exempt. Others may accept up to 500 cubic yards per year of yard waste generated off-site, but may not be compensated for it. Mulch is also exempt if

COMPOSTING RULES

June 1995

WASHINGTON

WORK BEGINS ON FACILITY GUIDELINES

The Department of Ecology has formed an Advisory Committee to work on Compost Facility Guidelines; they expect to produce a final draft late in 1996.

END USE GUIDELINES TO BE TESTED

Four draft end use guidelines have been issued. They are: Soil Amendment for Reclamation or Turf/Agronomy, Soil Amendment for Ornamental Horticulture, Garden and Plant Mulch for Horticulture, and Amendment to Blended Topsoil for Ornamental Horticulture and Turf/Agronomy.

The guidelines are final, and will now be field-tested with compost producers and users.

Composting Council

Alexandria Va. 22314

June 1995

MINNESOTA

YARD WASTE COMPOSTING COUNTS (ONCE AGAIN) TOWARD RECYCLING GOAL

Last year the Minnesota legislature decided to disallow the counting of yard waste composting toward the state's recycling goal. SF 462, signed by the Governor June 1, restores yard waste composting to the recycling equation, as a minor factor. Urban and rural county recycling goals are each increased by 5 percent, to 35 and 50 percent, respectively. 3 percentage points are given to counties with yard waste education programs and drop-off or curbside yard waste collection. An extra 2 points are given for activities likely to increase source reduction of yard waste, including on-site composting. Three points — apparently not available to composting — are given to an approved source reduction program which, if it can demonstrate waste reduction beyond 3 percent, can count the extra percentage points against its recycling goal.

NEW YORK

DRAFT REGULATIONS

Yard waste/manure composting facilities which take in up to 10,000 cubic yards annually, if no more than a third is grass clippings, may seek registration rather than a full permit. A facility composting food processing waste may also register. Facilities composting 1000 cubic yards per year or less of source-separated organic waste are now exempt. A new section regulates source-separated organic waste composting facilities. Yard waste composting facility regulations for runoff, odor and bioaerosol control are now more

explicit. Permit requirements for research projects up to 1000 cubic yards per year are described in a new section.

Much of federal sludge regulations (Part 503) have been incorporated, including pollutant limits, and pathogen and vector reduction requirements. Some of the pollutant limits differ from Part 503 and adhere to USDA recommendations (Selenium and Molybdenum); Cadmium levels remain at the level (10 ppm) found in current New York regulations; Nickel's proposed level of 290 ppm has an unknown origin. Adding sludge or septage to the mix increases reporting requirements substantially.

The proposed rules differ from 503 very significantly for composts derived from mixed solid waste or sewage sludge, by applying cumulative loading limits to all sites where repeated application can be expected, or where a large amount will be used in one location. One of the most important parts of 503 is the definition of material good enough for unlimited distribution; the proposed regulations do not embrace that concept. Compost application rates are also limited to agronomic rates. Incoming sludge, or sludge to be used as composting feedstock, has metal limits of its own. Compost must not contain sharp objects.

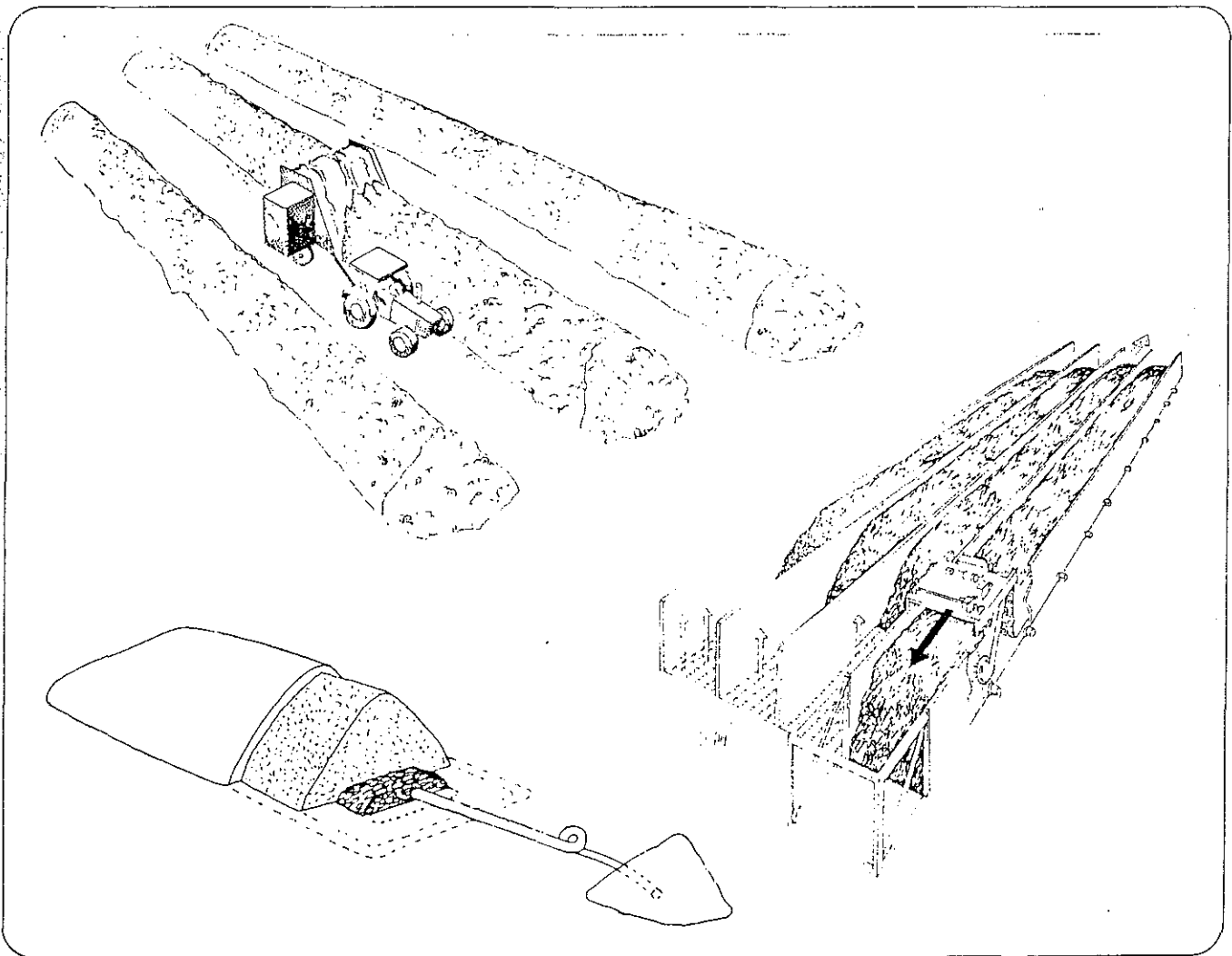
Mixed solid waste compost cannot be used on public contact areas, food and feed crops for at least the first year of the facility's operation, until a good quality record can be established. Recyclables separation and hazardous waste collection programs must be in place in the community before a mixed waste composting facility can operate.

Distribution of compost made from source-separated organic waste is also limited to agronomic rates, but yard waste compost distribution is not. Yard waste composting facilities do not have specific setback distance requirements; these will be set by the Department on a case-specific basis.

Hearings were held in April; the public comment period ended May 31.

Because of Governor Pataki's moratorium on new regulations, formal revisions to these regulations have been suspended. The Department of Environmental Conservation is accepting

On-Farm Composting Handbook



Northeast Regional Agricultural Engineering Service


 Cooperative Extension

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Credits

Portions of the material on grinders and shredders in chapter 5 were taken from *Yard Waste Management: A Planning Guide for New York State* by Richard, Dickson, and Rowland. A portion of the discussion on screens in chapter 5 was taken from *Composting Fish By-Products: A Feasibility Study* by Brinton and Seekins. Special thanks must go to the farmers and composters who provided most of the real-world information that made the case studies in chapter 10 possible: Marvin Glaum, Glaum Egg Ranch; Elizabeth Henderson and David Stern, Rose Valley Farm; Wayne Gerster and Fred Feit, Gerster & Sons, Inc.; Karl Hammer and Nels Johnson, Moody Hill Farms; Brett Kreher, Kreher Poultry Farms; Tom Richard, Hardscrabble Farm; Gary Tennant, Cornell University Farm Services; and David Allen, Farmer Automatic of America, Inc. The authors are grateful to the compost equipment manufacturers and other commercial enterprises that gave permission for their information and illustrations to be used in developing this handbook. Chapter 1 includes a brief description of parasitic protozoans and the potential for these pathogens to be destroyed during the composting process. The following persons from Cornell University assisted in developing the text: Alice Pell, Associate Professor, Animal Science; Susan Wade, Director, Parasitology Division, Diagnostic Lab, New York State College of Veterinary Medicine; William Ghiorse, Associate Professor, Microbiology; Lynne J. Brundage-Anguish, Research Support Specialist, Microbiology; and Keith Porter, Director, New York State Water Resources Institute.

Reviewers

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Disclaimers and Further Notes

Throughout the text, certain illustrations were developed from commercial products, and trade names and equipment manufacturers' names are used. Trade names and commercial products are used for illustrative purposes and to simplify information. They do not imply an endorsement of any particular product or a preference for a particular trade name.

Acknowledgments

continued from inside front cover

Equipment tables are provided in appendix B as further information to readers. The information in these tables was obtained from the manufacturers; no attempt was made to verify the manufacturers' claims. These lists do not include all equipment manufactured; only those manufacturers that responded to a survey are included. Mention of company names does not imply an endorsement of the product, nor is criticism implied of similar products which are not mentioned.

The authors have listed specific journals, books, and articles in this handbook. These publications will be useful to readers who want to maintain an awareness of new developments in composting technology. No endorsement of named publications is intended, nor is criticism implied of similar publications which are not mentioned.

Address lists are provided in appendix E for state environmental agencies and regional offices of the Environmental Protection Agency (EPA). Every attempt was made to verify the addresses of these agencies; however, absolute accuracy cannot be guaranteed. In addition, no guarantee is made that these agencies will be able to provide answers to specific questions that readers may have.

Address lists are provided in appendix B for temperature probe distributors and equipment manufacturers. This information is provided as a service to readers and was obtained from the manufacturers. No endorsement of these companies or their products is intended, nor is criticism implied of similar companies or products which are not mentioned.

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Introduction

Composting is a biological process in which microorganisms convert organic materials such as manure, sludge, leaves, paper, and food wastes into a soil-like material called compost. It is the same process that decays leaves and other organic debris in nature. Composting merely controls the conditions so that materials decompose faster.

Composting and the use of compost offer several potential benefits including improved manure handling, enhanced soil tilth and fertility, and reduced environmental risk. The composting process produces heat, which drives off moisture and destroys pathogens and weed seeds. With good management, it produces a minimum of odors.

Compost is quite different from the original materials that it was derived from. It is free of unpleasant odors, is easy to handle, and stores for long periods of time. Compost has a variety of uses which make it a valuable and saleable product. For all of these reasons, composting is attracting the attention of farmers, waste-generators, public officials, and environmentalists.

Agriculture is well-suited to composting. The amount and nature of farm wastes, the availability of land, and the benefits which compost brings to soil make farms an ideal place to practice composting. Anyone familiar with basic agricultural principles should have little difficulty grasping the technology of composting. Often the equipment needed already exists on the farm.

Composting is not a new technology, nor is it new to agriculture. Written references of deliberate composting can be found in the Bible. Farmers in eighteenth- and nineteenth-century America practiced composting. A century ago, composting methods and speed differed little from the decomposition of organic materials which occurs naturally. It wasn't until the twentieth century, beginning with the Indore method in India, that scientific principles were applied to composting, speeding the process with selected materials, mechanical devices, and specific methods of constructing composting piles. However, by this time, farming had also become more scientific. Mechanization, chemical fertilizers, and specialization changed farming. Compost was perceived to be unnecessary,

and waste disposal was not yet a major problem. As a result, composting largely disappeared from farms.

Later in this century, interest in composting shifted to municipalities, where it offered a means to treat solid waste and sewage sludge. Now, with shrinking landfill space and increasing concern about the environment, composting is becoming popular. Both the number and variety of applications have increased. Composting is now seen as a way to turn problem materials such as sewage sludge, municipal solid wastes, and agricultural wastes into a valuable product which can be recycled back to the land.

This handbook presents a thorough overview of composting as it is practiced on the farm. It explains how to produce, use, and market compost. The information is intended to help farmers decide whether composting or the use of compost is appropriate for their farm. For waste producers, environmental regulators, and public health officials, the handbook provides information about agricultural composting and what can reasonably be accomplished.

Table 1.1
Benefits and drawbacks of on-farm composting

Benefits of composting	Drawbacks of composting
Excellent soil conditioner	Time and money involved
Saleable product	Land required for operations
Improves manure handling	Possibility of odors
Improves land application	Weather interferes with composting
Lowers risk of pollution and nuisance complaints	Marketing is necessary
Pathogen destruction	Diversion of manure and crop residues from cropland
Bedding substitute	Potential loss of nitrogen in manure
May reduce soilborne plant diseases	Slow release of nutrients in compost
Possible revenue from processing or tipping fees	Risk of being considered a commercial enterprise

3. The heat generated by the composting process reduces the number of weed seeds contained in the manure.

Lower Risk of Pollution and Nuisance Complaints

On a growing number of farms, manure is more of a liability than an asset. Disposal of manure is a problem where feed is not grown on the farm, when previously rented land is lost, or when herd size has increased beyond the farm's capacity to support it. Odor complaints are common in populated areas. Other concerns include runoff from manure spread on frozen ground and *nitrate contamination* of wells.

Composting has the potential to alleviate these problems. Disposal is less of a problem because there is usually a demand for compost. Storage and handling qualities of compost allow it to be transported farther than manure and other raw materials, possibly out of an over-burdened watershed. A well-run manure composting operation generates fewer odors and flies. Composting also converts nutrients into forms which are less likely to leach into ground water or be carried away by surface runoff.

Pathogen Destruction

While human *pathogens* are rarely a concern in farm-generated wastes, outbreaks

of *Giardia* species and *Cryptosporidium parvum* have been reported in livestock. Both are protozoans that can cause recurrent diarrhea in humans and animals, particularly those with a weakened immune system. The protozoans are transmitted from infected animals as dormant cysts in fecal material. The cysts persist in the environment even under adverse conditions.

Livestock can be infected with these parasites by ingesting feed or water contaminated by fecal matter from infected animals, either domestic or wild. Young animals are more likely to become infected because of current management practices that group young animals in pens. They are also more likely to show clinical signs of infection.

When an animal has diarrhea because of these protozoans, the manure has high numbers of the protozoan cysts. Animals that do not show signs of infection may carry the protozoans and shed the cysts in their feces.

The protozoans are killed by exposure to a temperature of 140°F for thirty minutes. While temperatures within the compost pile can reach 140°F, material near the pile surface may not. Turning the pile improves the potential for all material to reach the required temperature.

Literature suggests that exposure to temperatures lower for several days may kill the protozoans. More research is needed to develop specific guidelines for reducing the protozoan populations during the composting process.

Bedding Substitute

Compost has been used for bedding in livestock barns, and experience has shown that it is generally a safe and effective material.

Disease Suppression

Properly prepared compost has been shown to reduce soilborne plant diseases and the use of chemical controls. The disease-suppressing qualities of compost are beginning to be widely recognized and appreciated.

Processing or Tipping

The current waste disposal crisis has led waste generators searching for alternative disposal methods. This is an opportunity for farmers to reduce tipping fees by composting certain types of waste materials. The fee for accepting waste materials is referred to as a tipping fee.

Some municipal and industrial wastes actually improve a farm's soil. Most manures need to be mixed with dry materials that are high in carbon. Leaves, newspaper, sawdust, bark, and shaving are good for this purpose. Moist materials like manure and food processing wastes can be composted with dry farm materials like straw. Some off-farm materials and *yard wastes* can be composted, taking advantage of the farm's equipment.

Composting off-farm wastes should be considered cautiously. First, it can be difficult to capture. Alternative off-farm wastes often exist in large quantities. Second, waste re-

difficult to handle or have the potential to create nuisances. A high tipping fee usually means that the material is more likely to be troublesome.

Composting off-farm wastes might lead to extra processing at the composting site, odor problems and odor control measures, resistance from neighbors, and more restrictive environmental regulations. The impact on the quality and value of the compost product must also be considered since the raw materials can determine the compost's market value and the concentration of contaminants (such as heavy metals) may affect its use.

The Drawbacks

Drawbacks to on-farm composting include time and money, odor, weather, marketing, diversion of manure and crop residues from cropland, potential loss of nitrogen, slow release of nutrients, and risk of losing farm classification.

Time and Money

Like any other operation, composting requires equipment, labor, and management. The initial investment for a composting operation can be very low, if existing farm equipment and facilities are used. This approach is fine where the volume of material is relatively small, but most medium- to large-scale farms have found that using only existing equipment requires too much labor. Many farm composters have found it necessary to purchase special composting equipment. With special equipment, it could cost as little as \$10,000 or well over \$100,000 to start a farm composting operation, depending on the equipment purchased.

Land

The composting site, storage for raw material, and storage for finished compost can occupy a considerable area of land and sometimes building space.

Odor

To say that composting is free of odors is

misleading. Although the end products of the process itself are not odorous, the materials that are being composted sometimes do create offensive odors. Until they begin to compost, active materials like manure, sewage sludge, and food wastes can produce odors, especially if they have been in storage for a while. Odors can also be generated if the process is mismanaged.

A sensitivity to odors is essential. Some sites, because of their location, may require odor control measures. This information does not contradict earlier statements that composting can resolve odor problems. With most raw materials, the odors from a well-managed composting operation are periodic and short lived. In most cases composting still represents an improvement over conventional methods of handling manures.

Weather

Cold weather slows the composting process by lowering the temperature of the composting material. It can also cause other problems like freezing materials and equipment. The effects of rain and snow are potentially more serious. Heavy precipitation adds water to the composting mix; snow and mud limit access to windrows. It is possible that a heavy snow fall could interrupt the operation until spring. If this occurs, an alternative method to store or dispose of the wastes is necessary.

Marketing

Selling compost involves marketing. This means searching out potential buyers, advertising, packaging, managing inventory, matching the product to the customers' desires, and maintaining consistent product quality.

Diversion of Manure and Crop Residues from Cropland

Composting manure and then selling it as compost diverts the nutrients, organic matter, and soil-building qualities of that manure from cropland. This also holds true for crop residues that are composted rather than returned to the land. Buying commer-

cial fertilizers to make up for the lost nutrients may not make good economic sense.

Potential Loss of Nitrogen

Composted manure often contains less than half the nitrogen of fresh manure. A good manure handling system conserves most of the nitrogen, so composting represents a potential nitrogen loss. However, without soil incorporation and proper storage, manure quickly loses nitrogen to the atmosphere and eventually may retain even less nitrogen than compost.

Slow Release of Nutrients

The nutrients in compost are mostly in a complex organic form and must be mineralized in the soil before they become available to plants. For example, less than 15% of the total nitrogen in compost is typically available in the first cropping season. Compared to raw manure, initial applications of compost must be greater to achieve the same nitrogen fertilization level.

However, adding enough compost to satisfy 100% of the crop's nitrogen needs in a given year may not be desirable because of the large number of trips the spreader must make. In the following years, nitrogen from previous applications will gradually become available.

Risk of Losing Farm Classification

It is possible to be too successful. If a farm sells a large amount of compost or handles off-farm wastes for a fee, neighbors and local regulators may contend that the operation is a commercial enterprise, rather than an agricultural activity. A farm could conceivably lose its status as a farm in regard to zoning or environmental regulations. Consider this carefully before establishing or expanding your composting operation. Try to determine at what point and under what conditions a farm composting operation becomes a commercial enterprise in your state or community.

11

Other Options for Waste Management and Composting

Although the focus of this handbook is farm-scale *composting*, it is important to recognize that composting is just one of several approaches that can turn both on-farm and off-farm waste materials into a farm resource. Other alternative uses for waste materials or composting techniques not discussed in the previous chapters may be more appropriate for a given farm or raw material. Like composting, these options offer a farm several potential benefits including improved handling of the farm's own waste materials, a source of nutrients and *organic matter* for farm soils, and/or possible revenue from handling off-farm wastes.

This chapter briefly reviews several waste management options so that you can better evaluate whether composting is the best approach for your farm or situation. Titles of selected references about these options are listed in the suggested readings section on pages 178–179. Full reference listings are included in the references section beginning on page 181.

Direct Land Application and Other Land-Based Methods

Direct land application is the traditional method of recycling *manures* and other farm-generated wastes. It has long been used as a treatment method for off-farm wastes as well. Like composting, it provides possible *tipping fees* and improved soil quality; yet direct land application is often less costly than composting because it involves less materials handling.

Solid and *slurry*-like materials, such as manures and sludges, are normally applied to cropland by a manure spreader or tank truck with and without soil incorporation. Dilute liquids are irrigated onto the land or applied through *infiltration* basins or allowed to flow over the land surface in a controlled manner. Liquids are also treated in aquatic land-based treatment systems such as lagoons and constructed wetlands which could possibly be located on a farm.

A growing list of waste materials are being considered for land application including *sewage sludge*, food wastes, paper, and *yard wastes*. For example, pretreated fish-processing wastes are being applied as a fertilizer to cranberry bogs via sprinkler irrigation systems. A few farms are plowing leaves or grass clippings directly into the soil without prior composting. Farmland often receives clean sewage sludge as a fertilizer supplement and source of organic matter.

In applying waste materials to cropland, consideration must be given to the timing of the application, nutrient needs of the crop, *nutrient availability* of the waste, the waste's *C:N ratio*, the need for storage, weather, and *pollution* control. Depending on the specific material, pollution control can be a major concern. Special environmental protection practices and monitoring systems may be required. For a few waste materials, regulations restrict the crops grown and future land use.

Anaerobic Digestion/ Biogas Production

Anaerobic digestion of manure is currently practiced by several farms. Anaerobic digestion occurs in the absence of oxygen. The *microorganisms* involved decompose manure or other organic material, producing an effluent plus *biogas*—a mixture of methane, carbon dioxide, and other gases. The effluent has nearly the same consistency, weight, volume, and plant nutrient content as the material entering the digester; but it has a lower potential for odor.

The production of biogas is a primary incentive for adopting anaerobic digestion. The biogas is similar to natural gas. It can be used as a fuel for heating or for generating electricity. The need for heating is seasonal and does not match the continual production of manure and biogas. Therefore, biogas is more often used to generate electricity. The electricity generated is used on farm, as needed, and the surplus is sold to the electrical utility.

Anaerobic digesters are enclosed vessels constructed of concrete or corrosion-protected steel. Mixed digesters are usually vertical cylindrical tanks (like a short silo) containing mechanical agitation. Plug-flow digesters are long concrete vessels often built in the ground with a flexible plastic membrane as a cover. Both types require a means of heating to maintain favorable temperatures inside the digester.

Unlike composting, anaerobic digestion requires little deliberate manipulation of the digested material before or during the digestion process. Raw manures by themselves are good materials for anaerobic digestion. The manure is pumped or flows by gravity into and out of the digester. On average, the manure remains in the digester for three to five weeks.

Anaerobic digestion requires less operational labor than composting. However, the digester requires management of temperature, pH, and loading rate because the process can be easily upset. Overall costs include regular maintenance for the electrical generation equipment and the capital

costs for the digester, heating, and generating equipment. The economics depend on cost of electricity being replaced on the farm and price that the farm receives for the surplus electricity.

Anaerobic digestion provides additional value because of the manure's reduced odor. The effluent can be used or stored in the same manner as raw manure with the advantages of low odor and the potential to reclaim bedding materials. Anaerobic digestion does little to solve manure-handling problems stemming from limited land for land application. The digester effluent can be composted if desired, though its carbon content and energy value are reduced.

Vermicomposting

In *vermicomposting*, or vermiculture, earthworms digest organic materials and produce castings. Worm castings are generally considered a good *soil amendment*, providing the same benefits as a high-quality *compost*. Worms are capable of breaking down a variety of organic materials including vegetated wastes, food processing wastes, sewage sludges, and manures. In addition to their value for waste management and compost production, the worms themselves have value as fish bait and potentially as a source of protein for animal feed.

Vermicomposting starts by adding the desired species of worms to a bed or pile of organic materials. The worms work their way through the bed. No physical *turning* of the bed is required. As the worms move through the bed, new material is added either to the end or in thin layer on top of the bed. The worms progressively move through the bed toward the new material, leaving behind castings which form the stable compost. As the worms vacate the decomposed sections, the composted material can be removed. Any worms remaining in the harvested compost can be screened-out and either returned to a composting bed or marketed.

The worms need a relatively moist and *aerobic* environment with low concentrations of *ammonia*. *Moisture contents* in the range of 60–90% are required. The earth-

worms also require mild temperatures, in the range of 60–85°F. To maintain *ic* conditions and limit the temperature rise (because of aerobic microbial decomposition), the bed or pile of material needs to be less than 3 feet high. In the winter, the beds must be contained in a building and perhaps heated to maintain favorable temperatures. Some degree of *porosity* is also required to allow air movement through the bed. Some raw materials may require *amendments*.

Farm-scale systems for vermicomposting have been developed. They tend to be simple systems using conventional materials-handling equipment. Little manipulation of the process is required. The worms do most of the processing work. However, labor and/or equipment is required to add material to the bed, remove composted material, separate the compost from the worms by screening, and process the compost and worms for their respective markets. Since this process occurs at low temperatures, flies are a potential problem. *Pathogen* destruction and drying are *reduced*. A drying or heating step may be required to produce the desired compost.

Recycling Wastes as Livestock Bedding and Poultry Litter

Several materials which are normally considered solid waste can be used on farms as livestock bedding or as *litter* for poultry operations. Examples of materials that have been used for this purpose include leaves, newspaper, cardboard, waste-derived compost, mixed paper, and even telephone books. When removed from the barn, the manure/bedding mixture can be applied to cropland, sold, or composted. Using these materials for bedding/litter replaces conventional materials that may be scarce or expensive. In addition, the farm might collect fees for accepting certain materials.

Waste paper has generally been deemed to be a safe bedding material, though several researchers have stopped short of giving it their whole-hearted endorsement. No seriously adverse effects have yet been found

from animals lying on or ingesting paper bedding, including those with printing inks. Nevertheless, the quality of the material and the presence of foreign materials should be strongly considered.

In most cases, paper, cardboard, and other waste bedding materials need to be *shredded* before use. Paper shredders, grinders, and forage choppers have all been used (see chapter 5). Possible problems to contend with include materials-handling, storage, dust, and waste paper littering the farmstead and neighboring area. Additional steps may be needed to sort and handle foreign materials, such as staples from cardboard boxes. If the manure/bedding mixture is to be directly land-applied, the bedding/litter material must be suitable as a soil amendment. The C:N ratio of the manure/bedding mixture should also be considered.

Home or Back Yard Composting

Home or back yard composting is composting on a small scale. Typically composting occurs in small free-standing piles or within small bins, although increasing varieties of commercial bins and rotating drums are also available. Turning is accomplished manually and, in many cases, infrequently. A pitch fork is the classic example of a turning device for home compost piles.

Home composting involves nearly the same processes and factors as those described in

chapter 2. The primary exception is that home composting normally takes place at lower temperatures. In most cases, *thermophilic* temperatures are not sustained. Although sections of home compost piles may remain hot for long periods, much of the decomposition takes place at *mesophilic* temperatures. As a result, insects, worms, and other large organisms are more active participants in the home composting pile (compared to commercial or farm-scale composting).

Home composting is not an important concern to farmers, unless it is used for garden and residential wastes. However, for environmental officials and advocates, home composting represents a means to promote recycling at the source. It offers considerable potential to reduce the amount of wastes entering the landfill. Perhaps more importantly, home composting encourages citizens to think about recycling, gets them to understand and support larger composting projects, and gives them an appreciation of what farms must do to manage soils and wastes.

Leaf and Yard Waste Composting

Leaves and other yard wastes are a special class of composting materials, because of their seasonal availability, their high C:N ratio (except grass clippings), and the relatively few environmental risks they pose. Many of the techniques and practices discussed in previous chapters of this handbook are used for leaves and yard

wastes. However, composting methods for these materials are unique in some ways and also tend to be similar from one facility to the next. In most cases, leaves and other yard wastes are composted in *passive* piles. They receive infrequent turnings and little management. Leaves may compost for nine months to three years depending on the level of management they receive.

A farm can be an ideal place for composting leaves and other yard wastes generated by municipalities and landscapers (for example, grass clippings, brush, and branches from tree pruning). Farms provide not only a large and often isolated land area to locate compost piles but also an outlet for the finished compost. Furthermore, the timing is right. On many farms, land begins to become available and chores begin to be less demanding in late autumn, just when the largest volume of leaves is collected. Composting of leaves offers farms an opportunity for tipping fees and/or a good source of organic matter for the farm's soils. It is not necessary for the farm to add its manure to these wastes or even produce manure. Leaves and yard waste materials compost well alone.

Guidelines for composting leaves and yard wastes are provided by several very good references (listed in the suggested readings section). Many of these are available from state environmental or solid waste agencies. You should contact these agencies in your particular state for both technical guidelines and regulations pertaining to leaf and yard waste composting.

June 24, 1996

Langston Marsh
Director
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Or 97204-1390

Dear Langston,

Enclosed please find our attorneys letter to Mike Johnson, Inc.; a copy of our contract with Mike Johnson, Inc.; the County's warning notice of April 18, 1996; Stephanie Hallock's letters of October 13, 1995 Feb. 15 and March 13, 1996; John Dadoly's letter of April 16, 1996; Val Toronto's letters of July 24, 1995, July 26, 1995, Dec. 18, 1995, Jan. 24, Feb. 2, Feb. 16th, March 15 and March 18, 1996 and June 24, 1996 and June 24, 1996; DEQ Fax from Peter Spendelow dated April 24, 1996; a City memo from Mike Hyde to Pete Wells dated Jan. 19, 1994 and Vera Simonton's letters of Feb. 22nd and 27th.

We are writing to formally appeal your fine as outlined in your complaint of June 7, 1996. We find the following errors in your complaint.

1. We did not allow any further deposits from the contractor after your notice of noncompliance. It was mailed on the 16th and received on the 18th or 19th. The contractor hauled after that date and we were unaware of it until today. Why wasn't the contractor notified with Mr. Dadoly's letter of March 16, 1996? We did not want anything that wasn't source separated and that could not be used in composting. You can easily see that the contractor is trying to take advantage of a poorly written contract. We would obviously not take all of his \$27,500.00 of refuse for \$3,500.00. Our intention was to only get source separated wood products and clean fill. No board action even approved the contract Mr. Toronto signed. The piles that we did not approve at the site ended up being dumped on us. We only approved two large wood chip piles. All the rest were rejected.
2. The fine should be directed at the contractor who violated our contract with him.
3. We have permission from your agency to accept source separated materials for recycling and reuse. The County has only warned us at this point. They lost our application at the point we refused to sign a release of liability form for not processing our application within the required 120 days. We have resubmitted to the County a copy of the application they misplaced for approval. The County continues to use the 1974 Solid Waste Management Plan. Recycling and agri-business is supported in the plan. It needs to be updated to protect our existing land fills.
4. The State's Solid Waste Management Plan encourages composting, recycling and land reclamation. Our proposal is in accordance with the statutes and Departments 1995-2005

Ex. 39

S.W.M. Plan recommendations and goals. Eastern region has not provided a good faith effort to our organization in attainment of the recycling goals and land filling and land reclamation. We are still waiting for your letter of support subject only to County LUC approval. The Eastern Region promised this to us in February to help us with the County approval.

5. The City of Pendleton has continued the use of the old City landfill for an undisclosed period of time, which has been continually monitored since 1995. They could have been required to clean up the entire land fill and monitor the groundwater for the next 30 years. They were never fined and allowed to merely cover the land fill and remove a token amount of waste. The City also dumps solid waste at other unpermitted sites and has not been required to obtain a solid waste permit or even control storm water runoff.

6. I was required to spend approximately \$1.6 million in cleanups on the Harris Pine sale, yet the Brownfield Park property that had the same environmental problems was conveniently given a clean bill of health when donated to the City of Pendleton.

7. Clean fill materials that are denied us are allowed at several other sites locally. We have been told that we would be fined if we hauled the same materials to our clean fill location.

8. There is no drainage way on the south side of our property and no waste in any drainage way.

9. We object to Mr. Dadoly classifying this as our second offense. The first complaint was on the old State Mental Hospital Landfill site. We have already cleaned up an old state landfill at our site. We did not dump it there.

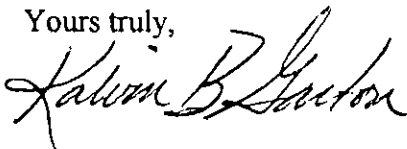
10. Our research shows that only a very small fraction of Oregon's compost operations in our state are permitted and illegal dumping has increased significantly.

11. When we filed a complaint for medical wastes being disposed of improperly, it fell on deaf ears. We had employees testimony, Sanitary Regulatory Board minutes, collection vs. Disposal receipts and wrappers picked up off the fence...not good enough! Again your agency protected the violators. There appears to be two sets of standards. One for government and another for the private sector.

We are trying to bring an environmentally safe, cost effective waste recycling, composting and disposal alternative to this state that will improve our environment. We would appreciate your support.

The State's environmental policies should be "Vision" driven, not "agency budget" driven.

Yours truly,



Kalvin B. Garton
President
Umatilla Refuse Group Cooperative

cc. Eastern Region, Pendleton Office DEQ
Eastern Region, The Dalles Office DEQ
Waste Management and Cleanup Division, DEQ
Department of Justice

Environmental Protection Agency
Environmental Quality Commission
Umatilla County District Attorney
Umatilla County Counsel
Glen Diehl, Umatilla County Sheriff's Office
City of Pendleton
Warren Taylor, Property Owner
Wal-Mart
Mike Johnson Excavation
Circle M. Construction
Dennis Hachler, Attorney
John Gilbert, Attorney
Emile Holman
Editor
Senator Gordon Smith

MAILING ADDRESS:
P.O. Box 488

DENNIS A. HACHLER
ATTORNEY AT LAW
248 S. E. 4TH STREET
PENDLETON, OREGON 97901

TELEPHONE:
(503) 276-2986
FAX: (503) 276-8007

May 31, 1996

Mike Johnson, Inc.
General Contractor
Rt. 7 Box 420
Union Loop & Brinkley Rd.
Kennewick, WA 99337

RE: Umatilla Refuse Group Cooperative

Dear Mr. Johnson,

It is my understanding that my client, Umatilla Refuse Group Cooperative, by and through it's General Manager, Val Toronto, faxed you a letter on or about May 27, 1996, concerning several loads of material placed on their property in Umatilla County, Oregon, which had not been source separated, as was required by your original contract.

I have a copy of your May 28, 1996 response to said letter.

In looking at the contract which was signed between the parties, it indicates that the materials going to be deposited upon Umatilla Refuse Group's property would be source separated.

I have now been informed that gravel was placed over the top of the loads rather than tarps to keep the refuse material from blowing out of the trucks.

In addition, I have been advised that there are thirty one (31) loads of dirt and concrete mix, which have been dumped on the wrong property, and those need to be removed immediately from that property by you or your agents.

I also understand that there are sixteen (16) loads of dirt and concrete, which have been dumped on Umatilla Refuse Co-op's land, which can not be source separated unless it is done by hand.

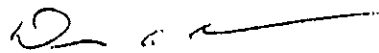
DENNIS A. HACHLER
ATTORNEY AT LAW

May 31, 1996
Umatilla Refuse Group Cooperative
Page 2

This letter is a formal demand upon your company to remove these forty seven (47) truck loads of material which cannot be source separated unless it is done piece by piece by hand.

This needs to be removed immediately. Your prompt attention to this matter is expected.

Yours truly,



Dennis A. Hachler
Attorney at Law

DAH:dmp

cc: Kal Garton
Val Toronto



Rt. 7, Box 420 • Kennewick, WA 99337
(Union Loop and Brinkley Road)

Ph. (509) 735-6039
Fax (509) 735-2402

April 11, 1996

Umatilla Refuse Group Co-Operative
219 SE 2nd St.
Pendleton, Or 97801

Re: Lump Sum agreement for construction demolition material

Subject:

1. Source separated material for use in production of wood fiber, shredding for farm use, erosion control, landscaping an/or land reclamation
2. Clean fill for land reclamation

Mike M. Johnson, Inc. agrees to pay a lump sum amount of Three Thousand Five Hundred Dollars (\$3,500.00) to the Umatilla Refuse Group Co-Operative, for accepting and receiving all source separated construction demolition material from the Wal-Mart Project at the Co-Op's 40 acre land reclamation site. The Umatilla Refuse Group Co-Operative accepts ownership and all liability for above mentioned material.

The Umatilla Refuse Co-Operative agrees to furnish all necessary labor to separate the construction demolition material.

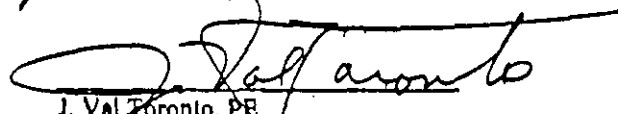
Payment to be as follows:

Advance payment of \$1,000.00 to be paid for completed work to date. The balance of \$2,500.00 to be paid within 10 days after the total amount of material is delivered to U.R.G. Co-Op's Land Reclamation site.

Thank you,

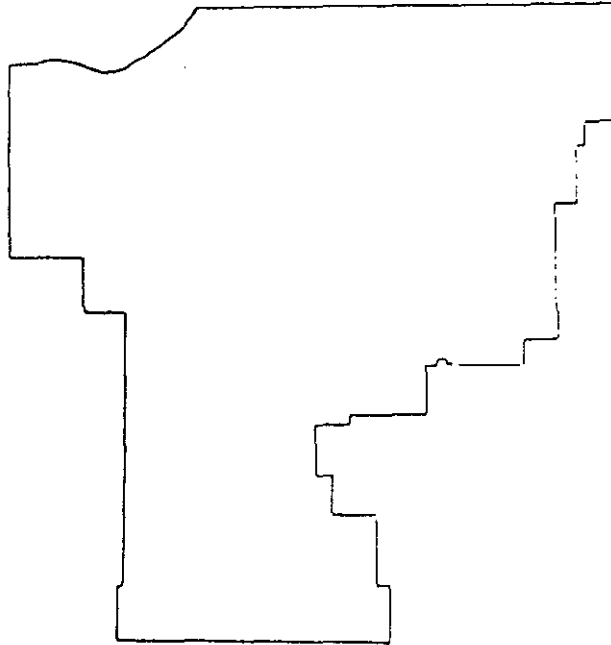

Mike M. Johnson, Inc.

4/11/96
Date


J. Val Toronto, PE
General Manager
U.R.G. Co-Op.

4/12/1996 8:55 a.m.
Date

FOR
COLLECTION AND DISPOSAL
OF
SOLID WASTE
UMATILLA COUNTY



ORDINANCE NO. 90-07

DEFINITION OF SOLID WASTE
AS STATED IN SECTION 3.02

(x) Solid Waste.

All putrescible and nonputrescible wastes, whether in solid or in liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, inoperable or unlicensed vehicles stored on the site for a period in excess of one year or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste and other discarded solid materials.

UMATILLA COUNTY SHERIFF'S OFFICE

Representing: Gordon M. Campbell, Sheriff



Glen G. Diehl
Senior deputy
Code Enforcement Officer

216 S.E. 4th St
Pendleton, OR 97801

541-278-6300

541-278-7111

No. _____

* WARNING *

UMATILLA COUNTY ORDINANCE VIOLATION

To: Taylor, Warren
(name of responsible party)
Rt. 2 Box 184
(address)
Pendleton, OR 97801
Phone: _____

You are hereby warned that unless steps are taken immediately to correct the violation(s) specified below, or to contact the Umatilla County Enforcement Officer at the phone number or address specified below, a citation will be issued and substantial penalties can be assessed against you. Correction or contact must be made no later than 04-30, 19 96.

You have been determined to be a responsible party for violations occurring on the following described property:

Site Address or Location Description: Torco Ranch, Birch creek,
Umatilla County

Assessor's Map I.D. #: 2N31000003800 / 2N31120000400

Zone: ERU

Record Owner: Taylor, Warren & Vivian

Description of Violation(s): Accumulation & Storage of Solid Waste.
Collection, Maintaining, Permitting, & Creating a
Solid Waste disposal site with out a franchise or land
use permits. Failure to apply for & obtain a franchise
and land use permits. Creating a public nuisance,
hazard to health and safety, the public.

Ordinance and Sections Violated:
Section (s) 5.00, 8.01, 8.02, 8.04, & 8.08 of the
Umatilla County Solid Waste Ordinance.

Steps which must be taken to correct the violation(s): Clean up and remove ALL
Solid Waste. Cease & Desist operation of disposal
site. Obtain land use permits and Franchise.

Potential Penalties for Violation(s): \$ 500.00 Each Violation.

Date: 04-18-96

Contact: [Signature]
Glen G. Diehl
(print name)

Umatilla County Enforcement Officer
216 S.E. 4th Street
Pendleton, Oregon 97801

(503) 278-7111 x: 300

I hereby certify that I properly served an exact copy of this warning notice on the above named responsible party in accordance with the requirement of the Umatilla County Enforcement Ordinance # 90-01.

Viva Certified Mail. [Signature]

State of Oregon
County of Umatilla

signature

Signed and sworn to or affirmed before me on _____
(date)

by _____
(name)

Notary
My commission expires: _____

October 13, 1995

EASTERN REGION
Bend Office

Mr. Kal Garton
Umatilla Recycling Group
17 SW Frazer Ave.
Pendleton, OR 97801

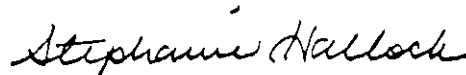
Dear Mr. Garton:

Thank you for coming by today to pick up my letter to Mr. Toronto. You asked me to follow-up on whether or not manure and wood chips could be received at your proposed compost facility.

What I told you verbally is correct: As long as both of those materials are source separated where generated and don't come to you as mixed waste, they are acceptable as compost materials.

As we discussed, if you intend to limit your facility to a few source separated materials such as these, you would not need a permit; however, from what you have submitted to date, you want to take more varieties of waste, so a Letter Authorization is the appropriate regulatory mechanism. I appreciate the packet of information you brought by on behalf of Mr. Toronto. I am forwarding it to Gerry Preston in The Dalles, as neither he nor I had seen the September 29 letter to Mike Stolz at the County.

Sincerely,



Stephanie Hallock
Administrator
Eastern Region

SH/ns

cc: Gerry Preston



2146 NE 4th Street
Suite 104
Bend, OR 97701
(503) 388-6146
DEQ/CR-101

February 15, 1996

EASTERN REGION
Bend Office

Mr. Dennis Olsen, Administrator
Umatilla County Planning Commission
216 SE Fourth
Pendleton, OR 97801

Re: Umatilla Refuse Group
SWLA Requirements
Umatilla County

Dear Mr. Olsen:

On February 9, 1996 the Department received an application for a Solid Waste Letter Authorization Permit (SWLA) from the Umatilla Refuse Group Cooperative Association (URGCA). The intent of this letter is to let you know that we received this application, explain what URGCA has proposed, explain what a SWLA permit is, and to inform you that it is our understanding an identical proposal has been submitted to the Planning Commission in order to obtain an affirmative Land Use Compatibility Statement (LUCS).

URGCA's proposal is generally to operate a composting facility at the Torco Ranch, which is located west of Pendleton. The facility would include the composting of solid waste materials such as yard debris, brush, animal manure, vegetable/fruit waste and waste paper. The proposal also includes the landfilling of clean fill materials such as rock, brick, and concrete, but these are exempted from the Department's Solid Waste Rules or, in other words, no DEQ permit is needed for "clean fill".

The Department feels that a SWLA permit would be the appropriate permit for the composting proposal at this time to allow the applicant an opportunity to demonstrate the feasibility of the operation. A SWLA is a permit issued by the Department which has a limited duration - six months, with one possible six-month extension. A longer term operation of the site or expansion of the types of solid wastes to be processed will most likely trigger the need for a more detailed permit such as a Material Recovery Facility Permit. The applicant has expressed an interest in applying for a Material Recovery Facility in the future.



2146 NE 4th Street
Suite 104
Bend, OR 97701
(541) 388-6146
DEQ/CR-101

Mr. Dennis Olsen
Umatilla County Planning Commission
February 15, 1996
Page 2

The Department is prepared to begin working with URGCA on this permit application once the application is deemed complete. Still needed (among other items) from the URGCA to make the DEQ application complete is an affirmative LUCS which the applicant must obtain from the Umatilla County Planning Commission.

If you have any further questions regarding this matter please contact John Dadoly in Pendleton at (541) 278-4616.

Sincerely,



Stephanie Hallock,
Administrator
Eastern Region

SH/cah

cc: John Dadoly, Gerry Preston; ER
J. Val Toronto; URG

March 13, 1996

Mr. Kal Garton, President
Umatilla Recycling Group
440 SW First Street
Pendleton, Or 97801

Mr. Garton:

In response to your March 11 letter, let me make it clear where the process for your facility stands:

- 1) The Department agreed at our February 9 meeting in The Dalles that Alternatives 1 and 2 proposed by the Umatilla Recycling Group (URG) are appropriate for a Solid Waste Letter Authorization (SWLA), but that a Land Use Compatibility Statement (LUCS) must be issued by Umatilla County before a SWLA can be prepared by DEQ.
- 2) The County has written to you regarding the LUCS (letter attached).
- 3) When the LUCS is issued by the County, DEQ will proceed with the Solid Waste Letter Authorization.

Your March 11 letter indicates that you think you should be able to proceed with your facility without a SWLA (not enough time allowed) or a solid waste permit (too expensive); as we have told you many times before, that is not acceptable for the facility you propose - Alternatives 1 and 2 require a SWLA and a LUCS from the County.

You also indicate that you no longer care to do business with Mr. Dadoly or Mr. Preston of my staff because they are "in McHenry's hip pockets." In my opinion, your remarks in the March 11 letter and remarks made by you, Val Toronto and the Umatilla Recycling Group in the past about my staff are not only inappropriate but border on slander. I will advise Mr. Preston and Mr. Dadoly that if they wish to seek legal recourse against you for these remarks, as their supervisor I will fully support their legal efforts.



Finally, I do not appreciate receiving threatening phone calls from Mr. Toronto on his way to Salem, nor do I intend to continue this unproductive dialogue with you and your organization. If the legislature or the Governor's office wishes to hear from me on this matter I assume they will let me or Director Marsh know. The Department has told you many times, in writing and in person, what your organization needs to do to proceed with your facility; it is clear that you simply do not want to do it.

Until such time as you have received a LUCS from the County, there is no point in further discussions between DEQ and the Umatilla Recycling Group on this matter.

Sincerely,



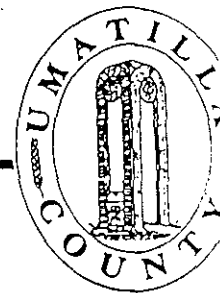
Stephanie Hallock
Administrator
Eastern Region

SH/cah

cc: Langdon Marsh, DEQ Director
Gordon Smith, State Senator
Ray Baum, State Representative
Bev Clarno, State Representative
Paula Burgess, Governor's Office

Umatilla County

Department of Resource Services and Development



Director
Dennis Olson

CERTIFIED MAIL

Land & Water
Resources
Division:

March 11, 1996

LAND USE PLANNING
603-278-6262

J. Val Toronto, General Manager
Umatilla Refuse Group Cooperative Association
440 SW First Street
Pendleton, OR 97801

UMATILLA BASIN
WATERSHED COUNCIL
603-278-3830

Emergency
Management
Division:

Dear Mr. Toronto:

EMERGENCY
MANAGEMENT
603-278-6263

After a thorough review of the material you have provided this office regarding your proposed "Demonstration on Recycling and Conservation," and based upon Section 3.015.15 and other provisions of the Umatilla County Development Ordinance; Section 3.02 (f)(q)(s)(x)(y), Section 8.01, and other provisions of the Umatilla County Solid Waste Ordinance; and after consultation with the County Planning Staff and County Counsel, I have determined that conditional use permit approval by the County Planning Commission is required for your project. Your project will also require approval and a franchise from the County Solid Waste Commission.

RURAL ADDRESSING
PROGRAM
603-278-6263

CHEMICAL STOCKPILE
EMERGENCY
READINESS
TEAM (CS EPT)
603-278-2084

Since you have withdrawn all previous applications (and incomplete applications were returned), you will have to resubmit your application along with the \$200 fee. My decision to require a conditional use permit may be appealed to the Planning Commission. The appeal fee is \$100.

County/State
Services
Division:

COUNTY FAIR
603-607-6121

Sincerely,

STATE AGENCY
LIAISONS:

A handwritten signature in black ink, appearing to read "Dennis Olson".

OSU EXTENSION
SERVICE
603-278-5403

Dennis Olson
Director

WATERMASTER
603-278-5450

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

MAR 13 1996

EASTERN REGION
BEND

cc: County Counsel
Solid Waste Commission Chair
DEQ - Stephanie Hallock
DEQ - John Dadoly

DATE REPLIED
MAY 16 1996



April 16, 1996

J. Val Toronto, P.E.
General Manager, Umatilla Refuse Group
219 S.E. 2nd
Pendleton, OR 97801

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

**Notice of Noncompliance ER-P-96-031
Unpermitted Solid Waste Facility
Umatilla County**

Dear Mr. Toronto:

BACKGROUND:

Since July 25, 1995 the Umatilla Refuse Group (URG) has been making several proposals which have included recycling, composting and disposal of various materials. Officials from both the Department of Environmental Quality (Department) and Umatilla County (County) have reviewed all of your proposals to help you ensure your project would adhere to state statutes, rules and local ordinances. We have often commended your group for seeking state and local review of what would be required "before" implementing such proposals.

"CLARIFYING MEETING":

At your request, in an attempt to finally clarify what proposal(s) the URG wishes to pursue, on February 8, 1996 your group met with my supervisors Stephanie Hallock and Gerry Preston and myself. At that meeting the URG presented three proposals labeled "Alternative 1", "Alternative 2", and "Alternative 3". You will recall that we used an outline to ensure we all agreed upon what each alternative entailed so the Department could better articulate to you what sort of permit we would require. *(This outline, which includes the URG's clarifying answers, is enclosed)* To summarize that discussion, all three alternatives included composting various materials. All three alternatives included disposing of "clean fill". Alternative 1 did not include composting food waste or paper products while Alternative 2 and 3 did. Only Alternative 3 included burial of materials other than "clean fill".

Using the same outline, the Department explained that we would require a Solid Waste Letter Authorization (SWLA) for Alternative 1 and that although Alternative 2 is probably pushing a Material Recovery Facility (MRF), we'd also agree to a SWLA for it as well. For Alternative 3 we made it clear that any filling or burial with materials other than "clean fill" requires a full Solid Waste Disposal Permit (SWDP).

Understanding this, the URG wanted to combine Alternative 1 and 2 under a



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

SWLA application (and may eventually apply for a MRF for Alternative 1 and 2). The URG did not wish to pursue Alternative 3 which would have required a full SWDP. The URG wanted these decisions documented so we all "signed-off" on it. *(This documentation is enclosed)*

SINCE THE "CLARIFYING MEETING":

Following our meeting, the URG submitted an incomplete SWLA application (a Land Use Compatibility Statement - LUCS - was not included with your application). To date, the Department is still waiting for you to provide us with the LUCS so we can process your SWLA application. In the meantime, the County has written the URG a letter explaining that a conditional use permit and franchise approval would be required for the URG's proposed project and that a resubmittal of an application and fee to the County would be necessary for them to process it. According to the County the URG has not re-submitted an application and fee. In Stephanie Hallock's March 13 letter to your group, she stated "Until such time as you have received a LUCS from the County, there is no point in further discussions between the Department and the URG on this matter."

COMPLAINT INVESTIGATION:

The Department has received complaints about the URG's advertisements to generators soliciting that the URG can take solid waste. The Department has also received complaints about truck loads of waste being taken to the Torco Ranch. Therefore, on April 9, 1996, the Department inspected the portion of the Torco Ranch which you lease. Before you arrived to meet Department staff at the entrance, a large, full dump truck was observed parked on top of a weight scale. The driver then came out of the scale house and proceeded up the hill to your leased property. After the Department followed you to the dumping location, staff observed large quantities of construction and demolition (C&D) waste consisting mainly of wood. Also in the C&D waste there were asphalt shingles, metal, gypsum board, and other materials which had been separated out from the wood waste into several distinct, small piles.

When asked "what" you intend to do with the wood waste you said you planned to use it for "land-reclamation" to help level out the property to make it more usable. (Tilling it into the ground to "fill" in low levels and make land flatter) You further said you did not intend to use the wood waste for compost or soil amendment. You also stated that you realized that the wood waste is not "clean fill". Upon being asked "when" you planned to use the wood waste for "land-reclamation", you said you needed to purchase a grinder first but that you would likely wait until you received permit approval from the Department and County. For now, your intentions are solely to store the wood waste. As for the metal, asphalt shingles, etc., you said you would be taking this waste to the Athena Landfill for proper disposal. Upon being asked "when" you planned to transfer this waste to the Athena Landfill, you said you

weren't sure when you'd "get around to it." Lastly, when asked how much more waste you intend to take at this site, you said you "really don't know".

Mr. Toronto, if the URG truly intends to use the wood waste for "land-reclamation" to level out the land, the Department has told the URG in the past that such a use constitutes disposal (this is "filling", but not using "clean fill"). Such a use is what the URG's Alternative 3 outlined which we have already said needs a SWDP which the URG has not wanted to do and has not applied for. If the URG believes the wood waste could be used in some manner as part of Alternative 1 and 2 (ie; for composting), the Department has told the URG all along that a SWLA must first be obtained from the Department. In any case, the URG has begun to commercially accept C&D waste without a permit. Until the URG has local approval from the County and a permit from the Department, you are not authorized to accept or store solid waste at your site.

VIOLATION:

The property leased by URG is being used by URG to store and handle solid waste without a permit. This is a violation of Oregon Administrative Rule 340-93-050(1).

CORRECTIVE ACTION:

o **Take No Additional Solid Waste.** This property has now received two Notices of Non-Compliance for having solid waste without a permit. This property may only accept "clean fill" materials. No material other than clean fill may be buried on site without obtaining a SWD permit.

o **Wood Waste.** The wood waste currently stored on the URG site may remain there until May 31, 1996 (about two months from the date of the Department's inspection). If the URG receives land use approval from the County by then, the Department will act on the SWLA application which you have submitted. The SWLA will contain conditions regarding storage and processing of the wood waste. Again, if the URG ultimately wishes to use this wood waste for ground leveling that is your Alternative 3 (disposal of more than just "clean fill") and you will need to apply for a SWDP.

o **Steel tanks.** The two large steel tanks in the drainageway on the south side of the site must be either put to use as culverts or properly disposed of. If the tanks are used as culverts, they must be properly cleaned and the residue must be sent to an appropriate facility. Either must occur by April 30, 1996 (about three weeks from the date of the Department's inspection).

o **Other Wastes.** The metals and asphalt shingles and other non-woody solid waste must be removed from the site and taken to a permitted solid waste disposal facility by April 30, 1996.

o **Proper Storage.** The solid waste material currently on site must be stored properly to ensure protection of the environment. The waste located near the drainageway on the south side of the site should be moved back at least 25 feet away from the drainageway by April 30, 1996.

o **No Burning.** No burning of wood waste or other materials is to be performed.

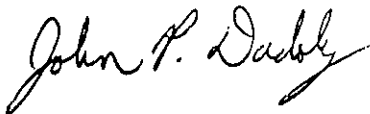
o **Receipts.** Receipts from a permitted disposal facility or a recycling facility for all of the solid waste disposed or recycled as required in this corrective action section must be submitted to the Department's Pendleton office by 5:00 PM on April 30, 1996 (for non-wood waste) and June 3, 1996 (for wood waste).

The Department will conduct follow-up inspections on or around May 1, 1996, and June 3, 1996. The violation listed in this notice is a Class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to comply with the corrective action schedule set forth in this notice or should a similar violation occur, we may refer your file to the Department's Enforcement section with a recommendation to proceed with formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

You will note that the property owner, Warren Taylor, is also receiving a copy of this notice. He is receiving a copy because he owns the property and is listed as one of the Directors of URG. If all other means fail with the URG (lessee in this case), he will be asked to take corrective actions to clean up his property.

If you have any questions regarding this matter please contact me at (541) 278-4616.

Sincerely,



John P. Dadoly, P.G.
Environmental Specialist,
Eastern Region

enclosure

cc: **URG Board of Directors** - Kal Garton, Vera Simonton, Warren Taylor, Lucky Meyers, Allen Key, Silva Garton
City of Pendleton - Pete Wells, City Attorney
County - Dennis Olsen, Director of Resource Services & Development Dept.
DEQ - Stephanie Hallock, Gerry Preston, Pat Vernon, Enforcement Section

July 24, 1995

Umatilla Refuse Group Cooperative Association

John Dadoly, Environmental Specialist
Department of Environmental Quality
700 S.E. Emigrant
Pendleton, Oregon 97801

President
Karl Jordan

Vice-President

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 25 1995

Secretary
Verna Jordan

Directors
Dug Smith
Allen Jordan
Lucky Myers
Fred Brachung
Allen Kay
Warren Taylor
Bill Cole
Don Goodhall

Re: Letter authorization for 6 month "Demonstration".

Dear John,

PENDLETON OFFICE

The Umatilla Refuse Group Co-Op, a non-profit association, will, with your assistance undertake and perform a "Demonstration Recyclable/Land Reclamation Project".

The Association is not serving the public sector and will remain and be operated as a private association, serving only bonafide members possessing a licensed operating business.

Our goal is to "Demonstrate" the applicable portions of ORS 459.015 and 40 CFR 257 relating to "Recycling and Land Reclamation" are achievable.

With your help and assistance, our objective is to "Demonstrate" through our private organization that Federal/State Recycling and Land Reclamation goals are possible, practical and make good sense. Perhaps, through this "Demonstration" the public sector may, at some later date, wish to become involved.

Our request is for the Department (DEQ) to issue a letter of authorization for a period of 6 months for any one or all of the three (3) following "Demonstrations".

RECYCLING GOALS

- °Reduce the amount of refuse through reusable bottles and packaging.
- °Compost
- °Land Reclamation, soil amendment, land leveling.

There is an urgent need for a site for construction/demolition and land clearing. The Co-Op would like your letter of authorization to include these items in our "Demonstration".

Inert material would be used as fill and all other material ground and shredded for composting.

The market for recycling and compost will depend upon the location and the need by wholesalers and suppliers. We would wholesale back to our members.

As the market for recycled and reclaimed goods fluctuates, the "Demonstration"

J. Val Torando P.E., - General Manager (503)276-0579

Karl Jordan - President (503)276-0931

11 thoroughly test the economic and environmental factors.

There shall be NO public access to any portion of the above described "Demonstration" project.

Drainage shall be diverted around or away from the active operational areas.

Surface contours will be maintained so that ponding of surface water is minimized.

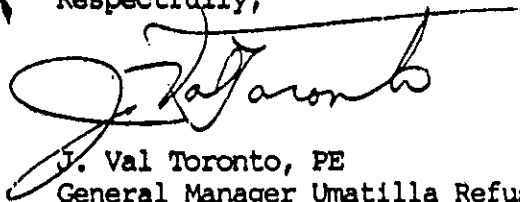
All incoming material will be weighed.

No hazardous refuse/waste will be accepted.

No recyclable material will be buried in agricultural designated land eg. CRP

We are ready to commence this vitally needed "Demonstration" and with your assistance and approval will proceed with this project immediately. We have been in the planning stage for over 10 months.

Respectfully,



J. Val Toronto, PE
General Manager Umatilla Refuse Group Co-Op
4231 S.W. Broadlane
Pendleton, Oregon 97801 Phone 276-1262

Umatilla Refuse Group Cooperative Association

President
Kal Garton

Vice-President
Bill Cole

Treasurer
Vern Hamilton

Directors
Greg Smith
Steve Garton
Lucky Myers
Fred Broadway
Allen Key
Warren Taylor
Don Goodell

July 26, 1995

John Dadoly- Environmental Specialist
Department of Environmental Quality
700 S.E. Emigrant
Pendleton, Or 97801

Re: Recycling Goals- Construction/Demolition/Land Clearing and
Land Reclamation.

Dear Mr. Dadoly,

This will confirm the conference in your office yesterday July 25,
1995 with Kal Garton, President of the Umatilla Refuse Group
Cooperative Association; Bill Cole, Board member, and Val Toronto,
General Manager of the Co-op with John Dadoly and Joni Hammond of
the DEQ in attendance.

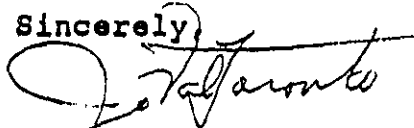
We wish to thank-you for your acceptance and approval of the four
(4) goals set out in our correspondence to you dated July 24, 1995.

Your cooperation was of great help and your decision that a State
DEQ permit was not required for the above referenced project and
the return of the \$100 and application is appreciated.

With your good help, we can implement the Policy of ORS 459.005
(16) (19) (20) (29); ORS 459.015; ORS 459.025; and ORS 459.055 as
the statutes apply to our request.

Contact me at any time if you have any questions.

Sincerely,



J. Val Toronto, P.E.
General Manager

December 18, 1995

Stephanie Hallock-Administrator Eastern Region
2146 N.E. 4th Street
Bend, Or 97701

Re: Recycling Demonstration

Dear Ms. Hallock,

Since your meeting October 13, 1995 with Mr. Kal Garton, President of the Umatilla Recycling Group and Silva Garton, Secretary, I have been extensively reviewing the largest operations of compost facilities in the Northwest.

As previously mentioned, we conducted a mini-pilot study using paper, cured stockyard waste, bark, green vegetable waste and hay waste. A bottled sample was given to John Dadoly for inspection and approval. The sample was ground dry through a 3" screen (we plan on a 1" screen) and bottled (air excluded) to determine the changes in phases (if any) of a dry material mix.

Operation at the Bellingham, Wa. compost facility and the Bothell, Wa. compost facility stated that the semi-arid weather conditions (12" of annual precipitation) was ideal, and perfect for composting. Bellingham receives about 4 times and Bothell 5 times Pendleton's annual precipitation. Both facilities are outdoors and have no evidence of odors or other environmental problems. Both are located on native soil and level ground.

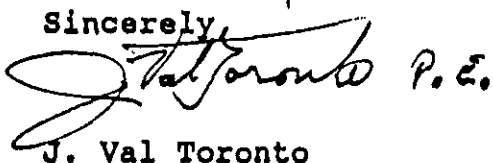
We appreciate your interest and your support and as the lessee, we want this demo project to succeed without generating complaints, enforcement actions or environmental and public health hazards.

Having visited numerous sites in Oregon, Washington and Lewiston, Idaho; we have as perfect a topographical site as could be selected and we intend to enhance the topographical conditions and much more. Only clean construction and demolition wood will either be a) reused or b) ground into chips.

Very few compost operations had available three types of materials, and all agreed that green vegetable waste and cured manure would produce an exceptionally high quality of compost.

I believe that we can get started as a demonstration project under your "No Permit" requirements and then expand when expansion becomes imminent. Very shortly I will prepare an operational layout plan for your review and comments.

Sincerely,

 P. E.

J. Val Toronto

C.C. DEQ. John Dadoly

January 24, 1996

Dennis Olsen-Administrator Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Or 97801

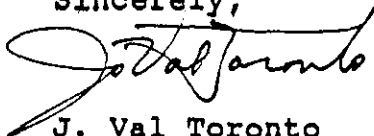
Dear Dennis,

This will confirm our discussion last Friday, January 19, 1996 and this date, January 24, 1996 regarding the progress and problems that the non-profit Umatilla Recycling Group Association and Umatilla Refuse Group Cooperative Association has experienced since April of 1994. Our written request to be included in the upgraded County Comprehensive Plan was February 17, 1994. Your request that the Department of Environmental Quality act first on the L.U.C. approval will be transmitted to Ms. Stephanie Hallock- Eastern Region Administrator for the Department of Environmental Quality.

I am presently preparing an operation manual and will submit it to Ms. Hallock for approval. When the DEQ approves and returns the L.U.C., we will transmit it to your office in accordance with your request this date.

Thank-you.

Sincerely,



J. Val Toronto
General Manager

cc: Stephanie Hallock-Bend
John Dadoly-Pendleton

2-2-1996

Re: Demonstration For Alternate Solutions to S.W.M. Practices
Through Source Separation and Recycling and Land Reclamation

Stephanie Hallock

Dear Stephanie,

I believe it is important to determine legislative intent in evaluating our proposal for a "Demonstration" to provide alternative solutions to existing solid waste management practices. These management practices are set out in several O.A.R. categories.

If the Department (DEQ) requires our project follow existing O.A.R. guidelines, the proposal would not be a "Demonstration". It would be a report of accepted State Standards and Processes that are known and established.

The Plan the Co-Operative envisions is to conduct a "Demonstration" that will ultimately lead to beneficial reuse of recyclable materials that are now transported to a distant landfill and going into landfill waste.

It would simplify discussion if I were to outline our proposed "Demonstration".

Virtually all recyclables will be utilized; construction debris and demolition waste, excluding all hazardous waste materials and medical waste.

The "Demonstration" may well show this plan is one method that will be profitable.

It is difficult to respond to questions, seeking answers, when that is why we want to conduct the "Demonstration". Some, if not most, questions can not be realistically answered until the "Demonstration" provides positive answers to these same questions.

At this point, we can only give a qualified guess, and suggest the results will differ between summer and winter conditions, and also depend upon availability of differing materials.

I believe the Department has sufficient latitude to allow a "Demonstration" that involves and/or includes most, if not all, materials set forth as acceptable in the O.A.R. for a municipal or a non-municipal landfill.

We want to "Demonstrate" there are environmentally sound alternatives to utilization and recycling of solid waste and that landfilling should be the last resort.

Integral to this "Demonstration" will be Land Reclamation and Land Improvement, to increase agriculture productivity, through

use of source separated (recycable) material that is now wasted in Regional Landfills.

I have attempted to provide the Department with all the answers that I can reasonably respond to. Hopefully a more accurate and detailed response will be forthcoming midway through the "Demonstration Process".

The O.R.S. 459 and other Statutes provide the Department with an adequate array of authority to approve the requested "Demonstration" through a Letter or Authorization as you suggested.

I also believe this same authority extends to any/one or any combination of the Department's existing permit authorizations. The permit can be issued to include:

°Source separated materials for purposes of material recovery, for recycling, for shredding or grinding, for utilization in providing soil amendments, landscaping, erosion control and compost.

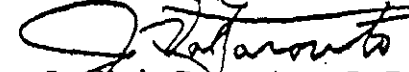
°Source separation of construction debris, demolition debris, clean fill, including inert materials that can be used in Land Reclamation.

It may well be the "Demonstration" may indicate new solutions to old problems and several rule categories can be reduced, combined or simplified.

Our interest is more inclined to determine a practical, economic, cost effective solution through Recycling, Reuse and Land Reclamation.

The response in the following attachments are in numerical order of the respective questions on O.A.R.

Sincerely,


J. Val Toronto, P.E.
General Manager URG

February 16, 1996

Dennis Olson, Administrator
Umatilla County Planning Department
Umatilla County Court House
Pendleton, OR 97801

Re: L.U.C. Approval to implement the Resource Conservation and Recovery Act (amended) and O.R.S. 459.015 pertaining to a "Demonstration thru Recycling Composting, and Land Reclamation".

Dear Mr. Olson,

Hand carried this date is a copy of the proposed project approval by the Department of Environmental Equality subject to Umatilla County approval.

Approval has been granted by DEQ for alternate 1 and alternate 2 during the negotiated conference on February 9, 1996 in The Dalles.

These alternates are fully explained in the demonstration on recycling and conservation document submitted herewith. Also, included are over 80 regulatory goals, rules and statutes encouraging and perhaps mandating the proposals contained within the above described document. The U.R.G. intends to implement the clean fill provisions immediately and look forward to your administrative approval within the coming week.

Don't hesitate to contact me as necessary to expedite your approval.

Thank you.

Sincerely,

J. Val Toronto, P.E.
General Manager U.R.G.A.

Enclosures: Demonstration on recycling and conservation

March 15, 1996

Mary Wahl, Administrator Waste Management and Clean Up
811 S.W. 6th Ave.
Department of Environmental Quality
Portland, Oregon 97204

Dear Ms. Wahl,

The Umatilla Refuse Group has made every reasonable effort to comply with the Department's permit requirements.

Our first request was for a permit to open a Sanitary Landfill in and near Pendleton. I personally located 8 environmentally safe site locations within a 4 mile radius of Pendleton.

The Group was formed in answer to the accelerating costs of collection and disposal. The rate increases had: 1) Discouraged use of the Transfer Station with costs of \$55 per ton and 2) The refusal to take yard debris, construction and demolition materials.

A casual drive around our City has evidence of concrete, asphalt, trees, stumps and miscellaneous rubbish poking out of every highway into and out of Pendleton.

It was obvious the City and County needed a solution to the ongoing environmental pollution occurring in virtually every side hill and drainage area.

Shortly after having several meetings it became clear to us that the local DEQ staff was not in favor of our original proposal.

We then thought the Department would surely support and approve a private landfill, restricted to private users. (A landfill that was not open to the public). A landfill restricted to it's members, only such as a co-operative.

This proposal also received guarded reservations, similar to our 1st proposal and no encouragement from staff.

The opinion by the Umatilla Refuse Group Co-Op (URG) was that surely the Department would support the concept of a Non-Municipal Landfill that would reduce the accumulations of debris and household materials littering virtually every isolated area, hillside, road shoulders, creek basins in and around Pendleton.

The increase in illegal and promiscuous dumping was increasing two fold each year. Note that the County Sheriff's Department stopped responding to illegal dumping complaints when the

frequency reached 500% over previous levels.

Senate Bill 1119 was created to provide a law that would help clean up the area and would also allow the small mill towns to survive the closures of their landfills because of the Department's restrictive provisions.

A review of Federal Environmental Protection Rules contained several exceptions that actually would allow the continued operation of many of Oregon's small mill town landfill facilities in certain environmentally safe settings.

You are aware that the Department opposed Senate Bill 1119 vigorously. The Bill was tabled for that session due to an accumulation of misinformation.

The U.R.G. delegation was approached with a verbal conciliatory proposal that a landfill permit could and would be available within 90 days.

Of course that never happened and 10 months later the Department keeps adding "additional" required information to continue their review. For a typical response refer to the often used statement from Ms. Hallock, February 15, 1996. "The Department is prepared to begin working with URGCA on this permit application once the application is complete. Each time we complete the additional data and information we receive a similar response in the Department's reply. Clearly the Department has no intention of issuing a permit with any practical purpose, if at all.

We had been previously persuaded by staff that a Letter of Authorization was the only permit available under ORS Chapter 459.015 for a Demonstration. Note: There is no such restrictive reference to only a 6 month L.O.A. in the Statutes for Demonstrations, Surveys and Studies to improve the environmental use of Solid Waste material hauled to distant landfills.

This 6 month limitation process was promoted by Gerry Preston, who was made aware that at least 2½ years of experimentation was the minimum time to develop a suitable compost process, because of changing climatic conditions and the availability of different materials that occur with the four seasons.

Mr. Preston's influence was clearly designed to thwart the purchase of \$200,000 worth of equipment for such a limited duration.

On March 8th, 1996, I requested to review 22 of 402 Letters of Authorization, L.O.A., in Salem. For some strange reason only 6 of the 22 could be made available as 16 L.O.A. could not be located.

Of the 6 I reviewed, none had been required to provide the

information that John Dadoly, in his last letter, needed in order to continue his review.

Even the \$3,000,000 Materials Recovery Facility separating 30 tons of household and commercial putrescible waste each day did not have to provide the information required from us for a simple compost pile. I suspect that none of the 402 L.O.A. came close to requiring the information that we have had to provide to staff in Pendleton, The Dalles and Bend.

I also suspect that most L.O.A. have been approved in less than 30 days and invite you to review the balance of the L.O.A. with me at a time convenient to your schedule.

Ms. Hallock is not the offended party in this continual delaying procedure. Consider that all of our ideas for a successful Demonstration, including all of our equipment specifications and our procedures have been transmitted to Pendleton Sanitary Service in Pendleton.

Enclosed is a recent advisory that copies several of our original ideas, which we were required to transmit to the local DEQ staff in Pendleton and The Dalles.

I request you review the numerous times and the substantial information that has been provided over these last 18 months. Compare that with the other permitting processes. How many times did the Department continue their review on other permits?

During the final, final review in The Dalles, February 9th, I had completed and/or commented on every applicable requirement given to me previously. Mr. Preston acknowledged that fact. Mr. Dadoly added two additional requirements which were given to him within 2 days. 1) A copy of the lease agreement (not required in the 6 L.O.A. I reviewed in Salem.) 2) A drawing of a Compost Pile or profile (not required in the 6 L.O.A. I reviewed in Salem.)

Upon delivering this additional data Dadoly required specifications and drawings of our equipment. (Not required in the 6 L.O.A. I reviewed in Salem.)

This additional material was given to Mr. Dadoly within 2 hours.

Several days later his letter required another round of data while he continued his review, which was now his 10th review.

When Mr. Dadoly refused to accept the Corporation Stamp from the owner and President of J. Val Toronto & Assoc. Inc. was when I drove to Salem and determined that staff in Pendleton had required a great deal of unneeded information and that these never ending requirements for more information was a continuation of the delays we had experienced through 1995 and into 1996.

We don't understand why the Department allowed the 30% recycling goal for Umatilla County to be reduced to 15%, when the U.R.G. goal was 50% or greater. That is only one of many questions that has troubled our members who thought the Department had a real interest in promoting Recycling, Composting and Land Reclamation. Our personal experiences do not support this philosophy, at least not in Umatilla County.

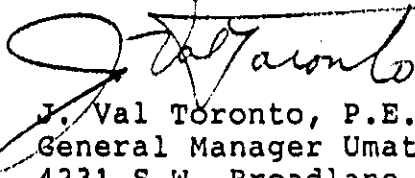
In closing we request the Department support a 2½ year to 5 year alternative Solid Waste Management Demonstration for composting, ORS 459.015, 459.025, and exercise the intended use of ORS 215.283 (j) as policy justification.

The Oregon State Integrated Resource and Solid Waste Management Plan for 1995-2005 provides the Department with 78 Rules and Statutes promoting improvements in S.W.M., Recycling and Composting.

I propose that the Department join with us to request a Legislative investigation into the policy, practices, and environmental effects attributed to the closure of 389 land fills. Establish a policy to promote recycling by any private organization and limit franchises to M.S.W..

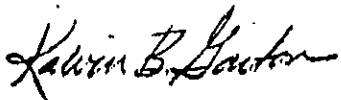
Reference: ORS 459.015; 459.A.020; 459.025; 459.035; 459.095; 459.215.

Sincerely,

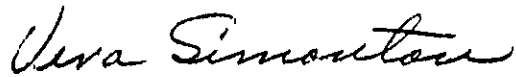


J. Val Toronto, P.E.
General Manager Umatilla Refuse Group
4231 S.W. Broadlane Ave.
Pendleton, Oregon 97801

Phone (541) 276-0579
276-0931



Kal Garton, President U.R.G.



Vera Simonton, Director

March 18, 1996

John Dadoly, DEQ
Pendleton Office
300 S.E. Emigrant
Pendleton, Oregon 97801

Re: Location and permits for Construction Debris/Demolition/Land Clearing.

Dear John,

This is to confirm the receipt from your office of all legally administered landfills in the State, public and private, particularly those that have been operating under your jurisdiction as of March 15, 1996.

I have several questions that need a written response and which will help contribute to a better understanding of your rules of enforcement when a violation has occurred.

1) There is a large construction debris/demolition landfill immediately East of Pendleton Youth Center off Goad Road. This embankment fill area is also within sight of the Jerry Odman residence. Mr. Odman is the Public Works Director for Pendleton.

The embankment fill is about 15' to 20' in height and has ostensibly been, in general, transported from construction/demolition projects within your jurisdiction.

In a previous letter, you were notified that the material from The Silver Saddle had been hauled to the above site. This was the same material you emphatically declared could not be hauled to our 40 acre site, and if it was you would issue an enforcement order and a violation to the landowner.

I am sure you passed your response on to the City as well as to Mr. Mara, the owner of the debris. At least that is the impression Mr. Mara gave to me.

QUESTION: Where has all the construction debris and demolition materials from the renovation of Helen McCune Junior High School been taken for disposal? Is it a site permitted by the Department?

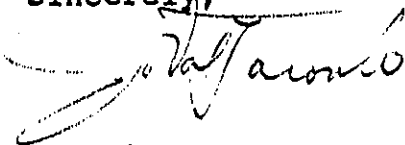
QUESTION: Where has all the construction debris and demolition material from the renovation and construction of the High School been taken for disposal? Is it a site permitted by the Department?

QUESTION: Where has all the burned out material, construction debris and rubble from the burned out bowling alley building been taken for disposal? Is it a site permitted by the Department?

QUESTION: Where has the burned asphalt covered roofing and burned asbestos impregnated siding material (ashes) at N.W. 50th and N.W. "A" St. (Airport) been taken for disposal? Is it a site permitted by the Department?

Your prompt response to these questions will be appreciated, particularly if the answers are sufficiently clear so that a follow-up letter can be eliminated.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Val Toronto". The signature is written in dark ink and is positioned below the word "Sincerely,".

J. Val Toronto, P.E., General Manager Umatilla Refuse Group
4231 S.W. Broadlane Ave.
Pendleton, Oregon 97801 Phone 276-0579
276-0931

June 24, 1996

RCRA Report by J. Val Toronto is 74 Pages
Does not include divider pages

The Co-op has applied to the Eastern Division for permit, said permit subject to County approval which has been held in abeyance until DEQ approval. DEQ has approved Alternate 1 and Alternate 2. See attached correspondence approving Alternate 1 and 2.

The Department ordered the clean-up of the former State Hospital site. Said site was the location of all Hospital residue and waste from 1914 to 1964. The State had demonstrated for period of 50 continual years of waste disposal operation that the site was located in an environmentally safe setting.

Various ranching companies have continued to use the site from 1964 to present time of clean-up with the same environmentally safe considerations.

Waste disposal by the State Hospital Dairy Farm contributed to the bulk of the clean-up performed by the Cooperative.

OAR 340-93-050

2. Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Div-93 through 97,...

The reason the Department has not issued is explained in the above two paragraphs and under the current DEQ process- no permit is obtainable in the Eastern Region.

C. Present operation is to obtain a sufficient quantity of recyclable materials to warrant the practicality of purchasing a type of tub grinder to reduce the recyclable material into small pieces of wood fiber for soil amendment purposes to aid in land reclamation and land leveling of the class 5 soils that exist at the site. Refer to ORS. 459.015 and the 50 page Resource Conservation and Recovery Act (Amended).

D. Due to inability and unwillingness of the DEQ to approve a compost operation ORS. _____ The Co-op will recycle the wood into a smaller product that can be blended with soil to produce a soil amendment for land reclamation and land revitalization purposes. The goal is to ultimately be able to irrigate a ½ circle (40 acre tract).

E. Virtually all material will be recycled and recovered. This has been told to the Eastern Region Staff on numerous occasions and is reiterated in the 74 page RCRA report submitted and approved by Stephanie Hallock, Eastern Region Administrator on Feb. 8, 1996 at The Dalles final conference. The nature, amount or location of the materials is such that they DO NOT constitute a potential threat of adverse impact on the waters of the State or public health.

3. The Department has unreasonably withheld a permit for a demonstration as set out in ORS 459.015 for composting, therefore the Co-op has substituted a temporary plan that will allow increased farming productivity through land reclamation of the class 5 soils. Soil conservation classifies the soils at the site as Type Two, which is the lowest category of soils that can be revitalized for agricultural purposes.

4. The Eastern Region has had over 18 months to evaluate the Cooperative's privately leased site and to issue a letter of Authorization in accordance with OAR. 340-93-060 and the final acceptance conference Feb. 8, 1996 of Alternate 1 and Alternate 2 as detailed in the above described site specific RCRQ report. Due to the uncooperativeness of the Eastern Region to provide a permit and allow a practical period of time for a Composting Demonstration, the Cooperative has chosen to upgrade the soil in the proposed Land Reclamation project by one of the three processes which do not involve composting, but are components of a soil commodity. The agricultural method will blend;

- wood fibers with soil for a soil commodity with high moisture retention value.
- wood fibers, cured livestock manure and soil for potting mix and agricultural purposes with fertilizer value and increase moisture retention value
- wood chips blended with top soil for land leveling and land reclamation

In summary, it appears that the Eastern Region has practiced and implemented an administrative de-facto Flow Control Process whereby the permitting process and proposed operation of the Co-op has been held in perpetual abeyance. The Eastern Region has retained and continues to retain a negative attitude towards all of our recycling proposals.

Clean material delivered to the Co-op site, including material that could have been delivered to the site has been condemned, while the same or similar material is permitted to be dumped elsewhere with total impunity and full acceptance by the staff of the Eastern Region. When the Eastern Region was questioned why they would not support a Demonstration Goal of Recycling 50% or more, the question was regarded as harassment. When the Eastern Region was questioned as to whether a decommissioned steel 6' diameter vessel could be re-used the negative reply was a FAX 9' in length. When asked to justify the reason for the negative response, the question was treated as harassment.

When the region was asked to survey and review 17 illegal dump sites in the Pendleton area, the suggestion was treated as harassment and no field trips scheduled.

The City of Pendleton has been using the Patawa dump site with impunity and no permit for an indefinite length of time. No monetary enforcement action has been issued by the Eastern Region.

The City drains large quantities of surface water runoff from the airport, through garbage south of C Street through the old landfill to the only wetland in Pendleton. No monetary enforcement action has been issued by the Eastern Region. The City has continued to dump mixed solid waste materials at other locations with impunity. This information and supporting documentation relates to harassment of staff in the Eastern Region and discontinue the dialogue

as meaningless and unfruitful!!

ORS 459.015 places primary authority with the City/County. The County Comprehensive Plan places primary authority for Solid Waste collection, disposal and storage with the "County Solid Waste Management Plan".

The Plan-page (IV-2) says that "storage does not include in process storage". The acceptable recyclable material is in process storage and does not constitute a health threat of any kind or nature to the public or to the waters of the State.

The DEQ Commission has established recycling goals in the 1995-2005 year S.W.M. Plan. The Co-op is attempting to demonstrate that these recycling goals of 50% for the year 2000 are attainable. The Eastern Region has taken a protectionist stance for the Franchisee who can barely achieve a 15% recycling goal. The County S.W.M. Plan, page (IV-26) says "No Solid Waste Regulation shall be adopted by local government if such regulation conflicts with regulations adopted by the Commission. ORS. 459.045; 459.095 (1).

The County S.W.M. Plan further says under "Prevent Conflicts of Interest"—no one agency should be assigned more than one(1) responsibility under -operating agency- Plan Administration, Control and Regulation. Pg (VI-31). Page 10 of "An Ordinance for Collection and Disposal of Solid Waste Umatilla County calls for only "one holder of a franchise" on the Committee. We submit that the committee has been composed of much more than one franchise holders representative. All County S.W. Ordinances have been enacted by the Commission at the recommendation of the County reviewing Solid Waste Committee containing a disproportionate influence of collectors and collectors committee members belong to or own a collection or solid waste disposal site!!!!. Because of the conflict of interest by committee members in regulating out competitive business, it explains why the County Ordinances are among the most onerous and restrictive of the 32 Counties.

The Solid Waste Management Plan specifically excludes all agri-business from the Land Use Compatibility requirements. The Department and LCDC should have (at the least) required a Plan Amendment and the full public hearing process by the agricultural businesses when this land use requirement was altered and dramatically revised.

ORS 459.153 —The Legislature intends that the County not discourage or hinder recycling. The Sole Franchise has not indicated that the goal of 50% is attainable by the year 2000. Facts indicate that since 1991, the Federal goal of 25% for Umatilla County has been reduced to 15%. The County has not encouraged recycling and both the County and the Eastern Region are waiting for each other to act first on the Permit that would allow the Recycling Group and the Cooperative Group to demonstrate that the 50% recycling goal is achievable.

ORS 459.025—Public and private agencies to satisfy statutes for carrying out as mandated, studies/research/demonstration projects for Solid Waste Management. The ongoing refusal by DEQ to issue a permit has been previously discussed and should be re-read in the context of State mandated Statutes on recycling.

Ex. 41
(4 pages)

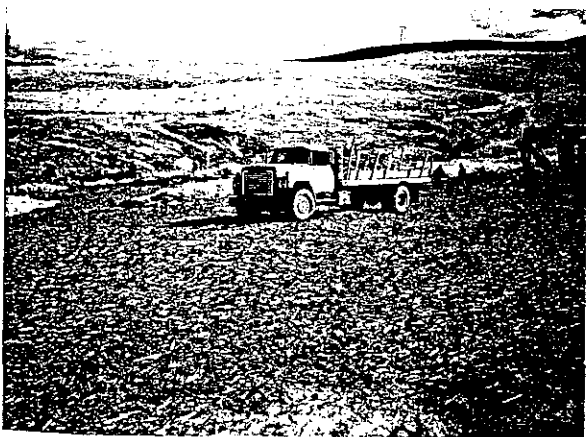


Exhibit Photo: 4 Location and Use
Filmstrip: Co-op 40 acre site
Date: 9-16-96 1/2 mile SW County Road
Weather: Slightly overcast/sunny

View: East Southeast from upper portion of access road looking east down access road and depicting about 1/2 acre of erodible land that has been covered with wood chips for soil erosion, wind erosion, and future farm use. The wood chips with manure is the 1st phase of a research and demonstration study to develop and promote soil conditioning, humus restoration, and mixing of manure to produce fertilizer.



Exhibit Photo: 5 Location and Use
Filmstrip: Co-op 40 acre site
Date: 9-16-96 1/2 mile SW County Road
Weather: slightly overcast/sunny

View: South southeast to unauthorized solid waste placed by Johnson. Located on west side of wood chip area.



Exhibit Photo: 6 Location and Use
Filmstrip: Co-op 40 acre site
Date: 9-16-96 1/2 mile SW County Road
Weather: slightly overcast/sunny

View: Access road easement to 40 acre leafed land situated from access road south (Left of photo area) for land reclamation and beneficial uses see photos 4 and 8.



Exhibit Photo: 7
Filmstrip:

Location and Use
Co-op 40 acre site
 $\frac{1}{2}$ mile County Road SW

Date: 9-16-96

Weather: Slightly overcast/sunny

View: 40 acre site situated off county road. Area where wood chips are spread. Unauthorized solid waste in background placed by Johnson.



Exhibit Photo: 8
Filmstrip

Location and Use
Co-op 40 acre site
 $\frac{1}{2}$ mile County Road SW

Date: 9-16-96

Weather: Slightly overcast/sunny

View: South side of access road depicted in exhibit photos 4 and 6. Illustrates benefits of placing wood chips over the former state dump area in use by State hospital from 1914 to 1964. Also 1st phase of land reclamation to provide cover to reduce soil erosion from surface water, snowmelt, and windstorms.



Exhibit Photo: 9
Filmstrip:

Location and Use
Co-op 40 acre site
 $\frac{1}{2}$ Mile County Road SW

Date: 9-16-96

Weather: Slightly overcast/sunny

View: South and South of photo 8. Indicates extent of placement of wood chips on lower level area for 1st phase land reclamation. Reference photo 4 and 8 for beneficial uses of wood chips

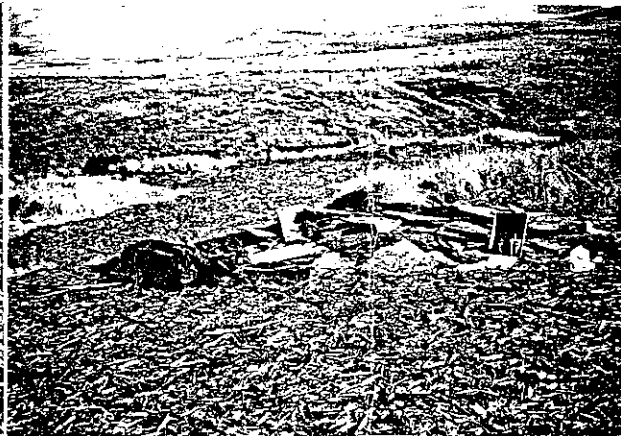


Exhibit Photo: 10 & 11
Filmstrip:

Location and Use
 Co-op 40 acre site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly overcast/sunny

View: Access road depicted in photo 6 shown in upper far right corner. View is west from midway up the slope depicting chips used as leveling course for dust control, soil erosion reduction, loss of soil from wind, and precipitation. Not enhanced view compared to photo 6. Future storage area and future land reclamation site.

Exhibit Photo: 12
Filmstrip:

Location and Use
 Co-op 40 acre site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly overcast/sunny

View: East depicts upper portion of lower level and lower level of upper site. Center photo accumulation of salvage of metal and plywood for later removal. Bottom of lower level is (above midway in photo) upper portion of photo. Land reclamation and beneficial uses see photos 4 and 8.

Exhibit Photo: 13
Filmstrip:

Location and Use
 Co-op 40 acre site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly overcast/sunny

View: Looking west northwest, to access road in upper right of photo. Photo taken midway up upper (2nd) level. Depicts small quantity of brick. Land reclamation and beneficial uses see photos 4 and 8.

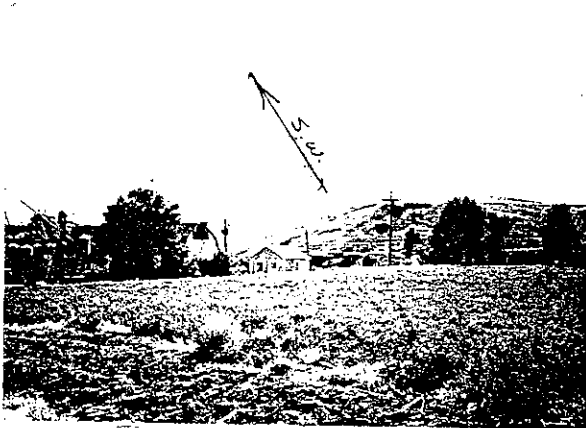


Exhibit Photo: 1
Filmstrip:
 Location and Use
 Co-op 40 Acre Site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly Overcast/Sunny

View: Southwest. Subject: Torco Ranch from county road. 40 acre site situated SW and ½ mile beyond hills. Site location: 4 miles SW of Pendleton.

Handwritten notes:
 Torco Ranch is located on the SW corner of the 40 acre site.
 The site is situated SW and ½ mile beyond hills.
 Site location: 4 miles SW of Pendleton.



Exhibit Photo: 2
Filmstrip:
 Location and Use
 Co-op 40 acre site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly overcast/sunny

View: West. North limits of wood chip area spread over highly erodible land. Unauthorized dumping of solid waste by Johnson in background. For land reclamation and beneficial uses see Photos 4 and 8.



Exhibit Photo: 3
Filmstrip:
 Location and Use
 Co-op 40 acre site
 ½ mile SW County Road

Date: 9-16-96

Weather: Slightly overcast/sunny

View: South South east to unauthorized solid waste placed by Johnson. Located on west side of wood chip area.

Dumping

Continued from 1A

Creek and eventually into Tutuilla Creek and the Umatilla River, is closed to the public by a locked gate.

URG member Val Toronto has about 50 photographs that he says show city personnel dumping at the Indian Hills site.

"You can look at our pictures from two weeks ago and they had a pile of garbage up here that you wouldn't believe," said Kal Garton, president of the URG. "Even the city can't afford to dump its waste in the transfer station."

Mayor Bob Ramig confirmed that Public Works and Parks personnel have been using the Indian Hills site to dispose of "clean fill." But city departments have been told not to stop using the site for dumping, he added.

"Anyone can dump that if they have the place to do it and it doesn't have non-permitted waste," Ramig said of so-called "clean fill" material. "But if our guys have been doing the wrong thing, then we've got to get it cleaned up."

"We don't have a thing to hide. If we're wrong, we'll take care of it and DEQ won't have to fine us," Ramig added. "We'll take care of it."

Ramig said he had not visited the site recently and would wait for a DEQ inspection to determine if the city is in violation.

It's unknown if the city is responsible for dumping all of the items visible at the site, but Jerry Preston, the Eastern Regional solid waste manager for DEQ, said landowners are responsible for cleanup when it's unclear who is responsible for violations.

Preston said his department will investigate if an official complaint is received. As of this morning, Preston was unaware of a formal complaint.

The URG emerged over two years ago as a spur group to the Pendair Citizens Committee, which successfully blocked construction of a garbage transfer station in Pendair Heights atop airport hill.

Vera Simonton, who is challenging Ramig in the May 21 primary election, is a charter member of the Citizens Committee and is a member of the URG's board of directors. Simonton says she will resign her position on the URG if elected.

Neither the URG nor Citizens Committee thought that the city needed to close its landfill near the Pendleton Airport or that Pendleton Sanitary Service needed to switch to a transfer station and haul garbage to a regional landfill.

Since then, the URG leased the land near Rieth with plans of operating a composting

landfill and recycling operation in competition with Pendleton Sanitary Service.

Garton said he got involved as garbage collection prices soared by 63 percent in Pendleton when the landfill closed and Pendleton Sanitary Service opened its temporary transfer station.

The city, meanwhile, has refused to give the URG a garbage collection franchise, contending a franchise ordinance requires that operators provide identical service across the board to avoid unfair skimming of only the most lucrative customers by one garbage collector.

In a letter last week from Garton to Ramig, the URG offered to ignore its suspicions of illegal dumping by the city if the city agreed to assist the group in clearing up its own regulatory mess and ease the process of gaining official permits for its composting/recycling operation.

"The letter was a conciliatory, saying we wouldn't show any of these pictures to anyone if the city responded," Garton said. "All we want is to open an affordable, non-profit recycling and composting operation."

The agreement recommended by the URG would have required the city to close its "illegal dump" near Indian Hills and agree to haul composting material to the URG landfill in Rieth. It also stipulated that the city ask Umatilla County for a six-month exemption on enforcement while the URG organizes its franchise and that the city advocate in favor of the URG not being required to remove wood debris from its Rieth site.

The URG letter asked the city to respond in writing by May 10 and enter a contract by May 17.

Ramig said the URG request has been referred to the city's Sanitary Regulatory Board for a recommendation and that the city would not be able to meet the URG's deadline.

"I know the URG is angry with us and I expected something like this, which I consider a form of blackmail," Ramig said of the URG's pursuit of a formal complaint against the city.

Ramig said the timing of the complaint and deadline of May 17 placed on the city's response is "more than a coincidence."

"It's a counter blow to a couple weeks ago when the URG was caught with its illegal landfill near Rieth," Ramig said. "The timing with the election may be more than fortuitous."



Staff Photo by Steve Brown

Kal Garton, left, and Val Toronto of the Umatilla Refuse Group inspect what they say is illegal dumping on city property in southeast Pendleton.

Group asks state to investigate dumping

By STEVEN BROWN
of the East Oregonian

PENDLETON — The Umatilla Refuse Group is calling for a full investigation of an alleged illegal dump site it says is being used by the city of Pendleton's Public Works and Parks and Recreation departments.

The site — a long-since closed city landfill — is at the east end of Nye Avenue at Indian Hills east of Bi-Mart. Refuse Group members went with a Umatilla County Sheriff's deputy to the site on Tuesday and have asked the state Department of Environmental Quality to investigate for possible violations of the state's garbage disposal regulations.

While the URG threatens action against the city, the group faces its own problems with the DEQ, which took action in April against the group's composting/recycling

operation near Rieth.

The DEQ says the landfill was being operated without the required solid waste disposal permit to accept the type of waste that was being collected by the URG.

Umatilla County also is pursuing the URG for alleged violations of the county's solid waste franchise ordinance and for possible violations of state land-use laws.

As for the city, the URG alleges it is dumping waste — including uncompacted asphalt, lumber and household garbage — that would require a solid waste disposal permit under DEQ guidelines. Visible under a recent covering of top soil is an aerosol spray can, large chunks of concrete, tree branches and at least one automobile tire.

The site, which drains into Patawa Creek and eventually into Tutuilla Creek

See Dumping/2A

May 16, 1996

Ex. 43

June 26, 1996

Rules Coordinator
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, Oregon 97204

Re: No. SW-ER-96-121
Order No. SW-ER-96-129

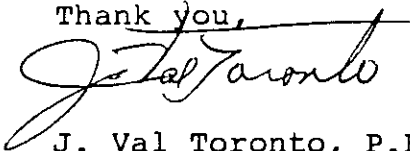
Attn: Van A Kollias, Manager, Enforcement Section

Gentlemen,

The Umatilla Refuse Group Co-Op wishes to have an informal meeting to discuss mitigating factors surrounding the Co-Op's 18 month effort to Recycle and provide Land Reclamation as set forth in ORS 459, Umatilla County's Solid Waste Management Plan and the Department's Solid Waste Management Recycling Plan for 1995-2005.

Your assistance in this matter is appreciated.

Thank you,



J. Val Toronto, P.E. General Manager
Umatilla Refuse Group Co-Op
Pendleton, Oregon 97801

encl: 40 page documentation
2 page correspondence to Mike Johnson, Inc., generator
and hauler.

cc: Larry C. Wik, Department of Environmental Quality
Northwest Region Office
2020 S.W. 4th Ave. #400
Portland, Oregon 97201-5884

DE
Ex 44
(4 pages)

June 26, 1996

Mike Johnson, Inc. General Contractor
Rt. 7 Box 420
Union Loop and Brinkley Road
Kennewick, Wa. 99337

Dear Mr. Johnson,

I have made several attempts to contact you the early part of June for the single purpose of resolving the class and type of material delivered to our storage site.

Gale Balderson was instructed to store the material to the South of the property, not on or adjacent to the access road allowance.

Your response to the correspondence by Dennis Hachler, attorney, does not absolve the company from DEQ rules.

I have asked Gale Balderson, during two phone conversations to visit the site to determine for Mike Johnson Inc. the extent of the area that your material has been placed on the Co-Op's leased land. Also to view for himself the material that cannot possibly be source separated for any useable agricultural purpose.

The following referenced material was submitted to qualify the types and classes of materials acceptable for our purpose that is acceptable to the State of Oregon.

Date:	To:	From:	Subject:
3-9-96	Mike Johnson, Inc.	U.R.G.	Source separated materials description.
3-11-96	Mike Johnson, Inc.	U.R.G.	Source separated Demolition Construction Debris-2 pages DEQ explanations
3-12-96	Mike Johnson, Inc.	U.R.G.	Tentative agreement transmit with .....this date.
3-18-96	Mike Johnson, Inc.	U.R.G.	First inquiry to M. Johnson
3-20-96	Mike Johnson, Inc.	U.R.G.	Source separated material and clean fill.
4-5-96	U.R.G.	Mike Johnson	Rejection of contractors definition of construction debris.

M
Ba

4-8-96	Mike Johnson, Inc.	U.R.G.	Clean wood and clean fill, wood fiber shredding, erosion controls, etc..
4-9-96	Mike Johnson, Inc.	U.R.G.	Authorize delivery of source separated materials with description.
4-10-96	Mike Johnson, Inc.	U.R.G.	Explanation of materials to be source separated prior to delivery, wood chips, located in area reserved for clean fill.
4-10-96	U.R.G.	Mike Johnson, Inc.	Adjudication by M. Johnson of source separated material.
4-11-96	U.R.G.	Mike Johnson, Inc.	1. Source separation 2. Cleanfill for land reclamation
5-21-96	Mike Johnson, Inc.	U.R.G.	Notification of unacceptable construction materials and placement of gravel in lieu of tarping for truck transportation

Note: By DEQ regulations, source separation must be accomplished prior to hauling or trucking. My conversation with Gale Balderson was that a secondary review of material, when placed on a conveyor, would hand sort out smaller objectionable material prior to entering the tub grinder.

During this discussion, Mr. Johnson was providing source separation by use of crane and bucket equipment plus one workman prior to loading. Secondary separation off site was a necessary part to insure the use of a product for the stipulated purposes in the contract.

Of the several piles of material that were reviewed on the Wal-Mart site, with Mr. Balderson, only two piles of wood material, about 250' apart, were deemed acceptable and all others were rejected as not conforming to acceptable requirements.

All material hauled on April 19th and thereafter consists of material that was placed without the Coopertive's general knowledge or approval.

The material situated in the 40' easement, including all material situated North of the road allowance must be removed immediately.

Your aprompt attention will be appreciated.

J. Val Toronto, P.E. General Manger

Umatilla Refuse Group

216 S.E. 2nd.

Pendleton, Oregon 97801

541-276-0931 or 541-276-0579

Page 3

June 5, 1996

Stephanie Hallock, Eastern Region
2140 N.E. 4th, #104
Bend, Oregon 97770

Re: Impartial investigation of a) Landfill violations
b) Violations of Clean Water Act
c) Violations of Wetlands

Dear Ms. Hallock,

The Northeast Region has been remiss in encouraging and approving Recycling for the Pendleton Region.

The Region's inaction on pursuing Recycling and the Department's unwillingness to promote and approve a Recycling Demonstration is well documented.

Gerry Preston and John Dadoly should not be allowed to investigate complaints on file by Mr. Kal Garton, Vera Simonton and Val Toronto.

Correspondence and notices of non-compliance by Dadoly and Preston have truly exposed the obsequious attitudes of your representatives to the Refuse Group, the Recycling Group and its individual members.

We can forecast Dadoly's and Preston's Whitewater cover up of the following documented violations:

- 1) Evaluations of the City's operating the Landfill above Patawa Creek, subsequent pollution of the ground water, percolation and surface water runoff to Patawa and Tutuilla Creeks, the Umatilla and Columbia Rivers.
- 2) Surface water runoff over and through the old existing Landfill on Airport Road, including mixing of spring water with Landfill pollution by percolation and mixing of spring water with surface water contaminants that flow directly on the surface to the wetlands West of Krusteaz and indirectly through potential ground water flows to the wetlands.

We expect the report from Dadoly and Preston will be similar to the reevaluation that was made when the Department was requested to investigate how 800 to 1200 lbs. of Medical Waste and Infectious Medical Waste stored in one gallon containers could possibly be stored in a newly purchased \$300 refrigerator. How many cubic feet is in a \$300 refrigerator? Hypothetically we will select a larger refrigerator volume of 8 cubic feet. We will also assume that only quart containers were used and not a cubic foot container. Note: Only 8 such boxes could have been stored in a 60 day delivery period. (When statutes allowed only a 30 day maximum storage period!) Of course, Dadoly and Preston could find no evidence of a statutory violation, because they refused to investigate beyond the perimeter of their desks and telephone.

Did each go look to evaluate the facilities? I can only think they did not. Did each review the minutes of the Sanitary Regulatory Board minutes wherein

EX. 45

the handler, carrier, storer, and transporter said that medical wastes were handled and landfilled in the Pendleton landfill? No!

On September 11, 1995, I hand delivered 27 photos of 16 sites in violation of OAR 340-93-050 and as of this date I have not received a written response to Dadoly's investigation which was requested.

The Simpson dump is in violation of OAR 340-93-050 and we will use that mixed material for the definition of Cleanfill to be applied by Dadoly and Preston to the materials the Refuse Group has stored for Land Reclamation use.

Mr. Simpson's permit expired about 2 years ago and was limited to less than 2000 cubic yards of Construction Demolition, Cleanfill. The site presently contains more than 10,000 and perhaps 20,000 cubic yards of landfill waste.

Photos taken since last September 1995, show wood co-mingled with metal and plastic pipe, wire, conduit and semi-buried logs and tree stumps.

Most interestingly, is that Mr. Dadoly categorically and emphatically emphasized that any material hauled from the burned, former Silver Saddle building to the Refuse Group land reclamation site would be followed by a citation in violation of OAR 340-03-050.

This same material was hauled by Mr. Simpson to his 10,000 to 20,000 cubic yard landfill site, and when reported by me to John Dadoly he merely smiled and has done absolutely nothing about this Solid Waste rule violation.

For confirmation call the owner of the Silver Saddle building, Mr. John Mara at 541-276-6272 or 541- 276-4678.

Mr. Preston mentions that the Department has issued two violations to the Co-Operative. Let me again express my disgust with the Department's representatives, whom I personally invited, and whom I told that the first order of work was to remove and clean up the site, which was also the former State of Oregon Hospital Dairy Farm garbage site from 1914 to 1964.

In a warped interpretation of the rules, these men, Mr. Dadoly, Preston and Davison, conspired to use this personal invitation for vindictive purposes by citing a violation to the Landowner and the Lessee of the property, the Umatilla Refuse Group.

Ms. Hallock, that is the height of unmitigated arrogance and misguided authority. Your representatives clearly must be removed.

There are numerous documented instances that prove Mr. Dadoly, Preston and Davison are really disinterested in the health, safety, welfare and environment of Pendleton.

They apply the rules with full administrative authority to negate Recycling to thwart a fledgling business from any possible chance of business competition. The trio freely administers violations to insure the profitability of a \$5,000,000 year monopoly, who could not meet the 1993 30% recycling goal for Umatilla County, merely requesting a reduction to 15%.

This reduction was approved by DEQ during the same period the Recycling Group requested a Demonstration to illustrate a 50% recycling goal was attainable.

Umatilla County will not attain the Federal Recycling Goal of 50% for the year 2000 and the Refuse Group and Recycling Group will never be allowed to operate as long as Dadoly, Preston and Davison exercise authority over Solid Waste Management.

There will not be an impartial investigation if conducted or influenced by the above, only a cursory veiled report.

We therefore insist that you assign an individual who has a proven record of impartiality. Any report investigation or analysis by the above named, will be cursory at it's best, to protect the violator, and useless unless the material is totally removed and compliance in accordance with State and Federal Statutes, the Clean Water Act and the Federal and State Wetland Regulations is enacted.

I have previously requested documentation of: a) Copies of disposal receipts showing time, dates, locations and quantities of demolition burned wood, melted bowling balls, toxic residues, hazardous wastes from the Bowling Alley that burned, located on S.W. Quinney Ave.

Estimated demolition and ash quantity about 1200 ton, including 5 steel petroleum containers. My examination indicates that the 5 steel vessels were not decommissioned in accordance with regulations and have remained on site these past 120 days. This poses a potential threat to the public.

b) Copies of disposal receipts from Helen McCune Junior High School demolition showing time, dates, locations and quantities of construction debris and demolition materials. This includes stumps, trees, branches, shrubbery, asphaltic paving, concrete, metal pipes, plastic pipes, wiring, conduit, wood flooring, fixtures, windows, doors and many other miscellaneous materials. Estimated weight 2200 ton delivered and buried somewhere!!

c) Copies of disposal receipts from the Pendleton Senior High School demolition showing time, dates, locations and quantities of construction and demolition debris similar to Helen McCune Junior High School waste. Estimated weight 6000 ton delivered or buried somewhere!!

d) Copies of disposal receipts from the Silver Saddle burnout, from Darrell Simpson, who demolished the building. Mr. Simpson hauled demolition material to his private contractor construction and demolition site situated East of Homestead Youth Lodge, Southeast and in view of Pendleton's Public Works Director's property.

The same identical material had been hauled to the Simpson dump that John Dadoly threatened instant Administrative Action followed by a violation and citation of OAR 340-93-050, if delivered to the Co-Op's recycling site!!! The estimated quantity of demolition and burned wood and construction debris hauled by Simpson to his illegal dumpsite about 250 tons. Simpson's City permit expired 2 years ago and total estimated construction/demolition/land clearing refuse is about 10,000 to 12,500 cubic yards in place with NO DEQ Solid Waste Permit!

e) Burning of hazardous materials at N.W. A Ave. and N.W. 50 St. Copies

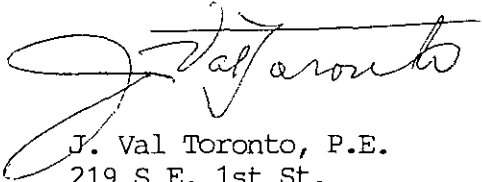
of P.S.S.I. for disposal of hazardous waste, ashes, residue, burned plastic furniture, burned food stock, and children's plastic toys. Mr. Dadoly confirmed visiting the site after all was conveniently covered with imported truck loads of earth within 24 hours of Mr. Toronto's complaint.

f) Cora Brownfield donated the former Oylear-Howard Auto Agency and repair shop to the City of Pendleton. This facility contained two large buried petroleum steel vessels and one large buried combination petroleum and gas waste steel vessel. Each reported to be 1000 gallon capacity. The local DEQ did not require the City to decommission these vessels, nor did the DEQ require soil testing to determine the extent of ground water pollution and soil contamination, this property is immediately adjacent to the Umatilla River.

There are numerous situations where the DEQ has chosen to disregard and ignore environmental violations of decommissioned tanks, ground and air pollution violations of the City Solid Waste franchise agreement and Oregon's Administrative Rules requiring permits for storage and disposal of solid waste.

These are only a few of the more blatantly, prominent, and illegally functions and sites using improper disposal methods condoned by the City of Pendleton and with the full awareness of the DEQ trio of Dadoly, Preston and Davison.

Throughout Umatilla County there are dumpsite locations that we will forward later for the Department's enforcement when a reliable public employee is assigned to investigate.



J. Val Toronto, P.E.
219 S.E. 1st St.
Pendleton, Oregon 97801

Revised Copy



NFIB
National Federation of
Independent Business

Testimony of
John R. Broadway
NFIB Virginia State Director
National Federation of Independent Business

Ex. 46

Subject: Flow Control
Before: House Committee on Small Business
Date: September 13, 1995

Statement by
John R. Broadway
NFIB Virginia State Director
National Federation of Independent Business

Good Morning. On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), and 13,000 members in Virginia, I appreciate the opportunity to present the views of small business owners on the subject of flow control.

By way of introduction, NFIB is the nation's largest business organization representing a broad cross section of American businesses. About 50 percent of our membership is in the service and retail industries, about 25 percent are in manufacturing and construction, and the rest are in businesses ranging from agriculture to wholesale services. NFIB's typical member has five employees and grosses about \$250,000 in revenue annually.

Overview

The vast majority of small businesses are customers of waste disposal services. However, NFIB also represents a number of small waste haulers and recyclers. Consequently, any efforts to maintain and expand the use of flow control ordinances negatively affect small business owners. The reasons are quite simple. Flow control ordinances, which force waste disposal customers to use government-mandated waste management facilities, create monopolies under which small business owners will most likely pay higher costs and receive inferior service.

Monopolies, by their very nature, give an advantage to one entity at the expense of all others. It makes little difference whether the local government or a separate entity with a long-

term contract runs the waste disposal facility. Because monopolies do not have to face free market competition, customers have no power to bargain for better rates and service.

Concerns of Small Business Owners

Flow control ordinances have the most obvious impact on price. Currently, in communities where no ordinances exist, both large and small haulers, processors, and recyclers compete for market share. As a result, customers can purchase disposal and recycling services that are efficient, safe, and cost-effective. On the other hand, where ordinances do exist, prices are artificially set to ensure a specific payout; and, in some instances, the prices are inflated to pay for other municipal services as well. In fact, I have brought a chart with me that illustrates the findings in a recent study by the National Economic Research Associates¹ that I would like to have placed in the record. According to this study, which was prepared in May 1995, flow control will result in an average increase of 40 percent in waste disposal costs. Small businesses simply cannot afford this very real tax that flow control places on them.

This tax burden, often referred to as a tipping fee, is not inconsequential. Studies conducted by the NFIB Education Foundation indicate that typical NFIB members take out of their businesses less than \$40,000 annually to support themselves and their families. Clearly, the price of any service, and particularly one that is as non-discretionary as waste disposal, can be a significant expense for a small business. When small business owners are required to use a government-mandated disposal operation that faces no price or quality competition, they are virtually guaranteed inferior service and higher prices.

¹National Economic Research Associates, The Cost of Flow Control (1995).

A second impact of monopolistic flow control ordinances is inefficiency. Instead of building disposal services to respond to need, flow control ordinances result in facility-driven systems. Government-backed facilities do not need to seek business to stay in business; they are guaranteed a return on their investment. There is no incentive to improve the disposal facility, to implement new technology, or to attempt to cut costs. And there is certainly no incentive to pass any savings on to the customer. In addition, because these facilities are built without regard to market conditions, they are often oversized, built to receive volumes of waste considerably in excess of volumes projected in a free market environment.

Flow control ordinances can also negatively affect environmental quality. Small business owners want the ability to ensure that their waste is being properly disposed. They and their families live in their communities -- they drink the water and they breathe the air. In addition, under current Superfund law they face enormous liability for the waste they generate if it is not disposed of responsibly.

With respect to flow control ordinances, waste generators may be forced to send their waste to facilities that are environmentally unsafe, leaving them with potentially huge liabilities. Waste generators should be able to control their own liability and their quality of life by choosing the facility that has the safest standards.

NFIB also represents a number of haulers and recyclers. With flow control ordinances in place, it is highly unlikely that these small businesses would be able to compete for long-term contracts. They will, in effect, lose any opportunity to provide these services or fill new niches in the market as new technologies develop.

Arguments are made that counties and municipalities need flow control ordinances to plan for present and future waste management. While such planning may be desirable, there are better

ways to manage it than by interfering in free markets. It is a myth that waste management requires flow control. Such management by local governments can be performed through regulating the quality of service, not by performing it themselves or by establishing long-term exclusive contracts.

Pending Legislation

It should be clear from my testimony that small business owners do not support flow control ordinances. However, they are not insensitive to the plight of many communities that have on-going facilities in place. If Congress must pass some flow control legislation, NFIB strongly urges that only a strictly limited grandfather provision be established. Specifically, we do not believe that communities that currently have on-going programs should be destined to live under flow control ordinances into eternity. Once the currently operating facility's useful life is finished, any grandfathered flow control ordinance should end. And certainly, any community that has passed an ordinance and was merely in the planning stages of building a facility should not be protected from the free market.

Small business owners face many hurdles in maintaining their businesses, creating jobs, and generating revenue for their communities. They should not be faced with the added costs and inferior service that results from monopolistic flow control ordinances. NFIB urges the committee to consider the negative consequences of establishing long-term monopolies that force small businesses to purchase services from a single supplier. It is not in the best interests of small businesses or the nation as a whole.

Thank you for giving me the opportunity to testify and I would be glad to answer any questions.



NFIB Speaks For Small Business

FOR OVER 50 YEARS, NFIB has been the voice of small business.

And in 1995, even the nation's leading mainstream media began to notice that lawmakers were listening.

"With more than 600,000 members stretched across every congressional district, the National Federation of Independent Business has made itself into one of the preeminent grass-roots lobbying powers in Washington," said the January 4, 1995, *The Wall Street Journal*.



"After years of neglect, a golden age dawns for small business," proclaimed a headline in the June 12, 1995,

Fortune story, which gave NFIB much of the credit for helping create a friendlier political climate for free enterprise.

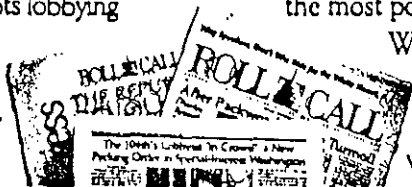


office and say, 'We have 1,600 members in your district and this is what they want.'"

And, when *BusinessWeek* magazine wanted to find out what small business thought of the efforts of the IRS towards small business, they invited

In September, the influential Capitol Hill newspaper, *Roll Call* ranked NFIB the most powerful advocacy group in Washington, quoting a Hill analyst who observed, "(NFIB lobbyists) can walk into a (lawmaker's)

NFIB President Jack Faris to sit down, one-on-one, with IRS Commissioner Margaret M. Richardson, for a roundtable discussion.



Major NFIB Victories

Health Insurance Deduction for the Self-Employed: Increased and made permanent the health insurance deduction for the self-employed, to 30 percent. (1995)

ulations, including air quality compliance programs and extensive recordkeeping. First year savings of approximately \$1,565. (1995)

flow control ordinances, which would have allowed government to dictate where business' waste must be sent and to set monopoly pricing. This will prevent a potential 40 percent hike in waste fees. (1995)

Government Paperwork: Won a continual reduction in government paperwork between now and 2001. Estimated savings per employee in 1996 will be \$530! (1995)

Unfunded Mandates: Won measure restricting Congress from passing unfunded mandates on state and local governments, increases they usually pass on to taxpayers. (1995)

Unfair Competition: Maintained restrictions on items sold at military exchanges, which already have a competitive advantage over small businesses. (1995)

OSHA Regulations: Killed OSHA's regulation on repetitive motion disorders, saving businesses an estimated \$1,000 per year in compliance costs. (1995)

EPA Enforcement: Won a change in EPA's enforcement policy by reducing or eliminating penalties for small businesses who voluntarily disclose violations. (1995)

Employer Mandated Health Care: Killed employer mandate provision in the Health Security Act of 1994, saving small business owners thousands of dollars annually in mandated employee benefits. (1994)

Indoor Air Quality Regulations: Forestalled implementation of indoor air quality reg-

Flow Control: Killed legislation permitting



Headquarters and Administrative office:
53 Century Blvd.
Nashville, TN 37214
(615) 872-5800

Federal Governmental Relations Office:
600 Maryland Ave., SW
Suite 700
Washington, D.C. 20024
(202) 554-9000

NFIB has offices in all 50 state capitals.

Member Services:
(800) NFIB-NOW

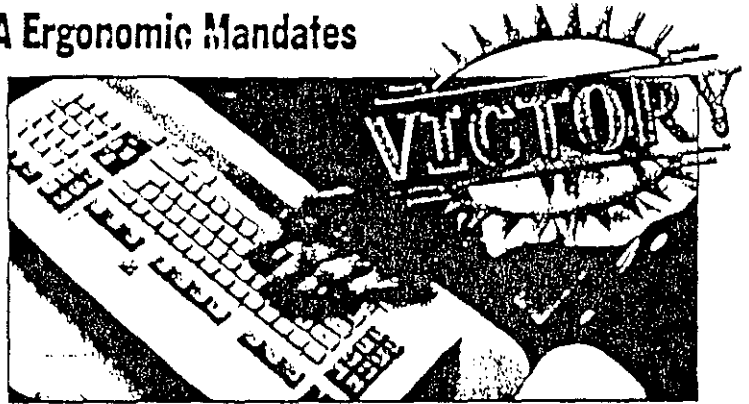
"We have welcomed the leadership and the direction the NFIB has given to all members of Congress. It's been a good partnership for those of us who represent rural America."

Rep. Charlie Stenholm, D-Texas

NFIB Helps Block OSHA Ergonomic Mandates

INTENSE PRESSURE FROM NFIB and a House-passed funding prohibition helped force the withdrawal of OSHA proposals, which included 500 pages of regulations and "economic assessments" covering "repetitive motion disorders" in the workplace.

If these proposals had not been blocked, the potential cost for employers to comply with OSHA guidelines to provide government-approved, ergonomically-correct furniture, tools and other equipment could have been in excess of \$1,000 per employee.



OSHA Must Hold Breath On Indoor Air Quality Regs

ANOTHER NFIB SUPPORTED BATTLE with OSHA means the successful delay in the implementation of its intrusive "Indoor Air Quality Regulations." In addition to requiring small business owners to set up specific locations for employees who smoke, the regulations require regular reports on air conditioners and heating units and the maintenance of very specific air standards and humidity levels regardless of the

type of small business.

Small business owners would have also been burdened with the compliance cost of implementing a federally mandated "indoor air quality program," including employee information and training requirements. The indefinite delay of these regulations is saving small business owners an estimated \$1,500 this year.

Flow Control Stopped At The Source

SOME IN CONGRESS WANTED TO MANDATE where small business owners disposed of their waste. Legislation permitting the use of "flow control" with respect to business establishments would have, in practice, allowed local governments to dictate where businesses sent their waste. This would enable the city or county governments to establish monopoly

pricing. And, it would have denied small business owners the right to shop among a variety of waste collectors to find the most efficient service for their needs.

NFIB fought and defeated this legislation, saving small business owners from facing an estimated 40 percent increase in their waste disposal costs.

EPA Regulatory Relief Changes Enforcement Policy

AFTER INTENSE COMPLAINTS from NFIB and others, the Environmental Protection Agency changed its enforcement policy to encourage small business to voluntarily discover, disclose, correct and prevent violations of federal environmental law. Regulatory changes include eliminating or sub-

stantially reducing civil penalties that would have been incurred as a result of the violation. EPA's new policy no longer allows voluntary audit reports to trigger investigations. NFIB is continuing its efforts to gain other EPA reforms for small business owners.

"I can't tell you...frankly what a joy it is to work with an organization that starts out from principle and actually cares more about what it believes than who is in power."

House Speaker Newt Gingrich, R-Ga.

—Tuesday, January 30, 1996—

3 Suspensions

Municipal Solid Waste Flow Control (H.R. ?)

FLOOR SITUATION: The bill will be considered under suspension of the rules; 40 minutes of debate; not subject to amendment; two-thirds majority vote required for passage. The measure will be managed by Chairman Bliley. The Democratic Manager is expected to be Rep. Dingell.

BACKGROUND: The Commerce Committee did not act on the bill.

Numerous states have laws authorizing the adoption of so-called "flow control" ordinances, under which local governments may require that municipal solid waste be managed, stored, and disposed only at designated sites. Various other states permit localities to exercise flow control authority indirectly, through means such as home rule authority, local planning processes, and franchise authority.

Local governments impose flow control requirements to ensure that the amount of waste sent to a waste management or disposal facility — such as a landfill, incinerator, or waste-to-energy plant — is sufficient to produce enough revenue (from disposal fees) to repay bonds issued to finance the facility. Such financing arrangements have become increasingly important to local governments due to environmental requirements which have caused older waste facilities to close, and necessitated construction of expensive new facilities. (Since 1980, with the assumption of flow control authority, more than \$20 BILLION in bonds have been issued by states and cities nationwide to cover the building and maintenance costs of new waste disposal sites.)

In May 1994, the U.S. Supreme Court ruled in *C. & A. Carbon? v. Town of Clarkstown* that flow control ordinances unconstitutionally restrict interstate commerce.

The House passed flow control legislation (H.R. 4683) in the 103rd Congress, but the Senate did not act on the measure.

SUMMARY: As of press time Friday, the bill had not yet been introduced. Following is a summary of the bill that is expected to be considered on the House Floor.

This bill "grandfathers" state and local government flow control arrangements made prior to May 16, 1994 (the date the Supreme Court struck down such ordinances) for municipal solid waste (ordinary household garbage) and recyclable materials generated within their boundaries. The effect of the bill, therefore, would be to permit local

Municipal Solid Waste Flow Control (cont.)

officials to control the movement of these materials and to require that the refuse be sent to a particular waste management facility (e.g., a specific transfer station, incinerator, landfill, or other waste facility).

"Grandfathering" Requirements

Under the bill, only flow control that was in effect before May 16, 1994, could be enforced by state or local governments. The bill, however, states that existing lawful contracts entered into between May 16, 1994, and November 10, 1995 (the date this legislation was substantially written) also would remain in effect.

The bill permits the imposition of flow control only if the state or locality had presented bonds for sale to finance a waste management facility, or had entered into legally binding "put or pay" contracts prior to May 16, 1994. (So-called "put or pay" contracts obligate a state or locality to pay for a facility that could accept a minimum amount of waste or recyclables, even if the allotted amount is not delivered.)

The bill states that flow control authority could be exercised only for the life of the existing bond (issued to finance the waste management facility) or contract, whichever is longer.

Qualified Facilities

Under the bill, qualified facilities would have to be in full compliance with all existing federal, state, and local environmental regulations. In addition, a waste facility would not be qualified for flow control authority if the facility is located over an aquifer that is the sole source of water for a locality, within five miles of a public beach, or within 25 miles of a city with a population of more than 5 million.

Financing

Under the bill, flow control proceeds could be used only to pay off qualified bonds; to make payments on "put or pay" contracts; to make operation and maintenance payments for facilities; or to pay recycling, composting, or other related expenses.

Interstate Waste

The bill stipulates that any state or locality that exercises flow control authority to a qualified facility may not prohibit or limit the receipt of municipal solid waste at that facility that is generated out-of-state.

Municipal Solid Waste Flow Control (cont.)

Exception for Pre-1984 Arrangements

The bill allows a state to exercise flow control for five years — even if it does not meet the requirements stated above — if the state had adopted regulations prior to 1984 to implement flow control, and subjected waste management facilities to a public utilities commission.

Other Provisions

The bill also includes provisions which do the following:

- **Superfund Sites** — Prohibit states or localities from requiring that waste be sent to a site on the Superfund National Priorities List without adequately indemnifying the generator or transporter of the waste against all liability under Superfund law;
- **Existing Law** — State that nothing in the measure affects existing environmental or state law;
- **Ownership of Recyclables** — State that nothing in the measure authorizes a state or locality to require the involuntary transfer of recyclable materials; and
- **Public / Private Sector** — Require that flow control authority must be applied equally to the public and private sector.

CBO Cost Estimate

A Congressional Budget Office (CBO) cost estimate of the bill was unavailable as of press time.

AMENDMENTS: None permitted.

COMMENTARY: The Administration position was unavailable as of press time Friday.

By Patrick Wilkinson
CQ's House Action Reports (546-3900)

RECEIVED

JUL 01 1996

OFFICE OF THE DEPUTY DIRECTOR

June 26, 1996

Rules Coordinator
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, Oregon 97204

Re: No. SW-ER-96-121
Order No. SW-ER-96-129

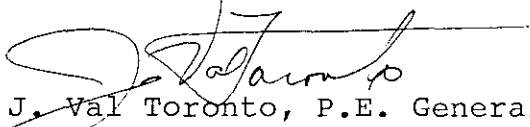
Attn: Van A Kollias, Manager, Enforcement Section

Gentlemen,

The Umatilla Refuse Group Co-Op wishes to have an informal meeting to discuss mitigating factors surrounding the Co-Op's 18 month effort to Recycle and provide Land Reclamation as set forth in ORS 459, Umatilla County's Solid Waste Management Plan and the Department's Solid Waste Management Recycling Plan for 1995-2005.

Your assistance in this matter is appreciated.

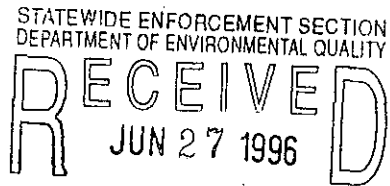
Thank you,


J. Val Toronto, P.E. General Manager
Umatilla Refuse Group Co-Op
Pendleton, Oregon 97801

encl: 40 page documentation
2 page correspondence to Mike Johnson, Inc., generator
and hauler.

cc: Larry C. Wik, Department of Environmental Quality
Northwest Region Office
2020 S.W. 4th Ave. #400
Portland, Oregon 97201-5884

Attachment W
43 pages



June 24, 1996

Langston Marsh
Director
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Or 97204-1390

Dear Langston,

Enclosed please find our attorneys letter to Mike Johnson, Inc.; a copy of our contract with Mike Johnson, Inc.; the County's warning notice of April 18, 1996; Stephanie Hallock's letters of October 13, 1995 Feb. 15 and March 13, 1996; John Dadoly's letter of April 16, 1996; Val Toronto's letters of July 24, 1995, July 26, 1995, Dec. 18, 1995, Jan. 24, Feb. 2, Feb. 16th, March 15 and March 18, 1996 and June 24, 1996 and June 24, 1996; DEQ Fax from Peter Spendelow dated April 24, 1996; a City memo from Mike Hyde to Pete Wells dated Jan. 19, 1994 and Vera Simonton's letters of Feb. 22nd and 27th.

We are writing to formally appeal your fine as outlined in your complaint of June 7, 1996. We find the following errors in your complaint.

1. We did not allow any further deposits from the contractor after your notice of noncompliance. It was mailed on the 16th and received on the 18th or 19th. The contractor hauled after that date and we were unaware of it until today. Why wasn't the contractor notified with Mr. Dadoly's letter of March 16, 1996? We did not want anything that wasn't source separated and that could not be used in composting. You can easily see that the contractor is trying to take advantage of a poorly written contract. We would obviously not take all of his \$27,500.00 of refuse for \$3,500.00. Our intention was to only get source separated wood products and clean fill. No board action even approved the contract Mr. Toronto signed. The piles that we did not approve at the site ended up being dumped on us. We only approved two large wood chip piles. All the rest were rejected.
2. The fine should be directed at the contractor who violated our contract with him.
3. We have permission from your agency to accept source separated materials for recycling and reuse. The County has only warned us at this point. They lost our application at the point we refused to sign a release of liability form for not processing our application within the required 120 days. We have resubmitted to the County a copy of the application they misplaced for approval. The County continues to use the 1974 Solid Waste Management Plan. Recycling and agri-business is supported in the plan. It needs to be updated to protect our existing land fills.
4. The State's Solid Waste Management Plan encourages composting, recycling and land reclamation. Our proposal is in accordance with the statutes and Departments 1995-2005

S.W.M. Plan recommendations and goals. Eastern region has not provided a good faith effort to our organization in attainment of the recycling goals and land filling and land reclamation. We are still waiting for your letter of support subject only to County LUC approval. The Eastern Region promised this to us in February to help us with the County approval.

5. The City of Pendleton has continued the use of the old City landfill for an undisclosed period of time, which has been continually monitored since 1995. They could have been required to clean up the entire land fill and monitor the groundwater for the next 30 years. They were never fined and allowed to merely cover the land fill and remove a token amount of waste. The City also dumps solid waste at other unpermitted sites and has not been required to obtain a solid waste permit or even control storm water runoff.

6. I was required to spend approximately \$1.6 million in cleanups on the Harris Pine sale, yet the Brownfield Park property that had the same environmental problems was conveniently given a clean bill of health when donated to the City of Pendleton.

7. Clean fill materials that are denied us are allowed at several other sites locally. We have been told that we would be fined if we hauled the same materials to our clean fill location.

8. There is no drainage way on the south side of our property and no waste in any drainage way.

9. We object to Mr. Dadoly classifying this as our second offense. The first complaint was on the old State Mental Hospital Landfill site. We have already cleaned up an old state landfill at our site. We did not dump it there.

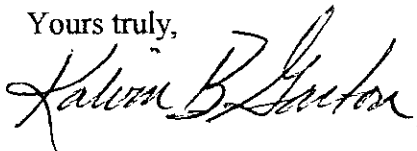
10. Our research shows that only a very small fraction of Oregon's compost operations in our state are permitted and illegal dumping has increased significantly.

11. When we filed a complaint for medical wastes being disposed of improperly, it fell on deaf ears. We had employees testimony, Sanitary Regulatory Board minutes, collection vs. Disposal receipts and wrappers picked up off the fence...not good enough! Again your agency protected the violators. There appears to be two sets of standards. One for government and another for the private sector.

We are trying to bring an environmentally safe, cost effective waste recycling, composting and disposal alternative to this state that will improve our environment. We would appreciate your support.

The State's environmental policies should be "Vision" driven, not "agency budget" driven.

Yours truly,



Kalvin B. Garton

President

Umatilla Refuse Group Cooperative

cc. Eastern Region, Pendleton Office DEQ
Eastern Region, The Dalles Office DEQ
Waste Management and Cleanup Division, DEQ
Department of Justice

Environmental Protection Agency
Environmental Quality Commission
Umatilla County District Attorney
Umatilla County Counsel
Glen Diehl, Umatilla County Sheriff's Office
City of Pendleton
Warren Taylor, Property Owner
Wal-Mart
Mike Johnson Excavation
Circle M. Construction
Dennis Hachler, Attorney
John Gilbert, Attorney
Emile Holman
Editor
Senator Gordon Smith

DENNIS A. HACHLER

ATTORNEY AT LAW

245 S. E. 4TH STREET

PENDLETON, OREGON 97801

MAILING ADDRESS:
P.O. BOX 488

TELEPHONE:
(503) 276-2986
FAX: (503) 276-5007

May 31, 1996

Mike Johnson, Inc.
General Contractor
Rt. 7 Box 420
Union Loop & Brinkley Rd.
Kennewick, WA 99337

RE: Umatilla Refuse Group Cooperative

Dear Mr. Johnson,

It is my understanding that my client, Umatilla Refuse Group Cooperative, by and through it's General Manager, Val Toronto, faxed you a letter on or about May 27, 1996, concerning several loads of material placed on their property in Umatilla County, Oregon, which had not been source separated, as was required by your original contract.

I have a copy of your May 28, 1996 response to said letter.

In looking at the contract which was signed between the parties, it indicates that the materials going to be deposited upon Umatilla Refuse Group's property would be source separated.

I have now been informed that gravel was placed over the top of the loads rather than tarps to keep the refuse material from blowing out of the trucks.

In addition, I have been advised that there are thirty one (31) loads of dirt and concrete mix, which have been dumped on the wrong property, and those need to be removed immediately from that property by you or your agents.

I also understand that there are sixteen (16) loads of dirt and concrete, which have been dumped on Umatilla Refuse Co-op's land, which can not be source separated unless it is done by hand.

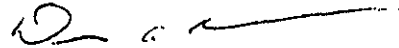
DENNIS A. HACHLER
ATTORNEY AT LAW

May 31, 1996
Umatilla Refuse Group Cooperative
Page 2

This letter is a formal demand upon your company to remove these forty seven (47) truck loads of material which cannot be source separated unless it is done piece by piece by hand.

This needs to be removed immediately. Your prompt attention to this matter is expected.

Yours truly,



Dennis A. Hachler
Attorney at Law

DAH:dmp

cc: Kal Garton
Val Toronto'



Rt. 7, Box 420 • Kennewick, WA 98337
(Union Loop and Brinkley Road)

Ph. (509) 735-6039
Fax (509) 735-2402

April 11, 1996

Umatilla Refuse Group Co-Operative
219 SE 2nd St.
Pendleton, Or 97801

Re: Lump Sum agreement for construction demolition material

Subject:

1. Source separated material for use in production of wood fiber, shredding for farm use, erosion control, landscaping an/or land reclamation
2. Clean fill for land reclamation

Mike M. Johnson, Inc. agrees to pay a lump sum amount of Three Thousand Five Hundred Dollars (\$3,500.00) to the Umatilla Refuse Group Co-Operative, for accepting and receiving all source separated construction demolition material from the Wal-Mart Project at the Co-Op's 40 acre land reclamation site. The Umatilla Refuse Group Co-Operative accepts ownership and all liability for above mentioned material.

The Umatilla Refuse Co-Operative agrees to furnish all necessary labor to separate the construction demolition material.

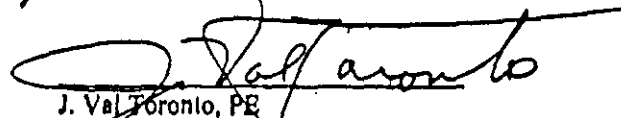
Payment to be as follows:

Advance payment of \$1,000.00 to be paid for completed work to date. The balance of \$2,500.00 to be paid within 10 days after the total amount of material is delivered to U.R.G. Co-Op's Land Reclamation site.

Thank you,

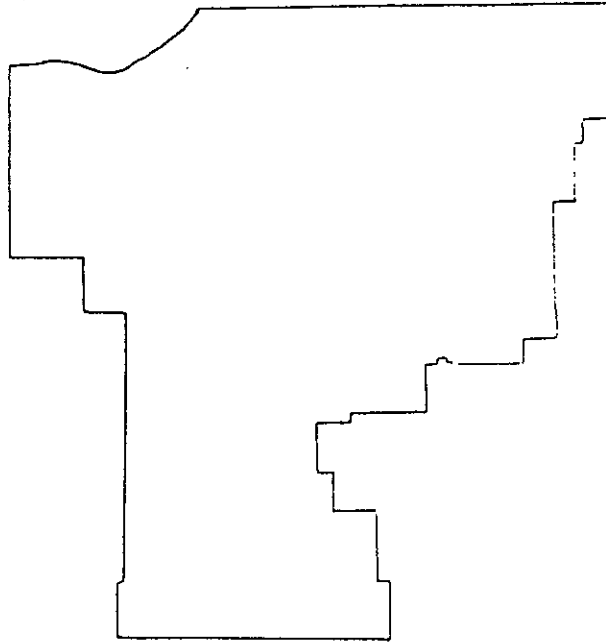

Mike M. Johnson, Inc.

4/11/96
Date


J. Val Toronto, PE
General Manager
U.R.G. Co-Op.

4/12/1996 8:25 A.M.
Date

AN ORDINANCE
FOR
COLLECTION AND DISPOSAL
OF
SOLID WASTE
UMATILLA COUNTY



ORDINANCE NO. 90-07

DEFINITION OF SOLID WASTE
AS STATED IN SECTION 3.02

(x) Solid Waste.

All putrescible and nonputrescible wastes, whether in solid or in liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, inoperable or unlicensed vehicles stored on the site for a period in excess of one year or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste and other discarded solid materials.

UMATILLA COUNTY SHERIFF'S OFFICE

Representing: Gordon M. Campbell, Sheriff



Glen G. Diehl
Senior deputy
Code Enforcement Officer

216 S.E. 4th St
Pendleton, OR 97801

541-278-6300

-- 541-276-7111

No. _____

* WARNING *

UMATILLA COUNTY ORDINANCE VIOLATION

To: Taylor, Warren
(name of responsible party)
Rt. 2 Box 184
(address)
Pendleton, OR 97801
Phone: _____

You are hereby warned that unless steps are taken immediately to correct the violation(s) specified below, or to contact the Umatilla County Enforcement Officer at the phone number or address specified below, a citation will be issued and substantial penalties can be assessed against you. Correction or contact must be made no later than 04-30-96.

You have been determined to be a responsible party for violations occurring on the following described property:

Situs Address or Location Description: Torco Ranch, Birch creek
Umatilla County

Assessor's Map I.D. #: 2N31000003800 / 2N31120000400

Zone: EFTU

Record Owner: Taylor, Warren & Vivian

Description of Violation(s): Accumulation & Storage of Solid Waste. Collection, Maintaining, Permitting, & Creating a Solid Waste disposal site with out a franchise or land use permits. Failure to apply for & obtain a franchise and land use permits. Creating a public nuisance, hazard to health and safety, the public.

Ordinance and Sections Violated: Section (s) 5.00, 8.01, 8.02, 8.04, & 8.08 of the Umatilla County Solid Waste Ordinance.

Steps which must be taken to correct the violation(s): Clean up and remove ALL Solid Waste. Cease & Desist operation of disposal site. Obtain land use permits and Franchise.

Potential Penalties for Violation(s): \$ 500.00 Each Violation.

Date: 04-18-96

Contact: [Signature]
Glen G. Diehl
(print name)

Umatilla County Enforcement Officer
216 S.E. 4th Street
Pendleton, Oregon 97801

(503) 276-7111 x: 300

I hereby certify that I properly served an exact copy of this warning notice on the above named responsible party in accordance with the requirement of the Umatilla County Enforcement Ordinance # 90 - 01.

Viva Certified Mail [Signature]

State of Oregon
County of Umatilla

Signed and sworn to or affirmed before me on _____ (date)

by _____ (name)

Notary
My commission expires: _____

October 13, 1995

Mr. Kal Garton
Umatilla Recycling Group
17 SW Frazer Ave.
Pendleton, OR 97801

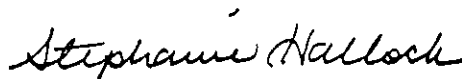
Dear Mr. Garton:

Thank you for coming by today to pick up my letter to Mr. Toronto. You asked me to follow-up on whether or not manure and wood chips could be received at your proposed compost facility.

What I told you verbally is correct: As long as both of those materials are source separated where generated and don't come to you as mixed waste, they are acceptable as compost materials.

As we discussed, if you intend to limit your facility to a few source separated materials such as these, you would not need a permit; however, from what you have submitted to date, you want to take more varieties of waste, so a Letter Authorization is the appropriate regulatory mechanism. I appreciate the packet of information you brought by on behalf of Mr. Toronto. I am forwarding it to Gerry Preston in The Dalles, as neither he nor I had seen the September 29 letter to Mike Stolz at the County.

Sincerely,



Stephanie Hallock
Administrator
Eastern Region

SH/ns

cc: Gerry Preston



2146 NE 4th Street
Suite 104
Bend, OR 97701
(503) 388-6146
DEQ/CR-101

February 15, 1996

Mr. Dennis Olsen, Administrator
Umatilla County Planning Commission
216 SE Fourth
Pendleton, OR 97801

Re: Umatilla Refuse Group
SWLA Requirements
Umatilla County

Dear Mr. Olsen:

On February 9, 1996 the Department received an application for a Solid Waste Letter Authorization Permit (SWLA) from the Umatilla Refuse Group Cooperative Association (URGCA). The intent of this letter is to let you know that we received this application, explain what URGCA has proposed, explain what a SWLA permit is, and to inform you that it is our understanding an identical proposal has been submitted to the Planning Commission in order to obtain an affirmative Land Use Compatibility Statement (LUCS).

URGCA's proposal is generally to operate a composting facility at the Torco Ranch, which is located west of Pendleton. The facility would include the composting of solid waste materials such as yard debris, brush, animal manure, vegetable/fruit waste and waste paper. The proposal also includes the landfilling of clean fill materials such as rock, brick, and concrete, but these are exempted from the Department's Solid Waste Rules or, in other words, no DEQ permit is needed for "clean fill".

The Department feels that a SWLA permit would be the appropriate permit for the composting proposal at this time to allow the applicant an opportunity to demonstrate the feasibility of the operation. A SWLA is a permit issued by the Department which has a limited duration - six months, with one possible six-month extension. A longer term operation of the site or expansion of the types of solid wastes to be processed will most likely trigger the need for a more detailed permit such as a Material Recovery Facility Permit. The applicant has expressed an interest in applying for a Material Recovery Facility in the future.



Mr. Dennis Olsen
Umatilla County Planning Commission
February 15, 1996
Page 2

The Department is prepared to begin working with URGCA on this permit application once the application is deemed complete. Still needed (among other items) from the URGCA to make the DEQ application complete is an affirmative LUCS which the applicant must obtain from the Umatilla County Planning Commission.

If you have any further questions regarding this matter please contact John Dadoly in Pendleton at (541) 278-4616.

Sincerely,



Stephanie Hallock,
Administrator
Eastern Region

SH/cah

cc: John Dadoly, Gerry Preston; ER
J. Val Toronto; URG

March 13, 1996

EASTERN REGION

Bend Office

Mr. Kal Garton, President
Umatilla Recycling Group
440 SW First Street
Pendleton, Or 97801

Mr. Garton:

In response to your March 11 letter, let me make it clear where the process for your facility stands:

- 1) The Department agreed at our February 9 meeting in The Dalles that Alternatives 1 and 2 proposed by the Umatilla Recycling Group (URG) are appropriate for a Solid Waste Letter Authorization (SWLA), but that a Land Use Compatibility Statement (LUCS) must be issued by Umatilla County before a SWLA can be prepared by DEQ.
- 2) The County has written to you regarding the LUCS (letter attached).
- 3) When the LUCS is issued by the County, DEQ will proceed with the Solid Waste Letter Authorization.

Your March 11 letter indicates that you think you should be able to proceed with your facility without a SWLA (not enough time allowed) or a solid waste permit (too expensive); as we have told you many times before, that is not acceptable for the facility you propose - Alternatives 1 and 2 require a SWLA and a LUCS from the County.

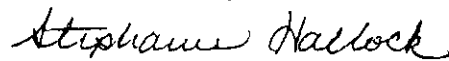
You also indicate that you no longer care to do business with Mr. Dadoly or Mr. Preston of my staff because they are "in McHenry's hip pockets." In my opinion, your remarks in the March 11 letter and remarks made by you, Val Toronto and the Umatilla Recycling Group in the past about my staff are not only inappropriate but border on slander. I will advise Mr. Preston and Mr. Dadoly that if they wish to seek legal recourse against you for these remarks, as their supervisor I will fully support their legal efforts.



Finally, I do not appreciate receiving threatening phone calls from Mr. Toronto on his way to Salem, nor do I intend to continue this unproductive dialogue with you and your organization. If the legislature or the Governor's office wishes to hear from me on this matter I assume they will let me or Director Marsh know. The Department has told you many times, in writing and in person, what your organization needs to do to proceed with your facility; it is clear that you simply do not want to do it.

Until such time as you have received a LUCS from the County, there is no point in further discussions between DEQ and the Umatilla Recycling Group on this matter.

Sincerely,



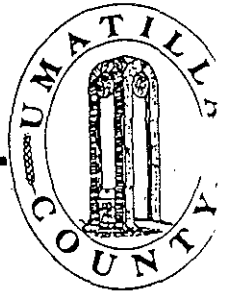
Stephanie Hallock
Administrator
Eastern Region

SH/cah

cc: Langdon Marsh, DEQ Director
Gordon Smith, State Senator
Ray Baum, State Representative
Bev Clarno, State Representative
Paula Burgess, Governor's Office

Umatilla County

Department of Resource Services and Development



Director
Dennis Olson

CERTIFIED MAIL

Land & Water
Resources
Division:

March 11, 1996

LAND USE PLANNING
603-278-6262

J. Val Toronto, General Manager
Umatilla Refuse Group Cooperative Association
440 SW First Street
Pendleton, OR 97801

UMATILLA BASIN
WATERSHED COUNCIL
603-278-3838

Emergency
Management
Division:

Dear Mr. Toronto:

EMERGENCY
MANAGEMENT
603-278-6263

After a thorough review of the material you have provided this office regarding your proposed "Demonstration on Recycling and Conservation," and based upon Section 3.015.15 and other provisions of the Umatilla County Development Ordinance; Section 3.02 (f)(q)(s)(x)(y), Section 8.01, and other provisions of the Umatilla County Solid Waste Ordinance; and after consultation with the County Planning Staff and County Counsel, I have determined that conditional use permit approval by the County Planning Commission is required for your project. Your project will also require approval and a franchise from the County Solid Waste Commission.

RURAL ADDRESSING
PROGRAM
603-278-6263

CHEMICAL STOCKPILE
EMERGENCY
PREPAREDNESS
PROGRAM (CSERP)
603-667-2084

Since you have withdrawn all previous applications (and incomplete applications were returned), you will have to resubmit your application along with the \$200 fee. My decision to require a conditional use permit may be appealed to the Planning Commission. The appeal fee is \$100.

County/State
Services
Division:

COUNTY PAIR
603-567-6121

STATE AGENCY
LIAISONS:

Sincerely,

OSU EXTENSION
SERVICE
603-278-6403

A handwritten signature in black ink, appearing to read "Dennis Olson".

WATERMASTER
603-278-6456

Dennis Olson
Director

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

MAR 13 1996

cc: County Counsel
Solid Waste Commission Chair
DEQ - Stephanie Hallock
DEQ - John Dadoly

EASTERN REGION
BEND

DATE MAILED

April 16, 1996

Oregon

J. Val Toronto, P.E.
General Manager, Umatilla Refuse Group
219 S.E. 2nd
Pendleton, OR 97801

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

**Notice of Noncompliance ER-P-96-031
Unpermitted Solid Waste Facility
Umatilla County**

Dear Mr. Toronto:

BACKGROUND:

Since July 25, 1995 the Umatilla Refuse Group (URG) has been making several proposals which have included recycling, composting and disposal of various materials. Officials from both the Department of Environmental Quality (Department) and Umatilla County (County) have reviewed all of your proposals to help you ensure your project would adhere to state statutes, rules and local ordinances. We have often commended your group for seeking state and local review of what would be required "before" implementing such proposals.

"CLARIFYING MEETING":

At your request, in an attempt to finally clarify what proposal(s) the URG wishes to pursue, on February 8, 1996 your group met with my supervisors Stephanie Hallock and Gerry Preston and myself. At that meeting the URG presented three proposals labeled "Alternative 1", "Alternative 2", and "Alternative 3". You will recall that we used an outline to ensure we all agreed upon what each alternative entailed so the Department could better articulate to you what sort of permit we would require. *(This outline, which includes the URG's clarifying answers, is enclosed).* To summarize that discussion, all three alternatives included composting various materials. All three alternatives included disposing of "clean fill". Alternative 1 did not include composting food waste or paper products while Alternative 2 and 3 did. Only Alternative 3 included burial of materials other than "clean fill".

Using the same outline, the Department explained that we would require a Solid Waste Letter Authorization (SWLA) for Alternative 1 and that although Alternative 2 is probably pushing a Material Recovery Facility (MRF), we'd also agree to a SWLA for it as well. For Alternative 3 we made it clear that any filling or burial with materials other than "clean fill" requires a full Solid Waste Disposal Permit (SWDP).

Understanding this, the URG wanted to combine Alternative 1 and 2 under a



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(503) 276-4063 Voice/TDD
FAX (503) 278-0168
DEQ/ER-101

SWLA application (and may eventually apply for a MRF for Alternative 1 and 2). The URG did not wish to pursue Alternative 3 which would have required a full SWDP. The URG wanted these decisions documented so we all "signed-off" on it. *(This documentation is enclosed)*

SINCE THE "CLARIFYING MEETING":

Following our meeting, the URG submitted an incomplete SWLA application (a Land Use Compatibility Statement - LUCS - was not included with your application). To date, the Department is still waiting for you to provide us with the LUCS so we can process your SWLA application. In the meantime, the County has written the URG a letter explaining that a conditional use permit and franchise approval would be required for the URG's proposed project and that a resubmittal of an application and fee to the County would be necessary for them to process it. According to the County the URG has not re-submitted an application and fee. In Stephanie Hallock's March 13 letter to your group, she stated "Until such time as you have received a LUCS from the County, there is no point in further discussions between the Department and the URG on this matter."

COMPLAINT INVESTIGATION:

The Department has received complaints about the URG's advertisements to generators soliciting that the URG can take solid waste. The Department has also received complaints about truck loads of waste being taken to the Torco Ranch. Therefore, on April 9, 1996, the Department inspected the portion of the Torco Ranch which you lease. Before you arrived to meet Department staff at the entrance, a large, full dump truck was observed parked on top of a weight scale. The driver then came out of the scale house and proceeded up the hill to your leased property. After the Department followed you to the dumping location, staff observed large quantities of construction and demolition (C&D) waste consisting mainly of wood. Also in the C&D waste there were asphalt shingles, metal, gypsum board, and other materials which had been separated out from the wood waste into several distinct, small piles.

When asked "what" you intend to do with the wood waste you said you planned to use it for "land-reclamation" to help level out the property to make it more usable. (Tilling it into the ground to "fill" in low levels and make land flatter) You further said you did not intend to use the wood waste for compost or soil amendment. You also stated that you realized that the wood waste is not "clean fill". Upon being asked "when" you planned to use the wood waste for "land-reclamation", you said you needed to purchase a grinder first but that you would likely wait until you received permit approval from the Department and County. For now, your intentions are solely to store the wood waste. As for the metal, asphalt shingles, etc., you said you would be taking this waste to the Athena Landfill for proper disposal. Upon being asked "when" you planned to transfer this waste to the Athena Landfill, you said you

weren't sure when you'd "get around to it." Lastly, when asked how much more waste you intend to take at this site, you said you "really don't know".

Mr. Toronto, if the URG truly intends to use the wood waste for "land-reclamation" to level out the land, the Department has told the URG in the past that such a use constitutes disposal (this is "filling", but not using "clean fill"). Such a use is what the URG's Alternative 3 outlined which we have already said needs a SWDP which the URG has not wanted to do and has not applied for. If the URG believes the wood waste could be used in some manner as part of Alternative 1 and 2 (ie; for composting), the Department has told the URG all along that a SWLA must first be obtained from the Department. In any case, the URG has begun to commercially accept C&D waste without a permit. Until the URG has local approval from the County and a permit from the Department, you are not authorized to accept or store solid waste at your site.

VIOLATION:

The property leased by URG is being used by URG to store and handle solid waste without a permit. This is a violation of Oregon Administrative Rule 340-93-050(1).

CORRECTIVE ACTION:

o **Take No Additional Solid Waste.** This property has now received two Notices of Non-Compliance for having solid waste without a permit. This property may only accept "clean fill" materials. No material other than clean fill may be buried on site without obtaining a SWD permit.

o **Wood Waste.** The wood waste currently stored on the URG site may remain there until May 31, 1996 (about two months from the date of the Department's inspection). If the URG receives land use approval from the County by then, the Department will act on the SWLA application which you have submitted. The SWLA will contain conditions regarding storage and processing of the wood waste. Again, if the URG ultimately wishes to use this wood waste for ground leveling that is your Alternative 3 (disposal of more than just "clean fill") and you will need to apply for a SWDP.

o **Steel tanks.** The two large steel tanks in the drainageway on the south side of the site must be either put to use as culverts or properly disposed of. If the tanks are used as culverts, they must be properly cleaned and the residue must be sent to an appropriate facility. Either must occur by April 30, 1996 (about three weeks from the date of the Department's inspection).

o **Other Wastes.** The metals and asphalt shingles and other non-woody solid waste must be removed from the site and taken to a permitted solid waste disposal facility by April 30, 1996.

- o **Proper Storage.** The solid waste material currently on site must be stored properly to ensure protection of the environment. The waste located near the drainageway on the south side of the site should be moved back at least 25 feet away from the drainageway by April 30, 1996.
- o **No Burning.** No burning of wood waste or other materials is to be performed.
- o **Receipts.** Receipts from a permitted disposal facility or a recycling facility for all of the solid waste disposed or recycled as required in this corrective action section must be submitted to the Department's Pendleton office by 5:00 PM on April 30, 1996 (for non-wood waste) and June 3, 1996 (for wood waste).

The Department will conduct follow-up inspections on or around May 1, 1996, and June 3, 1996. The violation listed in this notice is a Class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to comply with the corrective action schedule set forth in this notice or should a similar violation occur, we may refer your file to the Department's Enforcement section with a recommendation to proceed with formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

You will note that the property owner, Warren Taylor, is also receiving a copy of this notice. He is receiving a copy because he owns the property and is listed as one of the Directors of URG. If all other means fail with the URG (lessee in this case), he will be asked to take corrective actions to clean up his property.

If you have any questions regarding this matter please contact me at (541) 278-4616.

Sincerely,



John P. Dadoly, P.G.
Environmental Specialist,
Eastern Region

enclosure

cc: **URG Board of Directors** - Kal Garton, Vera Simonton, Warren Taylor, Lucky Meyers, Allen Key, Silva Garton
City of Pendleton - Pete Wells, City Attorney
County - Dennis Olsen, Director of Resource Services & Development Dept.
DEQ - Stephanie Hallock, Gerry Preston, Pat Vernon, Enforcement Section

July 24, 1995

Umatilla Refuse Group Cooperative Association

John Dadoly, Environmental Specialist
Department of Environmental Quality
700 S.E. Emigrant
Pendleton, Oregon 97801

President
Karl Barton

Vice-President

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY

RECEIVED

JUL 25 1995

Treasurer
Vera Emerton

Secretary
Greg Smith
Alice Barton
Lucky Myers
Fred Bradbury
Allen Kay
Warren Taylor
Bill Cole
Don Doshell

Re: Letter authorization for 6 month "Demonstration".

Dear John,

PENDLETON OFFICE

The Umatilla Refuse Group Co-Op, a non-profit association, will, with your assistance undertake and perform a "Demonstration Recyclable/Land Reclamation Project".

The Association is not serving the public sector and will remain and be operated as a private association, serving only bonafide members possessing a licensed operating business.

Our goal is to "Demonstrate" the applicable portions of ORS 459.015 and 40 CFR 257 relating to "Recycling and Land Reclamation" are achievable.

With your help and assistance, our objective is to "Demonstrate" through our private organization that Federal/State Recycling and Land Reclamation goals are possible, practical and make good sense. Perhaps, through this "Demonstration" the public sector may, at some later date, wish to become involved.

Our request is for the Department (DEQ) to issue a letter of authorization for a period of 6 months for any one or all of the three (3) following "Demonstrations".

RECYCLING GOALS

- °Reduce the amount of refuse through reusable bottles and packaging.
- °Compost
- °Land Reclamation, soil amendment, land leveling.

There is an urgent need for a site for construction/demolition and land clearing. The Co-Op would like your letter of authorization to include these items in our "Demonstration".

Inert material would be used as fill and all other material ground and shredded for composting.

The market for recycling and compost will depend upon the location and the need by wholesalers and suppliers. We would wholesale back to our members.

As the market for recycled and reclaimed goods fluctuates, the "Demonstration"

J. Val Toronto P.E., - General Manager (503)276-0579

Karl Barton - President

(503)276-0931

11 thoroughly test the economic and environmental factors.

There shall be NO public access to any portion of the above described "Demonstration" project.

Drainage shall be diverted around or away from the active operational areas.

Surface contours will be maintained so that ponding of surface water is minimized.

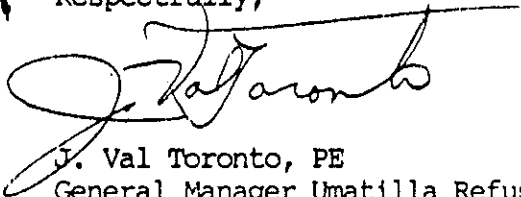
All incoming material will be weighed.

No hazardous refuse/waste will be accepted.

No recyclable material will be buried in agricultural designated land eg. CRP

We are ready to commence this vitally needed "Demonstration" and with your assistance and approval will proceed with this project immediately. We have been in the planning stage for over 10 months.

Respectfully,



J. Val Toronto, PE
General Manager Umatilla Refuse Group Co-Op
4231 S.W. Broadlane
Pendleton, Oregon 97801 Phone 276-1262

Umatilla Refuse Group Cooperative Association

President
Kal Garton

Vice-President
Bill Cole

Treasurer
Vera Simonson

Directors
Greg Smith
Steve Garlow
Lucky Myers
Fred Bradbury
Allen Key
Warren Taylor
Don Godshell

July 26, 1995

John Dadoly- Environmental Specialist
Department of Environmental Quality
700 S.E. Emigrant
Pendleton, Or 97801

Re: Recycling Goals- Construction/Demolition/Land Clearing and
Land Reclamation.

Dear Mr. Dadoly,

This will confirm the conference in your office yesterday July 25,
1995 with Kal Garton, President of the Umatilla Refuse Group
Cooperative Association; Bill Cole, Board member, and Val Toronto,
General Manager of the Co-op with John Dadoly and Joni Hammond of
the DEQ in attendance.

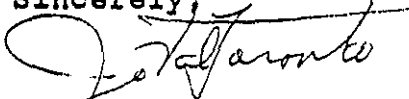
We wish to thank-you for your acceptance and approval of the four
(4) goals set out in our correspondence to you dated July 24, 1995.

Your cooperation was of great help and your decision that a State
DEQ permit was not required for the above referenced project and
the return of the \$100 and application is appreciated.

With your good help, we can implement the Policy of ORS 459.005
(16) (19) (20) (29); ORS 459.015; ORS 459.025; and ORS 459.055 as
the statutes apply to our request.

Contact me at any time if you have any questions.

Sincerely,



J. Val Toronto, P.E.
General Manager

December 18, 1995

Stephanie Hallock-Administrator Eastern Region
2146 N.E. 4th Street
Bend, Or 97701

Re: Recycling Demonstration

Dear Ms. Hallock,

Since your meeting October 13, 1995 with Mr. Kal Garton, President of the Umatilla Recycling Group and Silva Garton, Secretary, I have been extensively reviewing the largest operations of compost facilities in the Northwest.

As previously mentioned, we conducted a mini-pilot study using paper, cured stockyard waste, bark, green vegetable waste and hay waste. A bottled sample was given to John Dadoly for inspection and approval. The sample was ground dry through a 3" screen (we plan on a 1" screen) and bottled (air excluded) to determine the changes in phases (if any) of a dry material mix.

Operation at the Bellingham, Wa. compost facility and the Bothell, Wa. compost facility stated that the semi-arid weather conditions (12" of annual precipitation) was ideal, and perfect for composting. Bellingham receives about 4 times and Bothel 5 times Pendleton's annual precipitation. Both facilities are outdoors and have no evidence of odors or other environmental problems. Both are located on native soil and level ground.

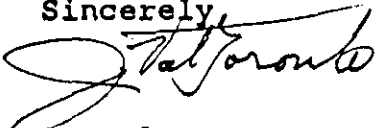
We appreciate your interest and your support and as the lessee, we want this demo project to succeed without generating complaints, enforcement actions or environmental and public health hazards.

Having visited numerous sites in Oregon, Washington and Lewiston, Idaho; we have as perfect a topographical site as could be selected and we intend to enhance the topographical conditions and much more. Only clean construction and demolition wood will either be a) reused or b) ground into chips.

Very few compost operations had available three types of materials, and all agreed that green vegetable waste and cured manure would produce an exceptionally high quality of compost.

I believe that we can get started as a demonstration project under your "No Permit" requirements and then expand when expansion becomes imminent. Very shortly I will prepare an operational layout plan for your review and comments.

Sincerely,



J. Val Toronto P.E.

J. Val Toronto

C.C. DEQ - John Dadoly

January 24, 1996

Dennis Olsen-Administrator Umatilla County Planning Department
216 S.E. 4th Street
Pendleton, Or 97801

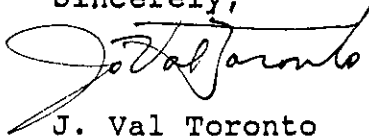
Dear Dennis,

This will confirm our discussion last Friday, January 19, 1996 and this date, January 24, 1996 regarding the progress and problems that the non-profit Umatilla Recycling Group Association and Umatilla Refuse Group Cooperative Association has experienced since April of 1994. Our written request to be included in the upgraded County Comprehensive Plan was February 17, 1994. Your request that the Department of Environmental Quality act first on the L.U.C. approval will be transmitted to Ms. Stephanie Hallock- Eastern Region Administrator for the Department of Environmental Quality.

I am presently preparing an operation manual and will submit it to Ms. Hallock for approval. When the DEQ approves and returns the L.U.C., we will transmit it to your office in accordance with your request this date.

Thank-you.

Sincerely,



J. Val Toronto
General Manager

cc: Stephanie Hallock-Bend
John Dadoly-Pendleton

2-2-1996

Re: Demonstration For Alternate Solutions to S.W.M. Practices
Through Source Separation and Recycling and Land Reclamation

Stephanie Hallock

Dear Stephanie,

I believe it is important to determine legislative intent in evaluating our proposal for a "Demonstration" to provide alternative solutions to existing solid waste management practices. These management practices are set out in several O.A.R. categories.

If the Department (DEQ) requires our project follow existing O.A.R. guidelines, the proposal would not be a "Demonstration". It would be a report of accepted State Standards and Processes that are known and established.

The Plan the Co-Operative envisions is to conduct a "Demonstration" that will ultimately lead to beneficial reuse of recyclable materials that are now transported to a distant landfill and going into landfill waste.

It would simplify discussion if I were to outline our proposed "Demonstration".

Virtually all recyclables will be utilized; construction debris and demolition waste, excluding all hazardous waste materials and medical waste.

The "Demonstration" may well show this plan is one method that will be profitable.

It is difficult to respond to questions, seeking answers, when that is why we want to conduct the "Demonstration". Some, if not most, questions can not be realistically answered until the "Demonstration" provides positive answers to these same questions.

At this point, we can only give a qualified guess, and suggest the results will differ between summer and winter conditions, and also depend upon availability of differing materials.

I believe the Department has sufficient latitude to allow a "Demonstration" that involves and/or includes most, if not all, materials set forth as acceptable in the O.A.R. for a municipal or a non-municipal landfill.

We want to "Demonstrate" there are environmentally sound alternatives to utilization and recycling of solid waste and that landfilling should be the last resort.

Integral to this "Demonstration" will be Land Reclamation and Land Improvement, to increase agriculture productivity, through

use of source separated (recycable) material that is now wasted in Regional Landfills.

I have attempted to provide the Department with all the answers that I can reasonably respond to. Hopefully a more accurate and detailed response will be forthcoming midway through the "Demonstration Process".

The O.R.S. 459 and other Statutes provide the Department with an adequate array of authority to approve the requested "Demonstration" through a Letter or Authorization as you suggested.

I also believe this same authority extends to anyone or any combination of the Department's existing permit authorizations. The permit can be issued to include:

°Source separated materials for purposes of material recovery, for recycling, for shredding or grinding, for utilization in providing soil amendments, landscaping, erosion control and compost.

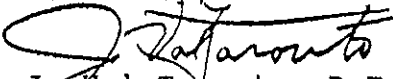
°Source separation of construction debris, demolition debris, clean fill, including inert materials that can be used in Land Reclamation.

It may well be the "Demonstration" may indicate new solutions to old problems and several rule categories can be reduced, combined or simplified.

Our interest is more inclined to determine a practical, economic, cost effective solution through Recycling, Reuse and Land Reclamation.

The response in the following attachments are in numerical order of the respective questions on O.A.R.

Sincerely,


J. Val Toronto, P.E.
General Manager URG

February 16, 1996

Dennis Olson, Administrator
Umatilla County Planning Department
Umatilla County Court House
Pendleton, OR 97801

Re: L.U.C. Approval to implement the Resource Conservation and Recovery Act (amended) and O.R.S. 459.015 pertaining to a "Demonstration thru Recycling Composting, and Land Reclamation".

Dear Mr. Olson,

Hand carried this date is a copy of the proposed project approval by the Department of Environmental Equality subject to Umatilla County approval.

Approval has been granted by DEQ for alternate 1 and alternate 2 during the negotiated conference on February 9, 1996 in The Dalles.

These alternates are fully explained in the demonstration on recycling and conservation document submitted herewith. Also, included are over 80 regulatory goals, rules and statutes encouraging and perhaps mandating the proposals contained within the above described document. The U.R.G. intends to implement the clean fill provisions immediately and look forward to your administrative approval within the coming week.

Don't hesitate to contact me as necessary to expedite your approval.

Thank you.

Sincerely,

J. Val Toronto, P.E.
General Manager U.R.G.A.

Enclosures: Demonstration on recycling and conservation

March 15, 1996

Mary Wahl, Administrator Waste Management and Clean Up
811 S.W. 6th Ave.
Department of Environmental Quality
Portland, Oregon 97204

Dear Ms. Wahl,

The Umatilla Refuse Group has made every reasonable effort to comply with the Department's permit requirements.

Our first request was for a permit to open a Sanitary Landfill in and near Pendleton. I personally located 8 environmentally safe site locations within a 4 mile radius of Pendleton.

The Group was formed in answer to the accelerating costs of collection and disposal. The rate increases had: 1) Discouraged use of the Transfer Station with costs of \$55 per ton and 2) The refusal to take yard debris, construction and demolition materials.

A casual drive around our City has evidence of concrete, asphalt, trees, stumps and miscellaneous rubbish poking out of every highway into and out of Pendleton.

It was obvious the City and County needed a solution to the ongoing environmental pollution occurring in virtually every side hill and drainage area.

Shortly after having several meetings it became clear to us that the local DEQ staff was not in favor of our original proposal.

We then thought the Department would surely support and approve a private landfill, restricted to private users. (A landfill that was not open to the public). A landfill restricted to it's members, only such as a co-operative.

This proposal also received guarded reservations, similar to our 1st proposal and no encouragement from staff.

The opinion by the Umatilla Refuse Group Co-Op (URG) was that surely the Department would support the concept of a Non-Municipal Landfill that would reduce the accumulations of debris and household materials littering virtually every isolated area, hillside, road shoulders, creek basins in and around Pendleton.

The increase in illegal and promiscuous dumping was increasing two fold each year. Note that the County Sheriff's Department stopped responding to illegal dumping complaints when the

frequency reached 500% over previous levels.

Senate Bill 1119 was created to provide a law that would help clean up the area and would also allow the small mill towns to survive the closures of their landfills because of the Department's restrictive provisions.

A review of Federal Environmental Protection Rules contained several exceptions that actually would allow the continued operation of many of Oregon's small mill town landfill facilities in certain environmentally safe settings.

You are aware that the Department opposed Senate Bill 1119 vigorously. The Bill was tabled for that session due to an accumulation of misinformation.

The U.R.G. delegation was approached with a verbal conciliatory proposal that a landfill permit could and would be available within 90 days.

Of course that never happened and 10 months later the Department keeps adding "additional" required information to continue their review. For a typical response refer to the often used statement from Ms. Hallock, February 15, 1996. "The Department is prepared to begin working with URGCA on this permit application once the application is complete. Each time we complete the additional data and information we receive a similar response in the Department's reply. Clearly the Department has no intention of issuing a permit with any practical purpose, if at all.

We had been previously persuaded by staff that a Letter of Authorization was the only permit available under ORS Chapter 459.015 for a Demonstration. Note: There is no such restrictive reference to only a 6 month L.O.A. in the Statutes for Demonstrations, Surveys and Studies to improve the environmental use of Solid Waste material hauled to distant landfills.

This 6 month limitation process was promoted by Gerry Preston, who was made aware that at least 2½ years of experimentation was the minimum time to develop a suitable compost process, because of changing climatic conditions and the availability of different materials that occur with the four seasons.

Mr. Preston's influence was clearly designed to thwart the purchase of \$200,000 worth of equipment for such a limited duration.

On March 8th, 1996, I requested to review 22 of 402 Letters of Authorization, L.O.A., in Salem. For some strange reason only 6 of the 22 could be made available as 16 L.O.A. could not be located.

Of the 6 I reviewed, none had been required to provide the

information that John Dadoly, in his last letter, needed in order to continue his review.

Even the \$3,000,000 Materials Recovery Facility separating 30 tons of household and commercial putrescible waste each day did not have to provide the information required from us for a simple compost pile. I suspect that none of the 402 L.O.A. came close to requiring the information that we have had to provide to staff in Pendleton, The Dalles and Bend.

I also suspect that most L.O.A. have been approved in less than 30 days and invite you to review the balance of the L.O.A. with me at a time convenient to your schedule.

Ms. Hallock is not the offended party in this continual delaying procedure. Consider that all of our ideas for a successful Demonstration, including all of our equipment specifications and our procedures have been transmitted to Pendleton Sanitary Service in Pendleton.

Enclosed is a recent advisory that copies several of our original ideas, which we were required to transmit to the local DEQ staff in Pendleton and The Dalles.

I request you review the numerous times and the substantial information that has been provided over these last 18 months. Compare that with the other permitting processes. How many times did the Department continue their review on other permits?

During the final, final review in The Dalles, February 9th, I had completed and/or commented on every applicable requirement given to me previously. Mr. Preston acknowledged that fact. Mr. Dadoly added two additional requirements which were given to him within 2 days. 1) A copy of the lease agreement (not required in the 6 L.O.A. I reviewed in Salem.) 2) A drawing of a Compost Pile or profile (not required in the 6 L.O.A. I reviewed in Salem.)

Upon delivering this additional data Dadoly required specifications and drawings of our equipment. (Not required in the 6 L.O.A. I reviewed in Salem.)

This additional material was given to Mr. Dadoly within 2 hours.

Several days later his letter required another round of data while he continued his review, which was now his 10th review.

When Mr. Dadoly refused to accept the Corporation Stamp from the owner and President of J. Val Toronto & Assoc. Inc. was when I drove to Salem and determined that staff in Pendleton had required a great deal of unneeded information and that these never ending requirements for more information was a continuation of the delays we had experienced through 1995 and into 1996.

We don't understand why the Department allowed the 30% recycling goal for Umatilla County to be reduced to 15%, when the U.R.G. goal was 50% or greater. That is only one of many questions that has troubled our members who thought the Department had a real interest in promoting Recycling, Composting and Land Reclamation. Our personal experiences do not support this philosophy, at least not in Umatilla County.

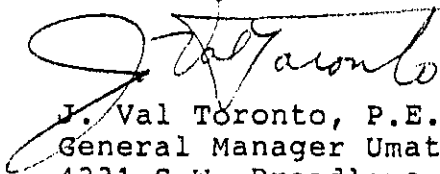
In closing we request the Department support a 2½ year to 5 year alternative Solid Waste Management Demonstration for composting, ORS 459.015, 459.025, and exercise the intended use of ORS 215.283 (j) as policy justification.

The Oregon State Integrated Resource and Solid Waste Management Plan for 1995-2005 provides the Department with 78 Rules and Statutes promoting improvements in S.W.M., Recycling and Composting.

I propose that the Department join with us to request a Legislative investigation into the policy, practices, and environmental effects attributed to the closure of 389 land fills. Establish a policy to promote recycling by any private organization and limit franchises to M.S.W..

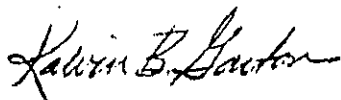
Reference: ORS 459.015; 459.A.020; 459.025; 459.035; 459.095; 459.215.

Sincerely,



J. Val Toronto, P.E.
General Manager Umatilla Refuse Group
4231 S.W. Broadlane Ave.
Pendleton, Oregon 97801

Phone (541) 276-0579
276-0931



Kal Garton, President U.R.G.



Vera Simonton, Director

March 18, 1996

John Dadoly, DEQ
Pendleton Office
300 S.E. Emigrant
Pendleton, Oregon 97801

Re: Location and permits for Construction Debris/Demolition/Land
Clearing.

Dear John,

This is to confirm the receipt from your office of all legally administered landfills in the State, public and private, particularly those that have been operating under your jurisdiction as of March 15, 1996.

I have several questions that need a written response and which will help contribute to a better understanding of your rules of enforcement when a violation has occurred.

1) There is a large construction debris/demolition landfill immediately East of Pendleton Youth Center off Goad Road. This embankment fill area is also within sight of the Jerry Odman residence. Mr. Odman is the Public Works Director for Pendleton.

The embankment fill is about 15' to 20' in height and has ostensibly been, in general, transported from construction/demolition projects within your jurisdiction.

In a previous letter, you were notified that the material from The Silver Saddle had been hauled to the above site. This was the same material you emphatically declared could not be hauled to our 40 acre site, and if it was you would issue an enforcement order and a violation to the landowner.

I am sure you passed your response on to the City as well as to Mr. Mara, the owner of the debris. At least that is the impression Mr. Mara gave to me.

QUESTION: Where has all the construction debris and demolition materials from the renovation of Helen McCune Junior High School been taken for disposal? Is it a site permitted by the Department?

QUESTION: Where has all the construction debris and demolition material from the renovation and construction of the High School been taken for disposal? Is it a site permitted by the Department?

QUESTION: Where has all the burned out material, construction debris and rubble from the burned out bowling alley building been taken for disposal? Is it a site permitted by the Department?

June 24, 1996

RCRA Report by J. Val Toronto is 74 Pages
Does not include divider pages

The Co-op has applied to the Eastern Division for permit, said permit subject to County approval which has been held in abeyance until DEQ approval. DEQ has approved Alternate 1 and Alternate 2. See attached correspondence approving Alternate 1 and 2.

The Department ordered the clean-up of the former State Hospital site. Said site was the location of all Hospital residue and waste from 1914 to 1964. The State had demonstrated for period of 50 continual years of waste disposal operation that the site was located in an environmentally safe setting.

Various ranching companies have continued to use the site from 1964 to present time of clean-up with the same environmentally safe considerations.

Waste disposal by the State Hospital Dairy Farm contributed to the bulk of the clean-up preformed by the Cooperative.

OAR 340-93-050

2. Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Div-93 through 97,...

The reason the Department has not issued is explained in the above two paragraphs and under the current DEQ process- no permit is obtainable in the Eastern Region.

C. Present operation is to obtain a sufficient quantity of recyclable materials to warrant the practicality of purchasing a type of tub grinder to reduce the recyclable material into small pieces of wood fiber for soil amendment purposes to aid in land reclamation and land leveling of the class 5 soils that exist at the site. Refer to ORS. 459.015 and the 50 page Resource Conservation and Recovery Act (Amended).

D. Due to inability and unwillingness of the DEQ to approve a compost operation ORS. _____ The Co-op will recycle the wood into a smaller product that can be blended with soil to produce a soil amendment for land reclamation and land revitalization purposes. The goal is to ultimately be able to irrigate a ½ circle (40 acre tract).

E. Virtually all material will be recycled and recovered. This has been told to the Eastern Region Staff on numerous occasions and is reiterated in the 74 page RCRA report submitted and approved by Stephanie Hallock, Eastern Region Administrator on Feb. 8, 1996 at The Dalles final conference. The nature, amount or location of the materials is such that they DO NOT constitute a potential threat of adverse impact on the waters of the State or public health.

3. The Department has unreasonably withheld a permit for a demonstration as set out in ORS 459.015 for composting, therefore the Co-op has substituted a temporary plan that will allow increased farming productivity through land reclamation of the class 5 soils. Soil conservation classifies the soils at the site as Type Two, which is the lowest category of soils that can be revitalized for agricultural purposes.

4. The Eastern Region has had over 18 months to evaluate the Cooperative's privately leased site and to issue a letter of Authorization in accordance with OAR. 340-93-060 and the final acceptance conference Feb. 8, 1996 of Alternate 1 and Alternate 2 as detailed in the above described site specific RCRQ report. Due to the uncooperativeness of the Eastern Region to provide a permit and allow a practical period of time for a Composting Demonstration, the Cooperative has chosen to upgrade the soil in the proposed Land Reclamation project by one of the three processes which do not involve composting, but are components of a soil commodity. The agricultural method will blend;

- wood fibers with soil for a soil commodity with high moisture retention value.
- wood fibers, cured livestock manure and soil for potting mix and agricultural purposes with fertilizer value and increase moisture retention value
- wood chips blended with top soil for land leveling and land reclamation

In summary, it appears that the Eastern Region has practiced and implemented an administrative de-facto Flow Control Process whereby the permitting process and proposed operation of the Co-op has been held in perpetual abeyance. The Eastern Region has retained and continues to retain a negative attitude towards all of our recycling proposals.

Clean material delivered to the Co-op site, including material that could have been delivered to the site has been condemned, while the same or similar material is permitted to be dumped elsewhere with total impunity and full acceptance by the staff of the Eastern Region. When the Eastern Region was questioned why they would not support a Demonstration Goal of Recycling 50% or more, the question was regarded as harassment. When the Eastern Region was questioned as to whether a decommissioned steel 6' diameter vessel could be re-used the negative reply was a FAX 9' in length. When asked to justify the reason for the negative response, the question was treated as harassment.

When the region was asked to survey and review 17 illegal dump sites in the Pendleton area, the suggestion was treated as harassment and no field trips scheduled.

The City of Pendleton has been using the Patawa dump site with impunity and no permit for an indefinite length of time. No monetary enforcement action has been issued by the Eastern Region.

The City drains large quantities of surface water runoff from the airport, through garbage south of C Street through the old landfill to the only wetland in Pendleton. No monetary enforcement action has been issued by the Eastern Region. The City has continued to dump mixed solid waste materials at other locations with impunity. This information and supporting documentation relates to harassment of staff in the Eastern Region and discontinue the dialogue

as meaningless and unfruitful!!

ORS 459.015 places primary authority with the City/County. The County Comprehensive Plan places primary authority for Solid Waste collection, disposal and storage with the "County Solid Waste Management Plan".

The Plan-page (IV-2) says that "storage does not include in process storage". The acceptable recyclable material is in process storage and does not constitute a health threat of any kind or nature to the public or to the waters of the State.

The DEQ Commission has established recycling goals in the 1995-2005 year S.W.M. Plan. The Co-op is attempting to demonstrate that these recycling goals of 50% for the year 2000 are attainable. The Eastern Region has taken a protectionist stance for the Franchisee who can barely achieve a 15% recycling goal. The County S.W.M. Plan, page (IV-26) says "No Solid Waste Regulation shall be adopted by local government if such regulation conflicts with regulations adopted by the Commission. ORS. 459.045; 459.095 (1).

The County S.W.M. Plan further says under "Prevent Conflicts of Interest"—no one agency should be assigned more than one(1) responsibility under -operating agency- Plan Administration, Control and Regulation. Pg (VI-31). Page 10 of "An Ordinance for Collection and Disposal of Solid Waste Umatilla County calls for only "one holder of a franchise" on the Committee. We submit that the committee has been composed of much more than one franchise holders representative. All County S.W. Ordinances have been enacted by the Commission at the recommendation of the County reviewing Solid Waste Committee containing a disproportionate influence of collectors and collectors committee members belong to or own a collection or solid waste disposal site!!!! Because of the conflict of interest by committee members in regulating out competitive business, it explains why the County Ordinances are among the most onerous and restrictive of the 32 Counties.

The Solid Waste Management Plan specifically excludes all agri-business from the Land Use Compatibility requirements. The Department and LCDC should have (at the least) required a Plan Amendment and the full public hearing process by the agricultural businesses when this land use requirement was altered and dramatically revised.

ORS 459.153 --The Legislature intends that the County not discourage or hinder recycling. The Sole Franchise has not indicated that the goal of 50% is attainable by the year 2000. Facts indicate that since 1991, the Federal goal of 25% for Umatilla County has been reduced to 15%. The County has not encouraged recycling and both the County and the Eastern Region are waiting for each other to act first on the Permit that would allow the Recycling Group and the Cooperative Group to demonstrate that the 50% recycling goal is achievable.

ORS 459.025---Public and private agencies to satisfy statutes for carrying out as mandated, studies/research/demonstration projects for Solid Waste Management. The ongoing refusal by DEQ to issue a permit has been previously discussed and should be re-read in the context of State mandated Statutes on recycling.

ORS 459.045 Rules (4)—Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 through 459.105 and 459.205 through 459.305. The DEQ Western Region approves the LUC process from 1 week to 2 months for environmentally difficult permit processes. The Eastern Region has refused a permit for over 18 months. A 74 page report including back-up reports are some 36 letters of qualifying additional data.

ORS 459.095—Restrictions on authority of local governmental units. All units of government in the Eastern Region have exercised flow control over recycling, and exclude permits to control flow to transfer station sites.

State of Oregon
Department of Environmental Quality

Date: June 24, 1996

To: Val Toronto fax (541) 276-2459

From: Peter Spindelow phone (503) 229-5253

Subject: Franchise statute

Val- Unfortunately, I'm not sure I know which part of statute you were referring to in your recent voice mail message to me. The authority for local governments to franchise collection services for solid waste (including some recyclables) is in ORS 459A.085. The exemption in ORS 459A.075 excludes from this franchise authority any recyclable material that is source-separated by the generator and purchased or exchanged from the generator for fair market value. Also, the franchise authority is for "collection service" franchises. In our rules (OAR 340-90-010(4) we define "collection service" as being "... a service that provides for collection of solid waste or recyclable material or both. Collection service of recyclable material does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material." Thus, it appears that the franchise authority in Oregon law does not give local governments the authority to exclude people from operating recycling depots for collecting source separated material from the public. I'm not a lawyer though, and so do not know if local governments have other authority (such as zoning) to regulate or exclude recycling depots.

I couldn't find your phone number in our computer system, so I'm faxing this directly to you. You should be able to find copies of the statutes at any local library.

From: Michael Hyde (MIKEHYDE)
To: Pate
Date: Wednesday, January 19, 1994 4:39 pm
Subject: Landfills

While the San Reg Bd and city are considering the closure of the airport landfill, should we also have those consultants look at what might be done to better secure the old Patawa Creek landfill so that it is not such an attraction for illegal dumping? Right now, we have a lease with a guy who is tearing apart vehicles on the site and running people out of there. I'd prefer to put a substantial fence around the place and get rid of this quasi-junk yard.

The problem is that we would draw attention to the fact that this Patawa landfill was not closed very well, it has very little top cover, etc... Maybe we should just let that "sleeping dog lie?"

Is this something worth bringing up to the reg bd to consider in the closure study?

February 22, 1996

Stephanie Hallock, Division Administrator, Eastern Region
2146 N.E. 4th, #104
Bend, Oregon 97770

Fax: (541) 388-6146

Dear Ms. Hallock,

Our group would like to thank you for the productive meeting in The Dalles, Thursday, February 8th.

We have been so long in attempting to reach our goals, it was gratifying to at last make progress.

It was a pleasure to meet with the Department's approval for our recycling project.

I have a difficulty with our local Department's asking for more information than was agreed upon in The Dalles. It was my understanding that we needed to apply for the Solid Waste Letter of Authorization for our Demonstration Project; combine Alternatives 1 & 2; to complete a drawing for the Compost Pile and to submit 1 drawing of the 1st site, with berms and details in place.

We are now being asked to submit even more detailed information.

As you are aware, our operation must begin this spring to be able to take advantage of the seasonal debris. We cannot understand the further delaying tactics of the Department.

I hope this can all be resolved quickly. If there is some misunderstanding, on our part, of the facts, please notify us.

Thank you again.

Vera Simonton
Vera Simonton, Treasurer
Umatilla Recycling Group
1208 N.W. 47th St.
Pendleton, Oregon 97801

February 27, 1996

John Dadoly, DEQ
300 S.E. Emigrant
Pendleton, Oregon 97801

Dear John,

Our organization is still waiting for the letter to Umatilla County Planning Department stating we have met with all the Department's rules and regulations for our recycling-composting business.

If there is some problem or regulation or rule we have not met please advise us immediately.

It is very important that we begin immediate operation to take advantage of the seasonal supply of materials for the composting.

I am available to talk with you, at any time convenient to you, as are other members of our organization. The delays by your Department are incomprehensible.

Please advise me, as soon as possible, what steps we can take to get this problem resolved.

Thank you,

Vera Simonton, Treasurer
Umatilla Refuse Group
1208 N.W. 47th St.
Pendleton, Oregon 97801 276-1262

June 26, 1996

Mike Johnson, Inc. General Contractor
Rt. 7 Box 420
Union Loop and Brinkley Road
Kennewick, Wa. 99337

Dear Mr. Johnson,

I have made several attempts to contact you the early part of June for the single purpose of resolving the class and type of material delivered to our storage site.

Gale Balderson was instructed to store the material to the South of the property, not on or adjacent to the access road allowance.

Your response to the correspondence by Dennis Hachler, attorney, does not absolve the company from DEQ rules.

I have asked Gale Balderson, during two phone conversations to visit the site to determine for Mike Johnson Inc. the extent of the area that your material has been placed on the Co-Op's leased land. Also to view for himself the material that cannot possibly be source separated for any useable agricultural purpose.

The following referenced material was submitted to qualify the types and classes of materials acceptable for our purpose that is acceptable to the State of Oregon.

Date:	To:	From:	Subject:
3-9-96	Mike Johnson, Inc.	U.R.G.	Source separated materials description.
3-11-96	Mike Johnson, Inc.	U.R.G.	Source separated Demolition Construction Debris-2 pages DEQ explanations
3-12-96	Mike Johnson, Inc.	U.R.G.	Tentative agreement transmit with
3-18-96	Mike Johnson, Inc.	U.R.G.	First inquiry to M. Johnson
3-20-96	Mike Johnson, Inc.	U.R.G.	Source separated material and clean fill.
4-5-96	U.R.G.	Mike Johnson	Rejection of contractors definition of construction debris.

4-8-96	Mike Johnson, Inc.	U.R.G.	Clean wood and clean fill, wood fiber shredding, erosion controls, etc..
4-9-96	Mike Johnson, Inc.	U.R.G.	Authorize delivery of source separated materials with description.
4-10-96	Mike Johnson, Inc.	U.R.G.	Explanation of materials to be source separated prior to delivery, wood chips, located in area reserved for clean fill.
4-10-96	U.R.G.	Mike Johnson, Inc.	Adjudication by M. Johnson of source separated material.
4-11-96	U.R.G.	Mike Johnson, Inc.	1. Source separation 2. Cleanfill for land reclamation
5-21-96	Mike Johnson, Inc.	U.R.G.	Notification of unacceptable construction materials and placement of gravel in lieu of tarping for truck transportation

Note: By DEQ regulations, source separation must be accomplished prior to hauling or trucking. My conversation with Gale Balderson was that a secondary review of material, when placed on a conveyor, would hand sort out smaller objectionable material prior to entering the tub grinder.

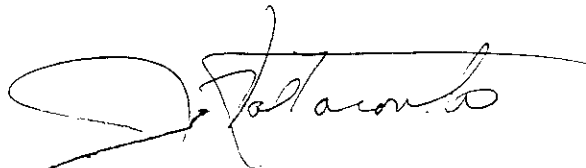
During this discussion, Mr. Johnson was providing source separation by use of crane and bucket equipment plus one workman prior to loading. Secondary separation off site was a necessary part to insure the use of a product for the stipulated purposes in the contract.

Of the several piles of material that were reviewed on the Wal-Mart site, with Mr. Balderson, only two piles of wood material, about 250' apart, were deemed acceptable and all others were rejected as not conforming to acceptable requirements.

All material hauled on April 19th and thereafter consists of material that was placed without the Coopertive's general knowledge or approval.

The material situated in the 40' easement, including all material situated North of the road allowance must be removed immediately.

Your aprompt attention will be appreciated.



J. Val Toronto, P.E. General Manger
 Umatilla Refuse Group
 216 S.E. 2nd.
 Pendleton, Oregon 97801

541-276-0931 or 541-276-0579

JUN 7 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

CERTIFIED MAIL Z 076 235 258

Umatilla Refuse Group Co-Op
c/o J. Val Toronto, P.E.,
Registered Agent and General Manager
225 SE Second Street
Pendleton, OR 97801

Re: Notice of Assessment of
Civil Penalty
No. SW-ER-96-121
Notice of Violation and Department
Order No. SW-ER-96-129
Umatilla County

In response to a complaint received by the Department on April 5, 1996, Department (DEQ) staff inspected a waste disposal site operated by the Umatilla Refuse Group Co-Op (URGC) on land known as the Torco Ranch, owned by Warren Taylor, southeast of Pendleton, Oregon on Birch Creek Road. On April 9, John Dadoly, Tim Davison, and Gerry Preston of the Department's Eastern Region visited the site and observed a very large accumulation of wood waste and miscellaneous debris, including asphalt shingles, metal and gypsum board, on the site. The wood waste on site was conservatively estimated at at least 230 cubic yards (46 tons) of wood waste. A dump truck operated by Mike Johnson Excavation, Kennewick, Washington, loaded with chipped wood debris was observed at the site on April 9 -- first weighing in on scales near the URGC disposal facility, and later returning empty. Mike Johnson Excavation was a subcontractor working on the Wal-Mart construction site in Pendleton. J. Val Toronto, URGC general manager, told DEQ staff on April 9, that waste already at the site and waste being brought to the site originated from the Wal-Mart site.

The site is an unpermitted solid waste disposal site. URGC had been in contact with the Department since July 1995 concerning the possibility of obtaining a permit for the site but no permit has been issued. A permit application was submitted to DEQ, but it was incomplete because URGC did not include a Land Use Compatibility Statement from Umatilla County. Without the Land Use Compatibility Statement, the Department cannot issue a permit for the disposal site. The Department has advised URGC on several occasions that no disposal site may be operated or maintained without a permit from the Department. The Department's permitting procedures are important as long-term impacts of a disposal site may include the generation of leachate which could impact surface water and groundwater. Some waste at the URGC site was observed to be placed near the drainageway at the south side of the site.



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1

*Attachment X
1/2 pages*



The Department sent URGC a Notice of Noncompliance (NON) on April 16, 1996. It noted that the Department had been in contact with URGC about a proposed solid waste site since July 1995, that local review and approval would be required before any solid waste disposal site could be located in Umatilla County and before a permit could be granted for such a site, and that URGC's solid waste disposal site violated Oregon law.

On April 17, DEQ staff again observed a dump truck and trailer loaded with demolition debris on the scales at the Torco Ranch, headed in the direction of the URGC site. On the next day, April 18, Department staff observed trucks operated by Circle M Construction, Spokane, Washington, loaded with demolition waste leaving the Wal-Mart construction site, traveling to the Torco ranch, weighing on scales at the entrance to the ranch, traveling up a hill on the ranch toward the URGC disposal site, returning empty a short time later, and then heading back in the direction of the Wal-Mart construction site.

On May 1, 1996, Umatilla County Sheriff's office staff inspected the URGC disposal site, and determined that the waste was still there; indeed, there appeared to be more waste at the site on May 1 than there had previously been during the prior DEQ inspection. URGC has continued to cause or allow solid waste to be disposed at the unpermitted disposal site despite being informed that this violated state law. This is unacceptable.

URGC is liable for a civil penalty assessment because URGC violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$18,750. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule 340-12-045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1. The Department has chosen to assess URGC a civil penalty for only 3 of the 23 days of violation the unpermitted operation of the solid waste disposal site between April 9 and May 1, 1996. The penalty includes an estimated \$2,550 in avoided tipping fees that URGC would have had to pay had it properly disposed of the wood waste and other waste at a permitted site such as the Pendleton Sanitary Service transfer station in Pendleton.

The enclosed Order cites URGC's continuing violation of Oregon law and orders that URGC and the property owner, Warren Taylor, are jointly and severally liable to clean up the waste and remove it properly to a licensed site within 60 days of receipt of the Order. Appeal procedures are outlined in the Order. Appeal procedures for the penalty are outlined in Section IV of the Notice. If URGC fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against URGC.

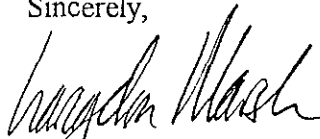
If URGC is cooperative in ensuring that the waste is properly removed and disposed of at a permitted disposal site, and satisfactory documentation is submitted to the Department in accord with the Order's schedule, the Department will mitigate the \$2,550 portion of the civil penalty assessed against URGC for the economic benefit to \$0. If the Order is not complied with, the Department will initiate additional and escalated enforcement action, which may include additional administrative civil penalties or injunctive relief.

If URGC wishes to discuss this matter, or if URGC believes there are mitigating factors which the Department might not have considered in assessing the civil penalty, it may request an informal discussion by attaching your request to your appeal. A request to discuss this matter with the Department will not waive URGC's right to a contested case hearing.

I look forward to URGC's cooperation in complying with Oregon environmental law in the future.

Copies of referenced rules are enclosed. If you have any questions about this action, please contact Larry Cwik with the Department's Enforcement Section in Portland at (503) 229-5728 or toll-free at 1-800-452-4011, Enforcement Section extension 5728.

Sincerely,



Langdon Marsh
Director

U:\ENFCPNOTICE\URGC\CL.DOC

Enclosures

cc: Eastern Region, Pendleton Office, DEQ
Eastern Region, The Dalles Office, DEQ
Waste Management and Cleanup Division, DEQ
Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Umatilla County District Attorney
Umatilla County Counsel
Umatilla County Sheriff's Office
City of Pendleton
Warren Taylor, property owner
Wal-Mart
Mike Johnson Excavation
Circle M Construction

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
UMATILLA REFUSE GROUP CO-OP,
an Oregon cooperative corporation,
Respondent.

NOTICE OF ASSESSMENT
OF CIVIL PENALTY
No. SW-ER-96-121
UMATILLA COUNTY

I. AUTHORITY

This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent Umatilla Refuse Group Co-Op, an Oregon cooperative corporation, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. VIOLATIONS

On April 9, April 18, and May 1, 1996, Respondent established, operated or maintained a solid waste disposal site located off of Birch Creek Road southeast of Pendleton, Umatilla County, Oregon, on property described as Tax Lot 3800, Section 24, Township 2 North, Range 31 East, Willamette Meridian, Oregon, without a solid waste disposal facility permit from the Department, in violation of ORS 459.205(1) and OAR 340-93-050(1). The facility contained at least 232 cubic yards of wood waste and miscellaneous debris, including asphalt shingles, metal, and gypsum board. These violations are Class I violations pursuant to OAR 340-12-065(1)(b).

III. ASSESSMENT OF CIVIL PENALTIES

The Director imposes a total civil penalty of \$18,750 for the three days of violation cited in Section II. The findings and determination of Respondent's civil penalty, pursuant to OAR 340-12-045, are attached and incorporated as Exhibit 1.

IV. OPPORTUNITY FOR CONTESTED CASE HEARING

Respondent has the right to have a formal contested case hearing before the Environmental Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which time Respondent may be represented by an attorney and subpoena and cross-examine witnesses.

1 **The request for hearing must be made in writing, must be received by the Department's Rules**
2 **Coordinator within twenty (20) days from the date of service of this Notice, and must be**
3 **accompanied by a written "Answer" to the charges contained in this Notice.**

4 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this
5 Notice, and shall affirmatively allege any and all affirmative claims or defenses to the assessment of this
6 civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause
7 shown:

- 8 1. Factual matters not controverted shall be presumed admitted;
- 9 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or
10 defense;
- 11 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in
12 subsequent pleading or stipulation by the Department or Commission.

13 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Management**
14 **Services Division, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a
15 request for hearing and an Answer, Respondent will be notified of the date, time and place of the
16 hearing.

17 Failure to file a timely request for hearing and Answer may result in the entry of a Default
18 Order for the relief sought in this Notice.

19 Failure to appear at a scheduled hearing or meet a required deadline may result in a dismissal of
20 the request for hearing and also an entry of a Default Order.

21 The Department's case file at the time this Notice was issued may serve as the record for
22 purposes of entering the Default Order.

23 V. OPPORTUNITY FOR INFORMAL DISCUSSION

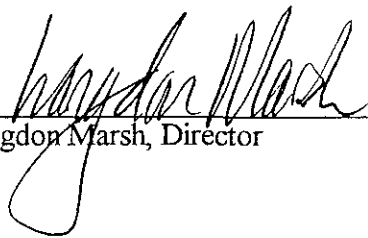
24 In addition to filing a request for a contested case hearing, Respondent may also request an
25 informal discussion with the Department by attaching a written request to the hearing request and
26 Answer.

27 ///

VI. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$18,750 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

6/7/96
Date


Langdon Marsh, Director

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D
June 25, 1999, Meeting

Title:

Temporary Rulemaking To Designate Methane Gas Generated From Solid Waste Landfills, In Certain Circumstances, As A Hazardous Substance, Pursuant To ORS 465.400.

Summary:

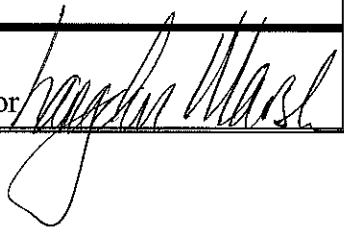
This action is necessary to allow the Department to use the Solid Waste Orphan Site Account to address threats to public health and safety from methane generated at an abandoned landfill. Construction of a new methane collection system is necessary to mitigate risks associated with the site in its current condition. Immediate action is necessary; however, the property owner and former landfill operator is a dissolved corporation with no assets. Because unconfined methane produced by a landfill is not currently a "hazardous substance" for purposes of ORS Chapter 465, the Department cannot use Orphan Site Account funds to address these problems. ORS 465.400 authorizes the commission to designate additional substances as "hazardous substances" for purposes of ORS Chapter 465. Approval of this rule will allow the Department to use Solid Waste Orphan Site Account funds to construct a new methane collection system and protect public health and safety.

Department Recommendation:

The Department recommends that the Commission temporarily adopt OAR 340-122-115(3) as presented in Attachment A of the Department Staff Report.


Report Author


Mary Wall
Division Administrator

Director 

Date: June 8, 1999
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Agenda Item D, EQC Meeting June 25, 1999

Statement of Purpose

The Department recommends adoption of the attached temporary rule to provide the Waste Management and Cleanup Division with a source of funding to address a serious public health threat. As discussed more fully in the background section, the site most directly impacted by this rule is a closed and abandoned landfill located in Portland, known as Killingsworth Fast Disposal (KFD).

At KFD, uncontrolled movement of methane gas presents a substantial and ongoing danger to the health, safety and welfare of on-site workers and neighboring homes, businesses, residents and others in the area. The quantity and concentration of methane at the facility poses a present and future danger to human health. Construction of a new methane collection system is required to mitigate risks associated with the site in its current condition.

Immediate action is necessary at the landfill; however, the property owner and former landfill operator is a dissolved corporation with no assets other than the contaminated property. Presently, the Department is using bankruptcy settlement funds to monitor the situation and to design a new methane collection system. However, the bankruptcy settlement funds will not be adequate for construction of the methane collection system or continued monitoring. No other funds are currently available to address this problem.

The Department has concluded that the necessary improvements at the landfill should be funded from the Solid Waste Orphan Site Account established by ORS 459.236. However, the Solid Waste Orphan Site Account, like the Industrial Waste Orphan Site Account, is available only for actions related to ORS Chapter 465 "hazardous substances." Under ORS Chapter 465, the statutorily-defined hazardous substances include oil, hazardous substances under CERCLA and hazardous wastes as defined in ORS 466.005 (ORS Chapter 466 implements RCRA). Methane is not a hazardous substance under any of the preceding categories; therefore, unconfined methane produced by a solid waste landfill is not a "hazardous substance" for purposes of ORS Chapter 465,

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

and the Solid Waste Orphan Site Account may not be used to remedy a hazard created by methane gas from a landfill.

ORS 465.400 authorizes the commission to designate other substances as "hazardous substances" in addition to the statutorily-defined hazardous substances. Before designation of a "hazardous substance" under ORS 465.400, the commission must find that "the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur." For the reasons discussed below, under the circumstances described in the proposed rule, methane gas released from landfills clearly meets the statutory criteria.

Substances designated "hazardous" by the commission are "hazardous substances" for purposes of ORS Chapter 465 and for purposes of the Solid Waste Orphan Site Account. The Department therefore recommends the designation of methane, under certain conditions, as a "hazardous substance" subject to ORS 465. Approval of this rule will allow the Department to use Solid Waste Orphan Site Account funds to carry out the necessary cleanup actions.

Background

The Department has proposed adoption of this temporary rule in order to address the human health hazards created by the former (KFD) landfill. KFD is a 24-acre landfill facility in NE Portland. The landfill operated under a Metro franchise and DEQ permit from approximately 1981 to 1990.

The landfill was lined along the bottom and sides, and is equipped with a leachate collection system. The final landfill cover, consisting of a geomembrane, compacted soil, and grass, was completed in 1991. A gas control system, consisting of 35 methane gas extraction wells, was installed in 1991 as part of final closure.

Methane, carbon dioxide, and other landfill gases continue to be generated in substantial quantities at KFD through the decomposition of organic wastes. Methane gas is potentially explosive at concentrations of 5 to 15% by volume in air; it also poses a substantial hazard to human health in both larger and smaller concentrations. Confined spaces like basements, crawl spaces, culverts, utility vaults, manholes and other structures are susceptible to methane buildup. High density residential and industrial developments are located within ten feet of the landfill along its south and southwest boundaries, and a high use golf course is located within one hundred fifty feet to the north. KFD is constructed in an old gravel pit and intersects highly porous sand and gravel deposits to depths of about 60 to 80 feet. The water table in the area is about 100 feet below ground surface, substantially below the base and side-walls of the landfill. These hydrogeologic

conditions promote methane mobility and create a high risk of offsite gas migration into neighboring residential and industrial areas.

The original methane collection system at KFD was poorly designed and is failing. It is now operational in only one corner of the landfill. KFD has been the source of several subterranean fires, most recently in November and December of 1998, which have further damaged the methane collection system and the landfill cap. The Department's consulting engineer has determined that the system has deteriorated to the point that it must be fully replaced. The Department proposes to install a landfill gas collection system during the next available construction season, i.e., the summer of 1999. Expedited construction is necessary to minimize risks to adjacent residents and properties.

Installation of improvements is necessary at KFD; however, the landfill owner and operator has abandoned the property and is unable to pay for the necessary improvements. Soon after closure of the landfill, the landfill owner and operator, Riedel Waste Systems, Inc. (RWS), became insolvent and was unable to meet its post-closure permit requirements, which included monitoring of on and off site methane emissions, maintenance of the limited methane collection system, and maintenance of the landfill cap. RWS was subsequently abandoned by its parent corporation and sole shareholder, Columbia Western Inc. (CWI), during CWI's bankruptcy proceedings.

There are no other responsible parties. Because of the environmental and public health concerns at the site, the Department has become involved. Since 1996, the department has been carrying out limited monitoring and maintenance activities at the landfill using funds obtained through a settlement agreement with CWI. Less than \$50,000 remains in this fund. The Department estimates a construction cost of \$1,300,000 for the new methane collection system and related improvements.

A temporary rule is recommended to enable construction of the methane collection system at KFD in the next available construction season. Recent subterranean fires have damaged the existing gas collection system, increasing the risk to neighboring residents and businesses. If the Department does not address the problem this construction season, the residents will face increased risks from migrating methane during the next year.

For the past six months, the Department has been pursuing external funding sources to address the methane problems at KFD. Those funds have not materialized, and the Department has concluded that the appropriate way to pay for necessary improvements at KFD is to use the Solid Waste Orphan Site account. Adoption of this temporary rule will provide the department with the authority and source of funds to carry out the necessary improvements at KFD.

Authority of the Commission with Respect to the Issue

The commission has the authority to develop and approve these temporary rules under ORS 465.200(15)(d), 465.400(3) and 183.335.

Alternatives and Evaluation

Other feasible alternatives have not been identified. The hazardous waste program explored the possibility of designating methane a characteristic hazardous waste under RCRA so that rulemaking would not be required to enable use of the Solid Waste Orphan site Account. After discussion with the Department of Justice and consideration of all issues, it was decided not to pursue this approach. Given recent federal court opinions, it was not clear that methane produced by a solid waste landfill would meet the criteria for a characteristic hazardous waste. The property is owned by a dissolved corporation with no assets or officers. The environmental liabilities, costs for remediation, and restrictions on use of the property (to protect the geomembrane cover) have discouraged potential purchasers.

Summary of Public Input Opportunity

The Department is sending notice of the proposed rulemaking and a summary of the proposed rule to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action.

Intended Future Actions

Upon adoption of the temporary rule, the Department intends to carry out necessary removal or remedial actions under ORS Chapter 465 at the Killingsworth Fast Disposal landfill in northeast Portland using funds from the Solid Waste Orphan Site Account. After adoption of this temporary rule, the Department will evaluate public comments and meet with appropriate advisory groups to determine whether to propose a permanent rule for this matter. The rule does not impact currently operating landfills because, by its terms, it applies only to abandoned facilities.

Department Recommendation

It is recommended that the Commission temporarily adopt OAR 340-122-115(30) as presented in Attachment A of the Department Staff Report.

Attachments


- A. Temporary Rule Proposed for Adoption
- B. Statement of Need and Justification for Temporary Rule

Reference Documents (available upon request)

- 1. ORS Chapters 183, 459 and 465.
- 2. Killingsworth Landfill – 96 Percent Design Report, prepared by Ecology & Environment, dated March 1999.
- 3. Contract Documents, Landfill Gas Management System, 95 Percent Design, prepared by Ecology & Environment, dated March 1999.
- 4. Post-closure Care Interim Site Management Plan, prepared by Ecology & Environment, dated May 1998.
- 5. Gas Extraction System Engineering Evaluation, prepared by Emcon[†], dated December 12, 1997.

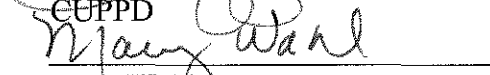
Approved:

Section:



Paul Slyman
CUPPD

Division:



Mary Wahl
Waste Management & Cleanup

Report Prepared By: Charles Landman
Phone: (503) 229-6461
Date Prepared: June 8, 1999

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

In the Matter of Temporary Rulemaking)
To Designate Methane Gas Generated) Proposed Temporary Rule
From Solid Waste Landfills, In Certain)
Circumstances, As a Hazardous Substance,)
Pursuant to ORS 465.400)

1. Proposed adoption of the following temporary rule amending Oregon Administrative Rule 340-122-115 as follows:

(30) "Hazardous substance" means:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499;
- (c) Oil as defined in ORS 465.200(19); and
- (d) Any substance designated by the commission under ORS 465.400. Under ORS 465.400, the commission has designated methane gas, from abandoned landfills as defined in ORS 459.005, provided: (1) methane is present, or is reasonably likely to be present at concentrations exceeding 5% by volume (the lower explosive limit for methane); and (2) a potential exists for methane to migrate into confined spaces or occupied structures and pose a hazard to human health and safety; and (3) the accumulations of methane are uncontrolled, poorly controlled, or require continued operation and maintenance of a landfill gas collection system.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

Department of Environmental Quality, Waste Management and Cleanup Division

In the Matter of Temporary Rulemaking	)	Statutory Authority,
To Designate Methane Gas Generated	)	Statutes Implemented,
From Solid Waste Landfills, In Certain	)	Statement of Need,
Circumstances, As a Hazardous Substance,	)	Principal Documents Relied Upon
Pursuant to ORS 465.400)	

Statutory Authority: The Commission has authority to adopt hazardous substance rules under ORS 465.400 and the authority to adopt temporary rules under ORS 183.335.

Statutes Implemented: The Commission is implementing ORS 465.205 and 465.400(3) by adopting this temporary rule.

Need for the Temporary Rule: Failure to immediately adopt the temporary rule will result in serious prejudice to the public interest and specific individuals. Prejudice will result because the Department will not have the authority or funding to prevent the imminent and ongoing threats to human health posed by an abandoned solid waste disposal landfill. Adoption of this temporary rule will insure that the department will have the authority and resources to take immediate action to prevent risks to human health posed by the potential movement of methane gas out of the landfill and into confined spaces such as neighboring residences and businesses.

Documents Relied Upon:

1. Killingsworth Landfill -- 95 Percent Design Report, prepared by Ecology & Environment, dated March 1999.
2. Contract Documents, Landfill Gas Management System, 95 Percent Design, prepared by Ecology & Environment, dated March 1999.
3. Post-closure Care Interim Site Management Plan, prepared by Ecology & Environment, dated May 1998.
4. Gas Extraction System Engineering Evaluation, prepared by Emcon, dated December 12, 1997.



Susan Greco

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E
June 25, 1999 Meeting

Title:

Title V Fee Increase, Title V Fee Applicability, and State Implementation Plan Revision.

Summary:

Title V Fees and Applicability: The proposed rule will increase Title V permitting fees according to the Consumer Price Index (CPI). The increase is needed to support the current and expected Operating Permit Program workload. The Oregon Operating Permit program is required to be fully funded by fees from all sources subject to Title V of the Clean Air Act in order to retain federal approval status. As such, the rule amendments will require that fees be paid by nonmajor landfills and other nonmajor sources specified by EPA in the future. This rulemaking will not affect area sources currently deferred from permitting, as allowed by EPA.

State Implementation Plan (SIP) Revision: The proposed rule will add the General ACDP rule to the State Implementation Plan. Although the General ACDP rule was adopted in August 1998, this rulemaking did not incorporate the General ACDP rule into the State Implementation Plan (SIP). Upon approval by EPA, the state of Oregon can use the General ACDP for permit streamlining of synthetic minor sources, which requires federal recognition.

Department Recommendation:

The Department recommends that the Commission adopt these rules to increase Title V fees by the Consumer Price Index, require that nonmajor sources subject to Title V permitting pay applicable Title V fees, and incorporate the General ACDP rule into the State Implementation Plan.

Report Author 


Division Administrator

Director 

State of Oregon
Department of Environmental Quality Memorandum

Date: June 8, 1999

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item E, EQC Meeting June 25, 1999.
Title V Fee Increase, Title V Fee Applicability, and State Implementation Plan
Revision

Background

On March 10, 1999, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which will increase Title V Operating Permit program fees by the Consumer Price Index (CPI), correct a rule omission regarding Title V fee applicability, and incorporate the existing general Air Contaminant Discharge Permits (ACDP) rule, OAR 340-028-1725, into the State Implementation Plan (SIP).

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on April 1, 1999. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on March 19, 1999.

A Public Hearing was held April 26, 1999 with Sarah Armitage serving as Presiding Officer. Written comment was received through April 29, 1999. The Presiding Officer's Report (Attachment C) summarizes the hearing and states that no oral or written testimony was presented at the hearing. The Department received written comment from Northwest Pulp and Paper Association in response to this rulemaking on April 29, 1999.

The following sections list key terms, and summarize the proposed rulemaking action.

Key Words and Acronyms

ACDP: Air Contaminant Discharge Permit
CPI: Consumer Price Index - a measure of the average change in prices paid by urban consumers.
SIP: State Implementation Plan (OAR 340-020-0047) required by the Clean Air Act.
Title V: Title V of the Clean Air Act - requires permits for air pollution sources to operate.

Issue This Proposed Rulemaking Action is Intended to Address

This proposal addresses three issues: Title V Permitting fee adjustments in response to the CPI, correcting a rule omission to assess fees to nonmajor sources subject to Title V permitting requirements, and adding the existing general ACDP rule to the SIP.

1. Title V Permitting Fees - CPI Increase

Costs of implementing and administering the Oregon Title V Operating Permit Program have increased due to personnel salary increases and inflation. As required to retain federal approval status, the Oregon Operating Permit Program must be fully funded by fees from all sources subject to Title V. Though most of the initial Title V Permits have been issued, workload remains high in response to permit modifications, source inspections, and emerging permit renewal work. Compliance assurance work is also greater now that the initial permitting work is largely done. The increase is necessary to meet the workload and associated resource demand.

2. Fee Applicability to All Sources Subject to Title V Permitting

Pursuant to the federal Clean Air Act, all sources subject to Title V permitting must pay fees sufficient to cover all reasonable costs to administer the program. Current Oregon rules only require major sources to pay Title V fees. The Oregon Operating Permit program is currently permitting non-major landfills because of a recent EPA standard that required these sources to have Title V permits. The rule amendments will allow the Department to assess Title V fees to nonmajor landfills and other nonmajor or area sources specified by EPA in the future. Correcting this is necessary to fulfill the Department's program approval status. Prior to this requirement, these landfills were permitted through solid waste rules.

Six landfills in Oregon (five regulated by the Department, and one by Lane Regional Air Pollution Authority) will be affected by the amendment and required to pay Title V Base Fees and Emission Fees. The Department estimates annual emissions subject to fees from each landfill to be on the order of fifty tons. This rulemaking will not affect area sources currently deferred from permitting, as allowed by EPA.

3. Addition of the current ACDP Permitting Rule into the SIP

Department approval to issue general ACDPs was granted by the Environmental Quality Commission in August, 1998. However, the public notice for that rulemaking did not explain that the rule would be incorporated into the SIP, which is a federal requirement. This rulemaking fulfills that administrative requirement, and allows for federal recognition of general ACDPs. This will enable the Department to streamline permitting by using general permits for synthetic minor sources and in other cases where federal enforceability is required.

Relationship to Federal and Adjacent State Rules

Title V of the Clean Air Act and EPA rules (40 CFR Part 70) require that Title V fees fully pay for the cost of the Title V program. Federal law requires that fees be increased to keep pace with inflation. Federal law also specifies which sources must obtain Title V permits.

EPA rules (40 CFR Part 51) specify requirements for establishing and amending the State Implementation Plan. The proposed rules do not differ from federal requirements.

For this rulemaking, state rules are no more or less stringent than the federal rules.

Authority to Address the Issue

The Commission has the statutory authority to address both the Title V fee amendment and applicability under ORS468.065, ORS468A.040, and ORS468A.315. The Commission's SIP revision authority resides in ORS468A.035.

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

Regulatory authority issues were determined in consultation with the office of the Attorney General. CPI adjustment information was provided by the State Economist's office. Staff salary information was provided by Department budget staff. The affected landfills were contacted by the Department prior to the public comment. Permitting workshops were also conducted for these landfills by the Department in December, 1996. No advisory committee was convened for the proposed rule change. However, the Department provided information regarding the fee amendment proposal to fee payer representatives during rule development and prior to public comment, and received no adverse comment.

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

This rulemaking proposes to increase Title V permitting fees by the Consumer Price Index to adjust for increased costs of implementing the Oregon Operating Permit Program. The CPI for 1998 was 1.62 percent. This rulemaking also proposes to require fees from nonmajor sources that are subject to Title V permitting.

This rulemaking also proposes to add the general ACDP rules to the State Implementation Plan to ensure federal enforceability and allow for permit streamlining. The general ACDP rule was adopted in August of 1998 but could not be added to the SIP because the public notice did not specifically state that the rule would amend the SIP.

Summary of Significant Public Comment and Changes Proposed in Response

The Department received written comments from Northwest Pulp and Paper Association on April 29, 1999. Those comments addressed program growth, program resource needs, program workload, fund accountability, and fee assessment procedures. The Department's evaluation of the comments is included in this package as Attachment D. No changes to the proposed rule language have been made in response to these comments.

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

The Department will begin billing Title V sources at the new rates starting July 1, 1999. As previously provided, the Department conducted permitting workshops and has informed the landfills of the proposed fee requirements.

The general ACDP rule is already effective as a state regulation. Addition of this ACDP rule to the SIP will require no additional implementation effort, and will be effective as a SIP revision upon federal approval, which is expected 12 to 18 months after adoption.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the Title V CPI fee increase and fee applicability as a revision to the Title V Operating Permit Program. It is also recommended that the Commission add the general ACDP rules to the State Implementation Plan as presented in Attachment A of the Department Staff Report.

Attachments

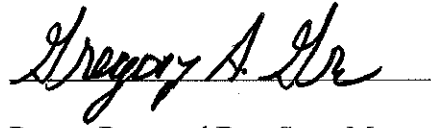
- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. Department's Evaluation of Public Comment
- E. Rule Implementation Plan

Approved: Section:

Andrew Grisberg

Memo To: Environmental Quality Commission
Agenda Item E, EQC Meeting June 25, 1999
Page 5

Division:

A handwritten signature in cursive script, appearing to read "Gregory A. He", is written over a horizontal line.

Report Prepared By: Scott Manzano

Phone: (503) 229-6156

Date Prepared: May 17, 1998

Attachment A

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Oregon Title V Operating Permit Fee Increase, Title V Fee Applicability, and State Implementation Plan Revision

Proposed Rule Changes

Stationary Source Air Pollution Control and Permitting Procedures

340-028-2110

Applicability

(1) Except as provided in Section (4) of this rule, OAR 340-028-2100 through 340-028-2320 apply to the following sources:

- (a) Any major source;
- (b) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the FCAA;
- (c) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the FCAA;
- (d) Any affected source under Title IV; and
- (e) Any source in a source category designated by the Commission pursuant to OAR 340-028-2110.

(2) The owner or operator of a source with an Oregon Title V Operating Permit whose potential to emit later falls below the emission level that causes it to be a major source, and which is not otherwise required to have an Oregon Title V Operating Permit, may submit a request for revocation of the Oregon Title V Operating Permit. Granting of the request for revocation does not relieve the source from compliance with all applicable requirements or ACDP requirements.

(3) Synthetic minor sources.

(a) A source which would otherwise be a major source subject to OAR 340-028-2100 through 340-028-2320 may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through production or operational limits contained in an ACDP issued by the Department under 340-028-1700 through 340-028-1790.

(b) The reporting and monitoring requirements of the emission limiting conditions contained in the ACDPs of synthetic minor sources issued by the Department under 340-028-1700 through 340-028-1790 shall meet the requirements of OAR 340-028-1100 through 340-028-1140.

(c) Synthetic minor sources who request to increase their potential to emit above the major source emission rate thresholds shall become subject to OAR 340-028-2100 through 340-028-2320 and shall submit a permit application under OAR 340-028-2120 in accordance with OAR 340-028-1740.

(d) Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-028-2110(1)(a).

(4) Source category exemptions and deferrals.

(a) The following source categories are exempted from the obligation to obtain an Oregon Title V Operating Permit:

(A) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; ~~and~~

(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation; and

(C) All sources that are not major sources, provided the sources are not:

(i) affected sources;

(ii) solid waste incineration units required to obtain a permit pursuant to section 129(c) of the FCAA; or

(iii) specifically required to obtain an Oregon Title V Operating Permit by a rule adopted in OAR 340, Divisions 25 or 32.

(b) Permit deferral. A source with the potential to emit at or above major source thresholds need not apply for an Oregon Title V Operating Permit or obtain a synthetic minor permit before December 31, 1999 if the source maintains actual emissions below 50 percent of those thresholds for every consecutive twelve month period since January 25, 1994 and is not otherwise required to obtain an Oregon Title V Operating Permit or synthetic minor permit.

(A) The owner or operator of a source electing to defer permitting under this paragraph shall maintain on site records adequate to demonstrate that actual emissions for the entire source are below 50 percent of major source thresholds.

(B) Recorded information shall be summarized in a monthly log, maintained for five years, and be available to Department and EPA staff on request.

~~— (c) All sources listed in OAR 340-028-2110(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(c) of the FCAA, are exempted by the Department from the obligation to obtain an Oregon Title V Operating Permit.~~

(c) Any source listed in OAR 340-028-2110(1) exempt from the requirement to obtain a permit under this rule may opt to apply for an Oregon Title V Operating Permit.

(5) Emissions units and Oregon Title V Operating Permit program sources.

~~— (a) For major sources, †~~ The Department shall include in the permit all applicable requirements for all relevant emissions units in the major Oregon Title V Operating Permit program source, including any equipment used to support the major industrial group at the site.

~~— (b) For any nonmajor source subject to the Oregon Title V Operating Permit program under OAR 340-028-2110(1) and not exempted under OAR 340-028-2110(4), the~~

~~Department shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the Oregon Title V Operating Permit program.~~

(6) Fugitive emissions. Fugitive emissions from an Oregon Title V Operating Permit program source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.

(8) Oregon Title V Operating Permit program sources that are required to obtain an ACDP, OAR 340-028-1700 through 340-028-1790, or a Notice of Approval, OAR 340-028-2270, because of a Title I modification, shall operate in compliance with the Oregon Title V Operating Permit until the Oregon Title V Operating Permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.

Stat. Auth.: ORS 468.020, 468.065, 468A.040 & 468A.310

Stats. Imp: ORS 468.020, 468.065, 468A.025 & 468A.310

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & ef. 10-6-95; DEQ 24-1995, f. & ef. 10-11-95; DEQ 1-1997, f. & cert. ef. 01-21-97; DEQ 14-1998, f. & cert. ef. 9-14-98.

Oregon Title V Operating Permit Fees

340-028-2560

Purpose, Scope And Applicability

(1) The purpose of OAR 340-028-2560 through 340-028-2740 is to provide owners and operators of ~~major Oregon Title V Operating Permit program~~ sources and the Department with the criteria and procedures to determine emissions and fees based on air emissions and specific activities.

(2) OAR 340-028-2560 through 340-028-2740 apply to ~~major Oregon Title V Operating Permit program~~ sources as defined in OAR 340-028-0110.

(3) The owner or operator may elect to pay emission fees for each assessable emission on:

- (a) Actual emissions, or
- (b) Permitted emissions.

(4) If the assessable emission is of a regulated air pollutant listed in OAR 340-032-0130 and there are no applicable methods to demonstrate actual emissions, the owner or operator may propose that the Department approve an emission factor based on the best representative data to demonstrate actual emissions for fee purposes.

(5) ~~Major s~~Sources subject to the Oregon Title V Operating Permit program defined in 340-028-0110, are subject to the following fees:

- (a) Emission fees, (OAR 340-028-2610), and
- (b) Annual base fee of ~~\$2,500 per source~~ (OAR 340-028-2580).

(6) ~~Major s~~Sources subject to the Oregon Title V Operating Permit program may also be subject to user fees (OAR 340-028-2600 and 340-028-1750).

(7) The Department ~~shall~~will credit owners and operators of ~~major new Oregon Title V Operating Permit program sources subject to the first year of the Oregon Title V Operating Permit Fees for the unused portion of paid Annual Compliance Determination Fees, paid for any period after October 1, 1994.~~ The credit will begin from the date the Department receives the Title V permit application.

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

Stats. Implemented: ORS Ch. 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96

340-028-2580

Annual Base Fee

(1) The Department shall assess an annual base fee of ~~\$2,777,822~~ for each ~~major~~ source subject to the Oregon Title V Operating Permit program.

(2) The annual base fee shall be paid to cover the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.040

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98

340-028-2590

Emission Fee

(1) ~~Based on the Oregon Title V Operating Permit Program Budget, prepared by the Department and approved by the 1993 Oregon Legislature, the Commission determines that~~ The Department shall assess an emission fee of \$32,5032.90 per ton is necessary to cover all reasonable direct and indirect costs of implementing to each source subject to the Oregon Title V Operating Permit program.

(2) The emission fee shall be applied to emissions from the previous calendar year based on the elections made according to OAR 340-028-2640.

Stat. Auth.: ORS 468 .020

Stats. Implemented: ORS 468A.040

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98

340-028-2600

Specific Activity Fees

Specific activity fees shall be assessed by the Department for ~~a major an~~ Oregon Title V Operating Permit program source with any one of the following activities:

(1) Existing Source Permit Revisions:

(a) Administrative* — ~~\$278,282~~;

(b) Simple — ~~\$1,110,129~~;

- (c) Moderate — ~~\$8,3308,465~~;
(d) Complex — ~~\$16,66016,929~~.
(2) Ambient Air Monitoring Review — ~~\$2,2212,257~~.

*includes revisions specified in OAR 340-028-2230(1)(a) through (g). Other revisions specified in OAR 340-028-2230 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 .020

Stats. Implemented: ORS 468A.040

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98

340-028-2610

Pollutants Subject to Emission Fees

(1) The Department shall assess emission fees on assessable emissions up to and including 4,000 tons per year for each regulated pollutant.

(2) If the emission fee on PM₁₀ emissions is based on the permitted emissions for a ~~major~~-source that does not have a PSEL for PM₁₀, the Department shall assess the emission fee on the permitted emissions for particulate matter (PM).

(3) The owner or operator shall pay emission fees on all assessable emissions.

(4) The Department shall assess emission fees only once for a regulated air pollutant that the permittee can demonstrate, using procedures approved by the Department, is accounted for in more than one category of assessable emissions (e.g., a Hazardous Air Pollutants that is also demonstrated to be a Criteria Pollutant).

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 19-1996, f. & cert. ef. 9-24-96

340-028-2620

Exclusions

(1) The Department shall not assess emission fees on newly permitted ~~major~~-sources that have not begun initial operation.

(2) The Department shall not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-028-2560.

(3) The Department shall not assess emission fees on any device or activity which did not operate at any time during the calendar year.

(4) If an owner or operator of a ~~major~~ Oregon Title V Operating Permit program source operates a device or activity for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the permitted emissions for the actual operating time.

(5) The Department shall not assess emission fees on emissions categorized as credits or unassigned PSELs within an Oregon Title V federal Operating Permit. ~~However, credits and unassigned PSELs shall be included in determining whether a source is a major source, as defined in OAR 340-028-0110.~~

(6) The Department shall not assess emission fees on categorically insignificant emissions as defined in OAR 340-028-0110.

(7) The Department shall not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96

340-028-2650

Emission Reporting

(1) The owner or operator shall, using a form(s) developed by the Department, report the following for each assessable emission or group of assessable emissions :

- (a) PM₁₀, or if permit specifies Particulate Matter (PM), then PM;
- (b) Sulfur Dioxide as SO₂;
- (c) Oxides of Nitrogen (NO_x) as Nitrogen Dioxide (NO₂);
- (d) Total Reduced Sulfur (TRS) as H₂S in accordance with OAR 340-025-0150;
- (e) Volatile Organic Compounds as:
 - (A) VOC for material balance emission reporting; or
 - (B) Propane (C₃H₈), unless otherwise specified by permit, or OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.
- (f) Fluoride as F;
- (g) Lead as Pb;
- (h) Hydrogen Chloride as HCl;
- (i) Estimate of Hazardous Air Pollutants as specified in a Department approved method.

(2) The owner or operator shall report emissions in tons per year and as follows:

- (a) Round up to the nearest whole ton for emission values 0.5 and greater; and
- (b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions shall:

- (a) Submit complete information on the forms including all assessable emissions; and
- (b) Submit documentation necessary to support emission calculations.

(4) The owner or operator electing to pay on actual emissions for an assessable emission shall report total emissions including those emissions in excess of 4,000 tons for each assessable emission.

(5) The owner or operator electing to pay on permitted emissions for an assessable emission shall identify such an election on the form(s) developed by the Department.

(6) If more than one permit is in effect for a calendar year for a majoran Oregon Title V Operating Permit program source, the owner or operator electing to pay on permitted emissions shall pay on the most current permitted or actual emissions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 19-1996, f. & cert. ef. 9-24-96

340-028-2660

Emission Reporting and Fee Procedures

(1) The owner or operator shall submit the form(s), including the owner's or operator's election for each assessable emission, to the Department with the annual permit report in accordance with annual reporting procedures.

(2) The owner or operator may request that information, other than emission information, submitted pursuant to OAR 340-028-2560 through 340-028-2740 be exempt from disclosure in accordance with OAR 340-028-0400.

(3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-028-2160. The owner or operator shall retain records for a period of at least five years in accordance with OAR 340-028-2130(3)(b)(B).

(4) The Department may accept information submitted or request additional information from the owner or operator. The owner or operator shall submit additional actual emission information requested by the Department within 30 days of receiving a request from the Department. The Department may approve a request from an owner or operator for an extension of time of up to 30 days to submit additional information under extenuating circumstances.

(5) If the Department determines the actual emission information submitted for any assessable emission does not meet the criteria in OAR 340-028-2560 through 340-028-2740, the Department shall assess the emission fee on the permitted emission for that assessable emission.

(6) The owner or operator shall submit emission fees payable to the Department by the later of:

(a) August 1 for emission fees from the previous calendar year; or

(b) Thirty days after the Department mails the fee invoice.

(7) Department acceptance of emission fees shall not indicate approval of data collection methods, calculation methods, or information reported on Emission Reporting Forms. If the Department determines initial emission fee assessments were inaccurate or inconsistent with OAR 340-028-2560 through 340-028-2740, the Department may assess or refund emission fees up to two years after emission fees are received by the Department.

(8) The Department shall not revise a PSEL solely due to an emission fee payment.

(9) Owners or operators operating ~~major~~ sources pursuant to OAR 340-028-2100 through 340-028-2320 shall submit the emission reporting information with the annual permit report.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94

340-028-2710

Determining Sulfur Dioxide Emissions Using Material Balance

(1) Sulfur dioxide emissions for ~~major~~ Oregon Tile V Operating Permit program sources may be determined by measuring the sulfur content of fuels and assuming that all of the sulfur in the fuel is oxidized to sulfur dioxide.

(2) The owner or operator shall ensure that ASTM methods were used to measure the sulfur content in fuel for each quantity of fuel burned.

(3) The owner or operator shall determine sulfur dioxide emissions for each quantity of fuel burned, determining quantity by a method that is reliable for the source, by performing the following calculation:

$$SO_2 = \%S/100 \times F \times 2$$

Where:

SO_2 = Sulfur dioxide emissions for each quantity of fuel, tons

$\%S$ = Percent sulfur in the fuel being burned, % (w/w).

F = Amount of fuel burned, based on a quantity measurement, tons

2 = Pounds of sulfur dioxide per pound of sulfur

(4) For coal-fired steam generating units the following equation shall be used by owners or operators of major sources to account for sulfur retention:

$$SO_{2adj} = SO_2 \times 0.97$$

Where:

SO_{2adj} = Sulfur dioxide adjusted for sulfur retention (40 CFR Part 60, Appendix A, Method 19, Section 5.2)

SO_2 = Sulfur dioxide emissions from each quantity burned (OAR 340-028-2690(3))

(5) Total sulfur dioxide emissions for the year shall be the sum total of each quantity burned calculated in accordance with OAR 340-028-2710(3) and reported in units of tons/year.

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

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

Stats. Implemented: ORS 468.020, 468A.025, & 468A.315.

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 2-1996, f. & cert. ef. 1-29-96

TABLE 4 AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE (340-028-1750)		
Part I.		
Note: Fees in (A) through (H) are in addition to any other applicable fee.		
A.	Late Payment	
	a) 8 - 30 days	\$200
	b) > 30 days	\$400
B.	Ambient Monitoring Network Review	\$1,170
C.	Modeling Review	\$2,600
D.	Alternative Emission Control Review	\$1,950

TABLE 4
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE
(340-028-1750)

Part I.

Note: Fees in (A) through (H) are in addition to any other applicable fee.

E.	Non-technical permit modification (name change, ownership transfer, and similar)	\$65
F.	Initial Permitting or Construction	
	a) Complex	\$28,600
	b) Moderately Complex	\$13,000
	c) Simple	\$2,600
G.	Elective Permits - Synthetic Minor Sources	
	a) Permit Application or Modification	\$2,1102,144
	b) Annual Compliance Assurance	\$1,1101,129
H.	Filing	\$98

Attachment B1

OREGON BULLETIN

Supplements the 1999 Oregon Administrative Rules Compilation

VOLUME 38, No. 4
April 1, 1999

For February 13, 1999 - March 15, 1999



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Secretary of State

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NOTICES OF PROPOSED RULEMAKING

Address: 350 Winter St. NE, Salem, OR 97310
Telephone: (503) 378-3272

Stat. Auth.: ORS 654.025 & 656.726
Stats. Implemented: ORS 654.001 - 654.295
Proposed Amendments: 437-002-0300, 437-002-0316
Last Date for Comment: 4-28-99

Summary: Oregon OSHA proposes to repeal OAR 437-002-0316(10) Tree Trimming - Electrical Hazards, and the "NOTE" immediately preceding it, both contained in Subdivision R, and replace both by adopting the federal standard portion 1910.268(q), Tree Trimming - Electrical Hazards.

These revisions will bring OR-OSHA's standards in line with Federal OSHA's standards. The standards that are currently in effect for OR-OSHA have been evaluated and determined by Federal OSHA not to be as effective as the federal rules. After extensive review of Oregon's standards and comparison to the federal standards, there was no longer a compelling reason to maintain a different standard. Comparison of the two standards reveals that the federal rules will provide a higher degree of safety and will be less confusing for the stakeholder.

Rules Coordinator: Brenda Price-Mathis
Address: 350 Winter St. NE, Salem, OR 97310
Telephone: (503) 947-7449

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

Date:	Time:	Location:
4-22-99	1 p.m.	Labor and Industries Bldg. 350 Winter St. NE Rm. 260 Salem, OR 97310

Hearing Officer: Marilyn K. Odell
Stat. Auth.: ORS 656.248, 656.704 & 656.726; Other Auth.: Attorney General's Uniform Model Rules Procedure
Stats. Implemented: ORS Ch. 656 & 656.248
Proposed Amendments: Chapter 436, Division 009
Last Date for Comment: 4-22-99

Summary: Amendments to the rules governing Oregon Medical Fees, Oregon Administrative Rules Chapter 436, Division 009, are being proposed in response to issues raised at the Division 009 Advisory Committee and input from Division staff. Additionally, amendments are being proposed to make Division 009 consistent with the other rule divisions.

General housekeeping revisions were made throughout the rules to reflect changes in ORS Chapter 656 language, statutory citation number reference and rule reference. Other general revisions include punctuation and grammar changes to clarify intent of the rule and improve readability.

<http://www.cbs.state.or.us/external/wed/docs/rules.htm>
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Marilyn Odell
Address: 350 Winter St. NE, Suite 320, Salem, OR 97310
Telephone: (503) 947-7717 - FAX (503) 947-7037

Stat. Auth.: ORS 656.704 & 656.726(3); Other Auth.: Attorney General's Model Rules of Procedure
Stats. Implemented: ORS Ch. 656
Proposed Amendments: 436-035-0007, 436-035-0220, 436-035-0330

Last Date for Comment: 4-22-99

Summary: OAR 436-035-0007 sets forth general principles governing the rating of permanent disability. The measurement of range of motion is controlled by (22). Subsection (a) currently states that range is measured in "each applicable direction." The proposed rule deletes the word "applicable." Range of motion of a joint is measured in each direction irrespective of whether motion is impaired.

OAR 436-035-0220 rates visual loss. Where a lens has been removed, pursuant to (2)(e) or (f), the worker is entitled to an additional loss to be combined with the percent loss of central visual acuity. The table set out in (2)(g) represents a shortcut for combining those measurements. The proposed rule clarifies that the table in (g) is an alternative to combining the award in (e) or (f), and not in addition

thereto.

OAR 436-035-0330 governs the rating of permanent unscheduled disability for the shoulder. The rule contains several tables rating range of motion loss in various planes. The tables in subsections (3), (5), and (11) inadvertently omit certain degrees of motion. This omission was corrected by temporary rule adopted by WCD Order 98-059. The proposed rule makes the corrections permanent.

<http://www.cbs.state.or.us/external/wed/docs/rules.htm>

Rules Coordinator: Marilyn Odell
Address: 350 Winter St. NE, Salem, OR 97310
Telephone: (503) 947-7717; FAX (503) 947-7037

Department of Environmental Quality Chapter 340

Date:	Time:	Location:
4-26-99	2 p.m.	811 SW 6th Ave. - Rm. 3A Portland, OR

Hearing Officer: Sarah Armitage
Stat. Auth.: ORS 468.020, 468A.035, 468A.040 & 468A.315
Stats. Implemented: ORS 468.020, 468A.010, 468A.025, 468A.045 & 468A.315
Proposed Amendments: 340-020-0047, 340-028-1750, 340-028-2110, 340-028-2560, 340-028-2580, 340-028-2590, 340-028-2600, 340-028-2610, 340-028-2620, 340-028-2650
Last Date for Comment: 4-29-99

Summary: The Department of Environmental Quality is proposing to amend its rules to increase Oregon Title V Operating Permit Program fees which includes sources that have Synthetic Minor permits. The rule amendments will also allow the Department to assess Title V Fees to nonmajor landfills and other nonmajor sources specified by EPA in the future. The amendment will also add the Department's General ACDP rule to the State Implementation Plan (OAR 340-020-0047), and if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) for approval, which is a requirement of the Clean Air Act.

**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Susan M. Greco
Address: 811 SW Sixth Ave.; Portland, OR
Telephone: (503) 229-5213

Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
4-23-99	8 a.m.	ODFW Commission Rm. 2501 SW 1st Ave. Portland, OR

Hearing Officer: TBA
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Proposed Amendments: Chapter 635; Divisions 3, 13, 14, 16, 18 & 23
Last Date for Comment: 4-23-99

Summary: Amend rules relating to commercial and sport salmon fishing in the Pacific Ocean and sport salmon fishing in specific near-shore ocean waters, bays and coastal streams.

**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Jennell Hoehne
Address: 2501 SW 1st Ave., P.O. Box 59, Portland, OR 97207
Telephone: (503) 872-5272 - ext. 5447

Date:	Time:	Location:
5-12-99	8 a.m.	Conference Center Best Western New Kings Inn 1600 Motor Court NE Salem, OR

Hearing Officer: TBA
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Proposed Amendments: Chapter 635, Division 5
Last Date for Comment: 5-12-99
Summary: Consider amending Division 5, which contains rules that regulate the commercial shellfish fishery in Oregon. The purpose of

Attachment B2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Oregon Title V Operating Permit Fee Increase,
Title V Fee Applicability, and State Implementation Plan Revision

Fiscal and Economic Impact Statement

Introduction

Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased due to personnel salary increases and inflation. The 1997 Legislature granted salary increases and funded only the amount that is paid out of the General Fund. The Oregon Operating Permit program must be fully funded by fees from all sources subject to Title V of the Clean Air Act in order to retain federal approval status. An increase in the fees charged is necessary to implement the program and maintain self supporting status. The increase will not result in an increase in staff. Regulated facilities will pay more for each ton of regulated air pollution released, and for annual compliance assurance work and permit modification work.

Title V Base Fees and Emission Fees: In 1998, the Annual Base Fee and per-ton Emission Fees were charged to 129 major industrial sources. Our records indicate Title V Base and Annual Emission fees will be assessed to 136 sources by the Department in 1999; the increase is associated with six solid waste landfills, now required to obtain permits because of a new federal requirement, and a former Synthetic Minor source that is now subject to Title V. If the amendment is made, the Base Fee will increase from 2,777/year to \$2,822/year, and the annual fee paid per ton of pollution will increase from \$32.50 to \$32.90.

Title V Modification Fees: From July 1, 1999 through June 30, 2000, the Department anticipates charging for as many as forty-five Administrative Amendments; increased from \$278 to \$282 each, twenty-five Simple Title V Modifications; increased from \$1,110 to \$1,129 each, twenty Moderate Title V Modifications; increased from \$8,330 to \$8,465 each, fifteen Complex Title V Modifications; increased from \$16,660 to \$16,929 each, and two ambient Air Monitoring Reviews from \$2,221 to \$2,257. The Department expects a significant increase in complex modification work; two were completed during 1998. All other 1999 modifications work is expected to be twice the 1998 workload.

Synthetic Minor Fees: The Annual Compliance Assurance Fee will increase from \$1,110 to \$1,129. Ninety-five Synthetic Minor sources are currently charged an Annual Compliance Assurance Fee. Our records indicate that 94 sources will be assessed the Annual Compliance Assurance Fee for the time period July 1, 1999 through June 30, 2000 (FY 2000). These sources are large industrial sources that elected to have emission limits on their operation in order to avoid obtaining a more costly Title V permit. Although these sources are not required to obtain Title V Operating Permits, the fees for their Synthetic Minor limits are required by Title V rules.

For FY 2000, 40 Synthetic Minor sources will also have to pay the Synthetic Minor Application Processing Fee because their permits will be expiring. It is also estimated that there will be approximately 30 applications for modifications and 15 new applications, all requiring the payment of Application Processing Fees. The Application Processing Fee will increase from \$2,111 to \$2,144.

Fee Applicability: Under current rules, nonmajor landfills are not subject to Title V fees, although they must get Title V permits. The rule amendments will allow the Department to assess Title V fees to nonmajor landfills and other nonmajor or area sources specified by EPA in the future. Six landfills in Oregon (five regulated by the Department, and one by Lane Regional Air Pollution Authority) will be affected by the amendment and required to pay Title V Base Fees and Emission Fees. The Department estimates annual emissions subject to fees from each landfill to be on the order of fifty tons. This rulemaking will not affect area sources currently deferred from permitting, as allowed by EPA.

State Implementation Plan Revision (SIP) Revision: The Fiscal and Economic Impact Analysis included with the original adoption of the General ACDP rule assumed that the rule would be incorporated into the SIP. Therefore, this action does not change the intent as reported then. In brief, the incorporation of the general ACDP rule into the SIP will allow for expanded use of general permits, which provide cost savings in to both the Department and Permittees.

General Public

Higher permit fees are likely to affect consumers through proportionately higher costs of goods and services produced by Title V sources.

Small Business

Title V and Synthetic Minor Permits are based on the amount of pollutants discharged, not the number of employees. Some major industrial sources of air pollution may be small businesses. In general, these companies tend to emit less than 100 tons per year of air pollutants but are considered "major" because of their potential to emit 100 or more tons per year. The fee increase proposed would raise the fees of a 100 ton/year source by a total of \$90 (from \$6,027

to \$6,117) as long as the source does not need any modifications to its permit, and does not need an ambient monitoring review done. This increase includes the increased base fee and the higher emission fee rate.

Many of the sources that received Synthetic Minor Permits are small businesses. The fee increase would be \$18 for the annual compliance assurance fee and \$34 for the application processing fee, which pays for permit renewals and modifications.

Large Business

Most major sources of air pollution subject to Title V permitting and the associated fees are large industrial facilities. The largest source of air pollution in Oregon emitted approximately 7,850 tons of assessable emissions (approximate 10 percent decrease from 1997) and paid \$258,000 in 1998. Assuming emissions remain the same 1999, this source would pay \$261,087 because of the increase. The second largest source of air pollution has emissions of approximately 5,500 tons per year. In 1998, approximately 15 percent of Title V sources emitted greater than 1,000 tons per year, 60 percent from 100 to 1,000 tons per year, and 25 percent emitted less than 100 tons per year.

Local Governments

Currently, Coos County is the only local government agency required to have a Title V Operating Permit. Their applicable fees would also increase by 1.62 percent. We anticipate Coos County will pay annual fees in 1999 of approximately \$8,668, an increase of \$138 over 1998 fees.

The Lane Regional Air Pollution Authority is the only other air permitting agency in Oregon. They also must demonstrate to the EPA that their Title V Operating Permit Program is self-supporting. They establish their own fee schedule, and this rule amendment will not necessarily affect them.

State Agencies

The Oregon State University and Oregon Health Sciences University currently are the only state agencies required to have Title V Operating Permits. Their annual fees would also increase 1.62 percent. Oregon State University will pay estimated annual fees in 1999 of \$5,881, an increase of \$94 over 1998 fees. In 1999, the Oregon Health Sciences University will pay estimated annual fees of \$16,383, an increase of \$261 over 1998 fees.

As provided herein, the Department expects additional revenue as a result of the proposed fee increase. Revenues from the 1.62 percent CPI fee increase and from the expected permit modifications will be used solely to fund the Oregon Title V Operating Permit Program. The

proposed increase will not result in an increase in staff, and is necessary to retain federal approval status.

Assumptions

Estimated expenditures are based on the assumption that essentially all facilities subject to this program have been identified. The original estimate of sources that would be subject to the program was 300. Of the 300 sources, 170 either submitted proof they were true minor sources, elected to become Synthetic Minor sources, or have permanently closed. Six municipal landfills (Lane County will have one more) are affected by new federal requirements and are now subject to Title V, bringing the total to 136 sources subject to permitting and fee requirements.

Revenue forecasts are also based on the assumption that the number of sources subject to this program have been identified, and that air emissions did not change significantly in 1998. Each billing is based on the previous year's emissions and includes the base fee for the following year.

Information regarding the Consumer Price Index (CPI) used for this analysis is provided below:

<u>Year</u>	<u>CPI</u>
1989	1.24
1993	1.446
1997	1.606
1998	1.632

Residential Development

The Department has determined that this rule making proposal will have no impact on the cost of developing a 6,000 square foot parcel and the construction of a 1,200 square-foot single-family, detached dwelling on that parcel.

Attachment B3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Oregon Title V Operating Permit Fee Increase,
Title V Fee Applicability, and State Implementation Plan Revision

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Title V Fees and Applicability: Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased due to personnel salary increases and inflation. The 1997 Legislature granted salary increases and funded only the amount that is paid out of the General Fund. The Oregon Operating Permit program is required to be fully funded by fees from all sources subject to Title V of the Clean Air Act in order to retain federal approval status. An increase in the fees charged is necessary to implement the program and maintain self supporting status. The rule amendments will also allow the department to assess Title V fees to nonmajor landfills and other nonmajor sources specified by EPA in the future.

The fee increase and the landfill permit work will not result in an increase in staff. Regulated facilities will pay more for each ton of regulated air pollution released, and for annual compliance assurance work and permit modification work. The fee increase is based on a 1.62% increase in the U.S. Consumer Price Index since the last rule adoption.

State Implementation Plan (SIP) Revision: Rules giving the Department the authority to issue General ACDPs was adopted in August, 1998. However, this rulemaking did not incorporate the General ACDP rules into the SIP. This action will amend OAR-340-020-0047 to add the general permit authority to the SIP. Once the SIP revision is approved by EPA, the state of Oregon can use the general ACDP as a federally enforceable document, which is necessary for federal recognition of synthetic minor sources.

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

Yes No

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

Oregon's Federal Operating Permit program, and the Air Contaminant Discharge Program, which regulate air emissions from industrial sources.

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

Yes No (if no, explain):

The proposed rules would be implemented through the Department's existing stationary source permitting program. An approved land use compatibility statement is required from local government before an air permit is issued.

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

Not applicable

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

Not applicable

Division

Libat Gony
Intergovernmental Coord.

3/9/99
Date

Attachment B4

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Oregon Title V Operating Permit Fee Increase,
Title V Fee Applicability, and State Implementation Plan Revision

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

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

Yes. Title V of the Clean Air Act and EPA rules (40 CFR Part 70) require that Title V fees fully pay for the cost of the Title V program. Federal law requires that fees be increased to keep pace with inflation. Federal law also specifies which sources must obtain Title V permits.

EPA rules (40 CFR Part 51) specify requirements for establishing and amending the State Implementation Plan. The proposed rules do not differ from federal requirements.

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

Not applicable.

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

Yes

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

Not Applicable.

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

Attachment B5

**State of Oregon
Department of Environmental Quality**

Memorandum

Date: March 19, 1999

To: Interested Parties and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Annual Oregon Title V Operating Permit Fee Increase, Operating Permit Program Applicability, and General Air Contaminant Discharge Permit (ACDP) Rule revision to Oregon State Implementation Plan.

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt rule amendments regarding Title V Operating Permit Program fees. The proposal also contains housekeeping amendments to address an omission regarding Title V fee applicability, and the addition of existing general ACDP rules, OAR 340-028-1725, to the State Implementation Plan (SIP).

The proposal regarding the existing ACDP rule, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the SIP (OAR 340-020-0047), which is a requirement of the Clean Air Act. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to amend Oregon Administrative Rules.

The Department has the statutory authority to address both the Title V fee amendment and applicability under ORS468.065, ORS468A.040, and ORS468A.315. The SIP revision authority resides in ORS468A.035.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335).
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D The actual language of the proposed rule amendments to Title V fees.
- Attachment E Cover Memo from ACDP Rule adoption (copies of the General ACDP rule are available upon request).

Memo To: Interested and Affected Public
Annual Oregon Title V Operating Permit Fee Increase
Page 2

Hearing Process Details

The Department is conducting a public hearing and you are invited to review these materials and present written or oral comment. The hearing will be held as follows:

Date: April 26, 1999
Time: 2:00 p.m.
Place: 811 SW 6th Avenue, Third Floor, Room 3A
Portland, OR

Deadline for submittal of Written Comments: April 29, 1999 at 5:00 p.m.

Written comments can be presented at the hearing or to the Department any time before the date above. Comments should be sent to: Department of Environmental Quality, Scott Manzano, 811 S.W. 6th Avenue - 11th floor, Portland, Oregon 97204. Comments may also be hand delivered to the same address, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. If you want your comments to be considered by the Department in the development of these rules, your comments must be received before the close of the comment period. The Department recommends that comments be submitted as early as possible to allow for adequate review and evaluation.

Sarah Armitage of the Department staff will be the Presiding Officer at the hearing.

What Happens After the Public Comment Period Closes?

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is June 25, 1999.

The Department will notify you 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 want to be appraised of this proceeding and receive a copy of the recommendation that is presented to the EQC for adoption, please request that your name be placed on the mailing list for this rulemaking proposal.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

Fee Increase, and Title V Applicability: Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased due to personnel salary increases and inflation. As required to retain federal approval status, the Oregon Operating Permit program must be fully funded by fees from all sources subject to Title V of the Clean Air Act. A fee increase is necessary to implement the program and maintain self-supporting status.

Clarifying the rule to identify all sources subject to fees is also necessary to fulfill the self-supporting requirement. Under current rules, nonmajor landfills are not subject to Title V fees, although they must obtain Title V permits. This proposed rulemaking would allow the Department to assess Title V fees to nonmajor landfills and other nonmajor or area sources specified by EPA in the future. This rulemaking will not affect area sources currently deferred from permitting, as allowed by EPA.

Three types of fees fund the Title V Operating Permit Program. The first is a base fee charged to each Title V source each year. The base fee has increased to keep up with inflation, but total revenue has declined because there are fewer Title V sources than when the program began. The second type of fee is an annual emission fee charged for each ton of regulated emissions. The annual emission fee has also increased to keep up with inflation. However, total revenue has declined because sources have reduced their emissions in response to the Title V Operating Permit Program. The third type of fee covers special activities, including permit revisions, ambient monitoring, and synthetic minor provisions. Synthetic Minor sources are those that have federally enforceable permit conditions that keep them from being subject to Title V requirements.

Since federal approval, program implementation adjustments have been made to respond to a higher than projected workload, and to manage budgets associated with legislative salary increases. For fiscal year 1998, all Department employees were granted a 3 percent salary increase. Fiscal year 1999 salary adjustments were more complex, but as a conservative average,

employee salaries increased approximately 5 percent. In comparison, CPI increases were 2.29 percent and 1.62 percent for calendar year 97 and 98 respectively. During this period, the Department made necessary resource adjustments while maintaining the effort to implement the Title V program, and is currently developing significant streamlining measures to improve program efficiency in response to the revenue differences.

Although Oregon has issued most of the initial Title V Permits, a pace well ahead of the national issuance rate, the workload in the program remains high due to increased permit modification work, increased compliance inspections and emerging permit renewal work. The Department expects an increase in Title V complex permit modifications from 2 this year to 15 during the proposed fee year. In addition, the Department expects a twofold increase in all other Title V modification work. Synthetic Minor modifications are expected to increase from 5 this year to 30, and 15 new Synthetic Minor applications are expected during the proposed fee year. Approximately 20 percent of Title V permits are due for renewal in the coming fiscal year.

SIP Revision: Rules authorizing the Department to issue General ACDPs were adopted in August, 1998. However, that rulemaking did not add the General ACDP rules to the SIP. This action will amend OAR 340-020-0047 to add the general permit authority to the SIP. After EPA approval, the state of Oregon can use the general ACDP as a federally enforceable document, which is necessary for federal recognition of synthetic minor sources. The revision also allows Oregon to take credit for any category-specific emission reductions required in the General ACDP permits. These reductions are a part of Oregon's obligation to meet and maintain current and future National Ambient Air Quality Standards (NAAQS).

How was the rule developed?

Oregon Revised Statute (ORS) 468A.315 allows the Department to increase Title V fees based on the amount of the increase in the Consumer Price Index (CPI). A CPI increase of 1.62 percent for 1998 was reported to the Department by the State Economist, and was used to calculate the new per-ton Emission Fee, the Annual Base Fee, Synthetic Minor fees, Title V Modification fees, and the Ambient Air Monitoring Review fee.

Incorporating the General ACDP rule into the SIP is an administrative step that was not considered necessary during the initial rulemaking.

No advisory committee was convened for the proposed rule change because no policy decisions were needed. However, the Department provided information regarding the fee amendment proposal to fee payer representatives as it was developed prior to this public comment. The Department received no adverse comment from those stakeholders.

The documents relied upon to develop this rulemaking proposal include the previously provided statutory references, Title V source applicability data, and Consumer Price Index information which can be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon. Please contact Scott Manzano at 503-229-6156 for times when the documents are available for review. Consumer Price Index data is also directly available at <http://www.oea.das.state.or.us/econdata/annind.prn>.

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

The fee revision will affect all Title V and Synthetic Minor sources. The correction, which will require fees from the nonmajor Title V sources subject to permitting, affects a small number of solid waste landfills. Title V fees will be required from other nonmajor sources as new federal Title V permitting requirements are promulgated.

As previously provided, the SIP revision will allow the state of Oregon to use the general ACDP as a federally enforceable document, which is necessary for federal recognition of synthetic minor sources. This allows the Department to issue less expensive general permits in lieu of individual permits for some source categories of synthetic minor sources.

How will the rule be implemented?

The Department will begin billing Title V sources at the new rates starting July 1, 1999. Synthetic Minor sources will receive their annual billing according to the standard billing schedule.

The general ACDP rule is already effective as a state regulation. Addition of this ACDP rule to the SIP will require no additional implementation effort, and will be effective as a SIP revision upon federal approval, which is expected 12 to 18 months after adoption.

Are there time constraints?

The fee amendments must be adopted by July 1, 1999 to meet the billing deadline for the bulk of Title V sources.

Although EPA approval of the SIP revision could take more than a year, a shorter approval time frame will best serve the Department's permit streamlining efforts. The SIP revision will be most useful if approved by EPA before the end of the Title V deferral for similar sources, currently expected in December, 1999.

Memo To: Interested and Affected Public
Annual Oregon Title V Operating Permit Fee Increase
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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:

Scott Manzano, Oregon DEQ
811 SW 6th Avenue - 11th floor
Portland, OR 97204
(503) 229-6156

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 27, 1999

To: Environmental Quality Commission

From: Sarah Armitage *SVA*

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: April 26, 1999, beginning at 2:00 p.m.
Hearing Location: 811 SW 6th Ave. Room 3A, Portland OR.

Title of Proposal: Title V Permitting Fees and Rule Housekeeping

The rulemaking hearing on the above titled proposal was convened at 2:00 p.m. The hearing officer and the rule writer were both present but no one else attended the hearing.

There was no oral or written testimony, and the hearing was closed at 2:30 p.m.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Oregon Title V Operating Permit Fee Increase, Title V Fee Applicability, and State Implementation Plan Revision

Evaluation of Public Comment

The following comments were submitted by Northwest Pulp and Paper Association on April 19, 1999.

Comment 1. DEQ's need for additional money for administration and implementation is unwarranted because issuance of the majority of the original air operating permits has been completed. New permitting processes by nature require more time and resources. Costs typically go down once permits are issued in any environmental program and should not be used as an excuse as to why there should be fee increases. DEQ was aware that fee income would decrease when the bulk of these permits were issued, and should have planned for this contingency at the beginning of the program and in subsequent years. Sources should not be penalized by fee increases for poor planning on the part of the Air Operating Permit Program.

Department Response to Comment 1: The Department does not expect a decrease in program workload during the fiscal year 2000. Although most of the initial round of Title V permits have been issued, approximately 20 percent of the Title V permits are scheduled to be reissued over the next fee year. A significant increase in permit modification and synthetic minor workload is also expected in addition to new federal NSPS and NESHAP standard adoption. The new Title V landfill sources included in the proposed rule provide an example of new program demands. Compliance assurance work is also greater now that the initial permitting work is largely done. Administrative, small business assistance, and emissions inventory work are expected to remain unchanged; other program tasks, such as area source permitting, may become more extensive as the program matures.

Comment 2: Implementation and administration should be far less expensive, and should not require the same number of staff as the original permit issuance. Large facilities bear the greatest burden in regard to increased fees and will now be bearing the burden of bankrolling an air quality operating permit program that is oversized.

Department Response to Comment 2: As provided in response to comment 1, the Department does not expect a decrease in workload over the next fee year. Additional implementation effort is required to address permit renewal and modifications, recently promulgated federal standards, and additional inspection and compliance workload. As a

planning initiative, the Department is integrating program streamlining measures to address current and expected program demands. The Department is committed to continual improvement; efforts to improve program efficiency are ongoing. The Department's commitment to provide the same service to fee paying sources is no less important. It is true that the largest emitting sources pay more in fees: those sources also have the opportunity to reduce fees by reducing emissions.

Comment 3: As of last year, there was a surplus of funds in this program. Until this money is allocated correctly, no fee increases should take place.

Department Response to Comment 3: There was no fee surplus last year. Program revenues for the Oregon Operating Permit Program are used solely for that program, and must be sufficient to fulfill program obligations. The revenue balance will fluctuate as workload activity increases and decreases. Proper fiscal management requires that the Department maintains a fund balance at the end of each fiscal year, and that there is a positive balance in the budget.

Comment 4: Existing sources, especially large emitting sources, should not have to bear the burden of expanding the scope of this program. It should be assured that funds from permit application fees cover the whole process for new sources and money from other fees not be used.

Department Response to Comment 4: Fees are assessed from sources subject to the Operating Permit Program to implement and administer the program, nothing more. The proposed fee structure assesses fees solely to sources subject to Title V permitting requirements, as required by the federal Clean Air Act. In turn, those fees pay solely for all work associated with the Operating Permit Program. New sources pay the same Base Fee and Emission Fee as existing sources. These are annual fees and are not tied to permit application. Special Activity Fees are charged for additional costs associated with permit modifications and synthetic minor activity.

Comment 5: Oregon's Title V program was designed to be self-sufficient. The program had fewer participants in the beginning than expected. NWPPA believes that the program needs to be sized according to the number of permit holders, and should not require fee increases to simply maintain the current number of staff even though the bulk of the work is over.

Department Response to Comment 5: The Department concurs with NWPPA's comment regarding appropriate allocation of program resource. The Department was authorized, and was prepared to fund 57 FTEs to address expected program needs during the program start-up period. In response to a reduced number of potential Title V sources (many "fell out" of the program because they were true minor, synthetic minor, or closed), the Department reduced the planned program resource, and funded approximately 39 FTEs for the 97-99 biennium. That resource has been necessary to fulfill program obligations, and as previously provided, the Department does not expect a reduction in program workload for the proposed fee year. The Department will continue to assess the

workload elements of the Operating Permit Program in conjunction with additional investments in efficiency measures to assure recommended adjustments are appropriate.

Comment 6: In respect to a related matter, retroactive fees were assessed last year to the 1998 CPI fee amendments. We request that the department's policy, on permit fee review and retroactive fee assessment, be explained to permit holders in the context of this rulemaking package. Additionally, we request in a separate letter answers to the following questions: 1) the Department's retroactive fee review policy, 2) frequency of permit reviews, 3) the relationship between retroactive Title V fees and pre-Title V program ACDP permit limits and fees, and 3) future Department use of retroactive fees when there is a program budget surplus.

Department Response to Comment 6: The fee requirement for all sources subject to Title V fees exists in both federal and state regulations, which also provides authority to increase fees according to the Consumer Price Index (CPI). Until 1998, the Department had only applied CPI increases to Annual Base Fees and Emission Fees. In 1998, the Department also increased the Special Activity Fees and Synthetic Minor Fees to the 1997 CPI. This increase was not retroactive; the assessment was a one time catch-up necessitated by increased costs described in the 1998 rulemaking package.

If fee basis information received by the Department is inaccurate, the Department may either refund or assess fees to correct inaccuracies for up to two years, thus assuring sources paying full fees are not paying more than their fair share. The Department reviews all assessable emissions reports to ensure that they are in compliance with the rules, and consistently bills for underpaid fees; 1998 was no exception. [A separate letter will be sent to the commentor to respond to the additional questions]

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Oregon Title V Operating Permit Fee Increase, Title V Fee Applicability, and State Implementation Plan Revision

Rule Implementation Plan

Summary of the Proposed Rule:

Title V Fees and Applicability: The proposed rule will increase Title V permitting fees according to the Consumer Price Index (CPI). The increase is needed to support the current and expected Operating Permit Program workload. The Oregon Operating Permit program is required to be fully funded by fees from **all** sources subject to Title V of the Clean Air Act in order to retain federal approval status. As such, the rule amendments will require that fees be paid by nonmajor landfills and other nonmajor sources specified by EPA in the future.

State Implementation Plan (SIP) Revision: The proposed rule will add the General ACDP rule to the State Implementation Plan. Although the General ACDP rule was adopted in August 1998, this rulemaking did not incorporate the General ACDP rule into the State Implementation Plan (SIP). Upon approval by EPA, the state of Oregon can use the general ACDP for permit streamlining of synthetic minor sources, which requires federal recognition.

Proposed Effective Date of the Rule

June 25, 1999

Proposal for Notification of Affected Persons

Affected sources will be notified through Department billings.

Proposed Implementing Actions

The Department will begin billing sources at the new rate starting July 1, 1999.

The General ACDP rule is already effective as a state regulation. Adding the rule to the SIP will require no additional implementation effort.

Proposed Training/Assistance Actions

Not necessary - The Department has conducted workshops for the nonmajor sources affected by this rule. Procedures for all other affected sources are not being changed; only the fee rates will be changed.

Tax Credit Actions

App. No.	Applicant	Certified Cost	Percent Allocable	Attachment B Recommendation	Attachment C Recommendation	Commission Action
4635	NPI, Inc. dba/Northwest Polymers	\$ 26,787	100%	Approve		
4687	Intel Corporation	\$ 242,195	100%	Approve		
4806	Willamette Industries, Inc.	\$ 156,122	100%	Approve		
4863	NPI, Inc. dba/Northwest Polymers	\$ 1,343	100%	Approve		
4903	Willamette Industries, Inc.	\$ 45,788	100%	Approve		
5007	Widmire Brothers Brewing Company	\$ 81,767	100%	Approve		
5053	Wellons, Inc.	\$ 265,583	100%	Approve		
5063	WWDD Partnership	\$ 9,747	100%	Approve		
5132	Portland General Electric Company	\$ 20,487	100%	Approve		
5134	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve		
5135	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve		
5136	Willamette Industries, Inc.	\$ 62,966	100%	Approve		
5143	Thomas & Son Beverage, Inc.	\$ 257,212	100%	Approve		
5144	Sam Trakul Investments, Inc.	\$ 1,884	100%	Approve		
5149	Dunn & Leblanc, Inc.	\$ 120,338	100%	Approve		
5150	Dunn & Leblanc, Inc.	\$ 11,367	100%	Approve		
5151	Dunn & Leblanc, Inc.	\$ 600	100%	Approve		
5153	United Disposal Service, Inc.	\$ 47,016	100%	Approve		
5155	United Disposal Service, Inc.	\$ 163,489	100%	Approve		
5164	United Disposal Service, Inc.	\$ 9,010	100%	Approve		
5166	Willamette Industries, Inc.	\$ 27,842	100%	Approve		
5171	Johns Ranch, Inc.	\$ 30,340	100%	Approve		
5172	Matthew L. Carlough	\$ 108,975	84%	Approve		
5176	United Disposal Service, Inc.	\$ 142,089	100%	Approve		
5180	United Disposal Service, Inc.	\$ 8,440	100%	Approve		
5182	Capitol Recycling & Disposal, Inc.	\$ 5,032	100%	Approve		
5183	Capitol Recycling & Disposal, Inc.	\$ 4,950	100%	Approve		
5192	Dunn & Leblanc, Inc.	\$ 136,198	100%	Approve		
5201	Timothy & Lori Van Leeuwen	\$ 34,558	100%	Approve		
5202	KG Farms	\$ 94,000	56%	Approve		
4801	Valmont Industries, Inc.	\$ 407,722	100%		Remove From Agenda	
4860	Waste Control Systems, Inc.	\$ 3,091,970	0%		Remove From Agenda	
4959	Tidewater Barge Lines, Inc.	\$ 775,000	100%		Provide Guidance Remove From Agenda	
4965	Tidewater Barge Lines, Inc.	\$ 775,000	100%		Provide Guidance Remove From Agenda	
4980	Willamette Industries, Inc.	\$ 18,041	100%		Remove From Agenda	

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June 18, 1999

DAVID E. FILIPPI
Direct Dial
(503) 294-9529
email defilippi@stoel.com

VIA HAND DELIVERY

Ms. Maggie Vandehey
Tax Credit Coordinator
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

**Re: Tidewater Barge Lines, Inc.; Pollution Control Facility Tax Credit
Applications 4959 and 4965**

Dear Ms. Vandehey:

On March 13, 1998, Tidewater Barge Lines, Inc. ("Tidewater") submitted an application (No. 4959) for final certification of a pollution control facility for tax relief purposes. The application involves the addition of a double hull to its barge, *The Prospector*. On March 20, 1998, Tidewater submitted a second application (No. 4965) for final certification of a pollution control facility for tax relief purposes. This application involves the addition of a double hull to its barge, *Tri-Cities Voyager*. The Environmental Quality Commission (the "Commission") is scheduled to consider both applications at its June 25, 1999 meeting in Hermiston, Oregon. This letter provides additional information relevant to the Commission's decision, and we hereby request that this letter be included in the record of decision.

Tidewater's position is that the construction of a double hull should qualify for tax credit relief as a "sole purpose facility." A sole purpose facility is a pollution control facility whose sole purpose "is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste * * * ." ORS 468.155(1)(a)(B). Under the Department's rules, "sole purpose" is defined as "exclusive purpose." OAR 340-16-010(9). Tidewater contends that the sole purpose of adding a double hull to *The Prospector* and *Tri-Cities Voyager* was and is to prevent water pollution. Tidewater's legal argument was originally set forth in the cover letter attached to each application. (A copy of the cover letter to *The Prospector* application is attached hereto as Exhibit A. The cover letter to the *Tri-Cities Voyager* application is nearly identical.)

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Ms. Maggie Vandehey
 June 18, 1999
 Page 2

The Department of Environmental Quality (the "Department") has recommended that both of Tidewater's double-hull applications be denied. According to the Department's Tax Credit Review Reports for the applications, the Department claims that the sole purpose of double-hulling is *not* to control water pollution. According to the Department, "double-hulling also provides improved safety of the vessel and crew in case of grounding or collision; lowering insurance costs; meeting requirements of the Coast Guard; and the possibility of avoiding the loss of petroleum product." The Department's position is based solely on an earlier decision of the Commission, which involved a similar tax credit application submitted by Tidewater for its barge, *The Pioneer*. As the Department noted,

"On December 28, 1995, the Commission determined that there were a number of business reasons for double-hulling *The Pioneer* - a barge presented by Tidewater Barge Line[s], Inc. on application number 4417. They determined that the applicant accrued the same types of benefits as state[d] above from investing in the double-hulling of a barge."

See Tax Credit Review Report, Application 4959, at 2 (dated 3/19/99, last printed 6/08/98); Tax Credit Review Report, Application 4965, at 2 (dated 6/25/99, last printed 6/08/99); *see also* Memo. from Langdon Marsh to EQC, Nov. 19, 1998, at p. 3; Memo. from Langdon Marsh to EQC, June 8, 1999, at p. 3 (regarding Agenda Item F).

As discussed in the cover letters attached to the applications (*see* Exhibit A), the Commission's earlier determination regarding *The Pioneer* is erroneous. This letter provides further analysis regarding the alleged business-related "benefits" of double-hulling.

A. The Sole Purpose of Double-Hulling.

ORS 468.155(1)(a)(B) defines a "sole purpose" pollution control facility as a facility whose sole purpose is to "prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste * * * ." OAR 340-016-0025(2)(g) further elaborates that such prevention, control or reduction shall be accomplished by "[i]nallation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

As made clear in the affidavits of William H. Pattison, Chief Financial Officer of Tidewater, the sole purpose of the construction of the double hulls for *The Prospector* and *Tri-Cities Voyager* "was to prevent, control, and reduce a substantial quantity of water pollution." (*See* Affidavits attached to applications at Tab 7, copies attached hereto as Exhibit B.) As noted in the description of the facility on the tax credit application forms, double hulls create a void, or containment area, between the cargo tanks and the water. The double hulls are designed such

Ms. Maggie Vandehey

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that any failure in the cargo tanks will result in the petroleum products being captured in the secondary hull, preventing the product from entering the water. The voids can then be pumped and cleaned, eliminating any pollution to the river system. In addition, the double hulls create a buffer for the cargo tanks, such that damage to the exterior hull caused by collision or grounding will not affect the cargo tanks. In this way, the cargo does not reach the river system.

There is no evidence in the record to dispute Tidewater's contention that the double hulls prevent a substantial quantity of water pollution. Rather, the assertion is that the double hulls serve other purposes, unrelated to pollution control. Each of these other alleged purposes is addressed in turn below.

B. The Purpose of the Double Hulls Was Not to Improve the Safety of the Vessel and the Crew.

There is no evidence in the record for the current applications or in the record for the Commission's decision regarding *The Pioneer* that indicates that a double hull improves the safety of the vessel or its crew. In fact, the only evidence in the record is to the contrary. It should be emphasized that the Department recommended approval of Tidewater's tax credit application for *The Pioneer*'s double hull. In a memorandum to the Commission dated December 28, 1995, the Department stated:

"The Department believes that the facility qualifies as a sole purpose facility and that there is no other viable business purpose for the double-hulling of the petroleum barge. It can be argued that the firm may accrue benefits from investing in double-hulling e.g., improved safety for the vessel and crew in case of collision or grounding, lower insurance costs or the potential for avoiding the loss of product as the result of an accident. However, the double-hulling also increases the draft of the vessel, reduces its capacity and perhaps, increases the risk of explosion on board. Based upon information available, the Department believes that the applicant would not have undertaken to invest in the facility were it not required to do so by law and that the only business function of the facility is to prevent the spill of petroleum product into Oregon inland waterways and adjacent waters." Memo. at p. 5 (copy attached hereto as Exhibit C.)

As the memorandum also indicates, the Commission deferred action on *The Pioneer* application at its November 17, 1995 meeting to allow the Office of the Attorney General to render an opinion as to whether a double hull qualifies as a pollution control facility eligible for

Ms. Maggie Vandehey
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tax credit relief. The Department's file for *The Pioneer* includes a copy of a two-page memorandum prepared by Robin Craig, who at the time was a law clerk with the Department of Justice and a law student at Lewis & Clark College. (Copy attached hereto as Exhibit D.) The memo concludes that a facility arguably can qualify as a "sole purpose" facility where the facility has another purpose, so long as that other purpose is one of conforming to a regulatory requirement, and "the regulatory requirement at issue is itself a requirement to control pollution." (See DOJ Memo. at 1, Exhibit D.)

While the issue of compliance with Coast Guard regulations is discussed further below, Ms. Craig notes in her memo that she was in fact unaware of the exact purpose of the Coast Guard's double hull requirement. Nevertheless, Ms. Craig *speculated* on other purposes for the regulation. As she states, "*my guess* would be that [the double hull requirement] is not solely pollution-related but also pertains to safety *of the vessel itself*." (First emphasis added; second emphasis in original.) Again, nothing in the record supports this statement, and, as noted above, the Department concluded otherwise.

Tidewater also contends that the double hull was not added for the purpose of addressing any crew safety problem. On the contrary, the addition of the double hull makes it more difficult for the crew to enter and clean the void and may also increase the risk of an on-board explosion. Any benefit related to the safety of the vessel or crew is simply non-existent. There is no evidence in the record that indicates otherwise.

C. The Purpose of the Double Hulls Was Not to Lower Insurance Costs.

As with the safety issues discussed above, there is no evidence in the record for the current applications or in the record for the Commission's decision regarding *The Pioneer* that indicates that a double hull lowers insurance costs. Tidewater's barges are essentially self-insured. Tidewater participates in a protection and indemnity club with other barge line owners and operators. The rate of insurance is set by gross tons of carrying capacity and the company's pollution claim history. There is no specific deduction or benefit based on the use of single-hulled vessels versus double-hulled vessels.

Durham and Bates Agencies, Inc. has served as Tidewater's insurance brokers since 1994. According to Durham and Bates, even though *The Prospector* and *Tri-Cities Voyager* are double-hulled barges, both barges were added to Tidewater's liability policy at the same rates as Tidewater's other single-hulled petroleum barges. In fact, because of the larger size of these barges, Tidewater pays the highest premium for *The Prospector* and *Tri-Cities Voyager* as compared to all of the other petroleum barges in its fleet. (See Letter from Durham and Bates Agencies, Inc. to David Filippi, attached hereto as Exhibit E.)

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D. The Purpose of Constructing the Double Hulls Was Not to Meet the Requirements of the Coast Guard.

The double hulling undertaken by Tidewater was not, strictly speaking, for the purpose of complying with Coast Guard requirements. While the Oil Pollution Act of 1990 (which is administered by the U.S. Coast Guard) does in fact include a requirement that new barges hauling petroleum be double hulled, Tidewater had no obligation under the Act to replace its single-hulled barges with double-hulled barges until January 1, 2015. *See* 46 USCA § 3703a (1997). Thus, Tidewater could have continued using its existing fleet and could have waited another twenty years before building its new double-hulled barges. In short, while double hulling *The Prospector* and *Tri-Cities Voyager* may have fulfilled the double hulling requirement contained in the Oil Pollution Act for newly constructed petroleum barges, Tidewater was under no obligation to take on the added expense of double hulling two new barges in 1996 and 1997.

More importantly, the Commission's position with respect to the Oil Pollution Act is illogical. A review of the legislative history of the Oil Pollution Act reveals that the sole purpose of the double hulling requirement was to prevent pollution. *See, e.g.*, S. Report No. 101-94, Oil Pollution Act, P.L. 101-380, at 140, *reprinted in* 1990 U.S.C.C.A.N at 819 (stating that the goal of the requirement for double hulls and double containment systems is "to ensure the environment is protected as quickly as possible from oil spills"); Statement of Senator Packwood, Conference Report on H.R. 1465, The Oil Pollution Liability Act, in the *Congressional Record*, at p. S11931 (Aug. 2, 1990) (discussing the requirement that all new tankers and barges be built with double hulls for the purpose of minimizing the number and size of large spills). The legislative history is replete with various references to the *Exxon Valdez* oil spill and the need to prevent similar environmental disasters. At the same time, the legislative history makes no mention of the need to add double hulls to petroleum tankers and barges for safety, insurance, or product retention purposes.

Given that the sole purpose of the Oil Pollution Act is in fact to reduce pollution, whether Tidewater acted for the purpose of "reducing pollution" or whether it acted for the purpose of "complying with the Act to reduce pollution" is immaterial. The Commission's past approach creates an artificial dichotomy that masks the fact that the purpose under either conceptualization is in essence the same. There is no basis in ORS §§ 468.150-.190 for such a false dichotomy.

E. The Purpose of Double Hulls Was Not to Avoid the Loss of Petroleum Product.

As with the safety and insurance issues discussed above, there is no evidence in the record for the current applications or in the record for the Commission's decision regarding *The Pioneer* that indicates that Tidewater added double hulls to avoid the loss of product. Quite

Ms. Maggie Vandehey
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simply, Tidewater is not responsible for lost product, because Tidewater does not insure the cargo it transports against loss.

Attached as Exhibit F is a copy of an excerpt from Tidewater's most recent Petroleum Rate Schedule (or Tariff). As indicated in the section governing Marine Cargo Insurance, the rates do not include marine cargo insurance. Even if Tidewater were to undertake the risk associated with lost cargo, which it does not, Tidewater is not aware of any discounted rate for marine cargo insurance based upon the use of a barge with a double hull as compared to a barge with a single hull.

F. Even If the Double Hulls Provide Some Business-Related Benefits, Which They Do Not, Such Benefits Are At Best "Incidental" and Are Not the "Purpose" of the Facility.

Even if there were benefits to Tidewater related to safety, insurance costs, or the avoidance of lost product (which there are not), all of these benefits would be incidental at best. In no way did the alleged benefits figure into Tidewater's decision to add double hulls. Double hulling provides no net savings in cost and there is no annual return generated from the expenditure. Even if it could be established that safety improvements, lower insurance costs, and avoiding product loss have some negligible effect on the overall expense of double hulling, these economic factors did not contribute to the "purpose" behind Tidewater's decision to add the double hulls. Stated directly, Tidewater did not add the double hulls *for the purpose of* gaining the alleged, and at best incidental, benefits.

Along these same lines, it should be noted that *every* sole purpose facility is likely to generate at least some incidental benefit to the facility owner. For example, any business that adds a pollution control facility, whether required by law or not, will gain benefits in the nature of good will. Thus, just because Tidewater may be able to secure a better public image because it has added double hulls to its barges, such an incidental benefit should not be the basis for ruling out double hulls as sole purpose facilities.

Even the Department has recognized this point. In the Department's latest memorandum to the Commission, the Department takes the following position:

"The Department recognizes that whenever an applicant installs a pollution control facility, there will always be incidental benefits even if those benefits are only to improve public relations and reputation. However, the EQC has the discretion to determine when an incidental benefit becomes the "purpose" of the facility."

STOEL RIVES LLP

Ms. Maggie Vandehey

June 18, 1999

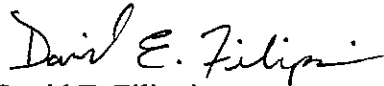
Page 7

*See Memo. from Langdon Marsh to EQC, June 8, 1999, at 2-3
(regarding Agenda Item F for June 25, 1999 EQC meeting).*

Tidewater respects the fact that it is the Commission that determines whether a facility qualifies as a sole purpose or principal purpose facility under the pollution control facility tax credit statute. At the same time, the Commission's decision must be supported by substantial evidence in the record. Based on the record before the Commission in 1995 and the current record before the Commission for the pending applications, the evidence can only support a conclusion that the double hulls added to *The Prospector* and *Tri-Cities Voyager* were added solely for the purpose of preventing, controlling, and reducing a substantial quantity of water pollution.

In conclusion, Tidewater urges the Commission to consider the evidence that has been submitted and find that the double hulls added to *The Prospector* and *Tri-Cities Voyager* are sole purpose facilities that qualify for tax relief purposes pursuant to ORS 468.155 *et seq.*

Sincerely,



David E. Filippi

Of Counsel for Tidewater Barge Lines, Inc.

Enclosures

cc (w/encs.): Mr. William H. Pattison
Mr. Henry C. Breithaupt

STOEL RIVES LLP

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March 13, 1998

DAVID E. FILIPPI
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VIA HAND DELIVERY

Ms. Maggie Vandehey
Tax Credit Coordinator
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

**Re: Tidewater Barge Lines, Inc.'s Applications for Final Certification of
Pollution Control Facilities for Tax Relief**

Dear Maggie:

As we have discussed over the phone, we are submitting on behalf of Tidewater Barge Lines, Inc. ("Tidewater") two separate applications for final certification of pollution control facilities for tax relief purposes pursuant to ORS 468.155 et seq. Both applications involve *The Prospector*, a barge currently under lease to Tidewater from Banc One Leasing Corporation, the barge owner. This letter provides a brief explanation of the applications to assist the Department in its review.

The first application involves a vapor recovery system that was added to *The Prospector*. As the application explains, the vapor recovery system traps all gases resulting from evaporation of petroleum products, particularly during loading and unloading operations. The gases are returned to the customer for condensation to liquid form. The system eliminates the direct venting of petroleum vapors into the atmosphere. All vapors are captured and returned shoreside where the petroleum gases are removed prior to venting the clean air back to the environment.

Tidewater applied for and obtained a pollution control facility tax credit for an identical vapor recovery system that was installed on its barge, *The Pioneer*. (See Application No. T-4417.) A review of the application materials for *The Pioneer* reveals that the vapor recovery system qualified for a tax credit as a principal purpose facility. A principal purpose facility is a pollution control facility whose principal purpose "is to comply

Ms. Maggie Vandehey
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Page 2

with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil." ORS 468.155(1)(a)(A). The federal Clean Air Act, administered by EPA, imposes requirements for vapor recovery. Further, as the Department's Tax Relief Application Review Report for *The Pioneer* explained, the allocation method for the vapor recovery system was not dependent on the amount of time the barge spent in Oregon versus Washington waters. Instead, the report explained: "The vapor recovery system controls the emission of volatile organic compound to the atmosphere. Portland is a non-attainment zone for the atmospheric pollutant ozone and the primary air quality benefit of the facility accrues to the Portland airshed." Report at 3.

Thus, Tidewater anticipates that the Department's review of the application for the vapor recovery system for *The Prospector* will be straight-forward. We have enclosed a copy of the Department's Tax Relief Application Review Report for *The Pioneer* and a copy of Pollution Control Facility Certificate No. 3549, which formally provides for the tax credit for *The Pioneer's* vapor recovery system. Given that the facility cost for *The Prospector* is \$237,000, an independent CPA review was performed by Arthur Anderson and is attached as Exhibit D to the application. An application fee for the amount of \$1235 is also enclosed, which amounts to \$50 plus $\frac{1}{2}$ of 1% of \$237,000 (the facility cost).

The second application involves the addition of a double hull to *The Prospector*. As you are well aware, a similar application submitted by Tidewater for *The Pioneer* was previously denied by the Environmental Quality Commission. The Commission's order found that *The Pioneer's* double hulling did not qualify as either a principal purpose facility or a sole purpose facility. The case is currently pending before the Oregon Court of Appeals.

Tidewater believes that the addition of a double hull should qualify for tax credit relief as a sole purpose facility. A sole purpose facility is a pollution control facility whose sole purpose "is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil." ORS 468.155(1)(a)(B). Under the Department's current rules, "sole purpose" is defined as "exclusive purpose." OAR 340-16-010(9). Tidewater contends that the sole purpose of double hulling *The Prospector* was and is to prevent water pollution. An affidavit from Mr. William H. Pattison, Chief Financial Officer of Tidewater Barge Lines, Inc., is enclosed, and it attests to Tidewater's motivation for adding the double hull.

Nevertheless, we anticipate that the Commission may take the position that *The Prospector's* double hulling does not qualify as a sole purpose facility. We note that with respect to *The Pioneer's* double hulling, the Commission found that the sole purpose of

Ms. Maggie Vandehey
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Page 3

double hulling was not pollution control. Instead, the Commission stated that “[t]he double hulling serves other purpose[s], such as complying with federal law, improving safety, lowering insurance costs, and avoiding loss of the petroleum product.” See Department of Environmental Quality’s Order Denying a Portion of the Claim for Tax Credit Relief (Application No. T-4417, Aug. 30, 1996). This position, however, is both factually and legally incorrect.

First, the double hulling of *The Pioneer*, as well as *The Prospector*, was not, strictly speaking, undertaken for the purpose of complying with federal law. While the federal Oil Pollution Act of 1990 does in fact include a requirement that barges hauling petroleum be double hulled, Tidewater had no obligation to comply with the requirement until January 1, 2015. See 46 USCA § 3703a (1997). Thus, while double hulling *The Prospector* may happen to fulfill the double hulling requirement contained in the Oil Pollution Act, Tidewater was under no obligation to undergo the double hulling expense in 1996. Rather, Tidewater made the conscious decision to double hull *The Prospector* solely for the purpose of preventing the pollution of the Columbia and Willamette River systems. (See Pattison Affidavit, enclosed.)

Second, the Commission’s position with respect to the Oil Pollution Act is illogical. Given that the sole purpose of the Oil Pollution Act is in fact to reduce pollution, whether Tidewater acted for the purpose of “reducing pollution” or whether it acted for the purpose of “complying with the Act to reduce pollution” is immaterial. The Commission’s position establishes an artificial dichotomy that masks the fact that the purpose under either conceptualization is in essence the same. There is no basis in ORS §§ 468.150-.190 for such a false dichotomy.

Third, improving safety, lowering insurance costs, and avoiding the loss of petroleum product are all incidental benefits and did not directly figure into the decision to double hull *The Prospector*. Double hulling provides no net savings in cost and there is no annual return generated from the expenditure. While safety improvements, lower insurance costs, and avoiding product loss may have some negligible effect on the overall expense of double hulling, these economic factors did not contribute to the “purpose” of Tidewater’s decision to add the double hull. Quite simply, Tidewater did not add the double hull *for the purpose of* gaining the incidental benefits. It appears that the Department originally took this position as well in its Review Report for *The Pioneer*. See Report at 2 (recommending that *The Pioneer* should qualify as a sole purpose facility and noting that there were no DEQ compliance issues, no recoveries or conversions of waste products into salable or usable commodities, no annual returns on the investment in the facility, no savings in costs as a result of the facility modification, and no known alternatives).

Ms. Maggie Vandehey
March 13, 1998
Page 4

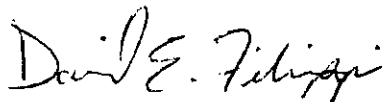
Along these same lines, it should be noted that *every* sole purpose facility is likely to generate some incidental benefit to the facility owner. For example, any business that adds a pollution control facility, whether required by law or not, will gain benefits in the nature of good will. Thus, for example, just because Tidewater may be able to secure a better public image because it has added double hulls to its barges, such an incidental benefit should not be the basis for ruling out double hulls as sole purpose facilities.

Fourth, after-the-fact inquiries should not be the basis for determining Tidewater's intent for adding double hulls. Instead, Tidewater's subjective intent should be sufficient for determining whether it added double hulls for the "sole purpose" of pollution control. Although we are unaware of any on-point case law in Oregon on this issue, other jurisdictions have addressed this issue in slightly different contexts. For example, when determining whether a facility qualifies for tax exemption under statutes requiring eligible facilities to be operated for the primary purpose of controlling pollution, Michigan and Alabama focus on the subjective intent of the entity that installed the facility. The focus is whether the company would have purchased or installed the equipment but for the pollution control problem and whether the taxpayer sought or gained any economic benefits from the decision to purchase or install the equipment. See, e.g., *Meijer, Inc. v. State Tax Comm'n*, 238 NW2d 582, 583 (Mich Ct App 1975); *Alabama Dep't of Revenue v. Taxpayer*, No. S.92-292, 1994 WL 501470 (Ala Dept Rev, Aug 24, 1994); *Alabama Dep't of Revenue v. Taxpayer*, No. S.89-221, 1990 WL 141566 (Ala Dept Rev, July 30, 1994). An affidavit from Tidewater attesting to its own motivations should suffice here.

In sum, *The Prospector's* double hull should qualify as a sole purpose facility. Given that the facility cost is \$775,000, Tidewater is not required to have an independent CPA review performed under the current rules. An application fee for the amount of \$3925 is also enclosed, which amounts to \$50 plus 1/2 of 1% of \$775,000 (the facility cost).

We very much appreciate the assistance the Department has provided to date, and we look forward to working with you further in the future. If you have any questions, please do not hesitate to call me at (503) 294-9529, or Mr. Bill Pattison, Chief Financial Officer for Tidewater, at (503) 281-0081.

Sincerely,



David E. Filippi

Enclosures

AFFIDAVIT OF WILLIAM H. PATTISON

STATE OF OREGON)
) ss.
 County of Multnomah)

I, William H. Pattison, having been duly sworn, do hereby depose and say that:

1. I am the Chief Financial Officer of Tidewater Barge Lines, Inc. ("Tidewater"). My responsibilities with Tidewater have included matters relating to general operations and financial matters. I make this affidavit in support of Tidewater's Application for Final Certification of a Pollution Control Facility for Tax Relief Purposes Pursuant to ORS 468.155 et seq, which seeks tax relief for the construction of *The Prospector's* double hull. I am familiar with Tidewater's application through information that I have obtained as an officer of Tidewater. To the best of my knowledge, all of the matters stated herein are true and correct.


2. The sole purpose of the construction of *The Prospector's* double hull was to prevent, control, and reduce a substantial quantity of water pollution. Such prevention, control, and reduction was accomplished by the redesign of *The Prospector's* hull, which works to eliminate industrial waste and prevent water pollution. *The Prospector's* double hull is not a facility described in ORS 468.155(2).



 William H. Pattison

SUBSCRIBED AND SWORN to before me this 13th day of March, 1998.





 NOTARY PUBLIC FOR OREGON
 My Commission Expires: 7-7-2001

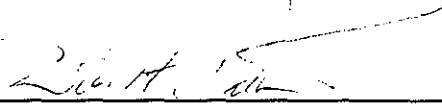
AFFIDAVIT OF WILLIAM H. PATTISON

STATE OF OREGON)
) ss.
County of Multnomah)

I, William H. Pattison, having been duly sworn, do hereby depose and say that:

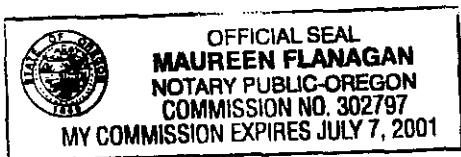
1. I am the Chief Financial Officer of Tidewater Barge Lines, Inc. ("Tidewater"). My responsibilities with Tidewater have included matters relating to general operations and financial matters. I make this affidavit in support of Tidewater's Application for Final Certification of a Pollution Control Facility for Tax Relief Purposes Pursuant to ORS 468.155 et seq, which seeks tax relief for the construction of *The Tri-Cities Voyager's* double hull. I am familiar with Tidewater's application through information that I have obtained as an officer of Tidewater. To the best of my knowledge, all of the matters stated herein are true and correct.

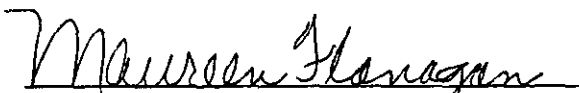
2. The sole purpose of the construction of *The Tri-Cities Voyager's* double hull was to prevent, control, and reduce a substantial quantity of water pollution. Such prevention, control, and reduction was accomplished by the redesign of *The Tri-Cities Voyager's* hull, which works to eliminate industrial waste and prevent water pollution. *The Tri-Cities Voyager's* double hull is not a facility described in ORS 468.155(2).



William H. Pattison

SUBSCRIBED AND SWORN to before me this 20th day of March, 1998.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 7-7-2001

Memo To: Environmental Quality Commission.
Agenda Item B
December 28, 1995 Meeting
Page 5

Tidewater Barge Lines

At the meeting of November 17, 1995, the Environmental Quality Commission deferred taking action on tax credit application 4417, Tidewater Barge Lines, pending a determination by the representative of the Office of the Attorney General on the eligibility of the costs incurred by the applicant for double-hulling a petroleum barge. The double-hulling of all like vessels is required under the Oil Pollution Control Act of 1990.

It is the Department's understanding, based upon conversations with the Attorney General's Office, that there is no provision in the statutes governing the Pollution Control Facilities Tax Credit Program that would preclude a transportation facility of this nature from being granted tax credit relief. Nevertheless, the facility is not eligible under the "principal purpose" criterion because it is not required to be installed under regulations of the EPA, the DEQ or an Oregon regional air authority; therefore, it must qualify as a "sole purpose" facility under the Rules. A sole purpose facility is defined as one having the exclusive purpose of preventing or controlling a significant amount of pollution.

The Department believes that the facility qualifies as a sole purpose facility and that there is no other viable business purpose for the double-hulling of the petroleum barge. It can be argued that the firm may accrue benefits from investing in double-hulling e.g., improved safety for the vessel and crew in case of collision or grounding, lower insurance costs or the potential for avoiding the loss of product as the result of an accident. However, the double-hulling also increases the draft of the vessel, reduces its capacity and perhaps, increases the risk of explosion on board. Based upon the information available, the Department believes that the applicant would not have undertaken to invest in the facility were it not required to do so by law and that the only business function of the facility is to prevent the spill of petroleum product into Oregon inland waterways and adjacent waters.

Quality Trading Company

The Quality Trading Company, a Limited Liability Corporation (LLC), has applied for a tax credit which includes facilities that were certified for tax relief under a previous owner. The Department is recommending the revocation of the tax credit certificates that cover these facilities. However, the previous owner was in the business of processing straw for resale and the facilities were therefore considered to be integral to the operation of his business. As a result, the costs of these facilities were only partially allocable to pollution control. The new owners are not in the grass seed straw business. We therefore recommend that the certificates to be transferred reflect the value of the previously certified facilities less the amount of tax credit actually taken by the previous certificate holder but that the cost be allocated 100% to pollution control.

DEPARTMENT OF JUSTICE

Interoffice Memorandum

DATE: December 4, 1995

TO: Michael B. Huston
Assistant Attorney General

FROM: Robin Craig
Law Clerk *RKC*

RE: Sole Purpose Facilities for Tax Credits
DOJ File No. 340-310-_____

QUESTION PRESENTED

Can a facility claim an investment for a "sole purpose" pollution control facility tax credit if the investment in fact has other purposes, such as conforming to a regulatory requirement?

SHORT ANSWER

According to the statutory language and DEQ's rules, no. However, if the regulatory requirement at issue is itself a requirement to control pollution, the investment is arguably still within the definition of a "sole purpose" facility.

DISCUSSION

A. General Law

Under the pollution control facility tax credit statutes, a facility can qualify for a tax credit if "[t]he *sole purpose* of such use, erection, construction or installation is to prevent, control, or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil." ORS 468.155(1)(a)(B) (1993) (emphasis added). DEQ has further defined "sole purpose" to mean "exclusive purpose." OAR 340-16-010(9).

Under these definitions, unless the investment's *exclusive* purpose is to prevent, control, or reduce pollution, the investment cannot qualify for a sole purpose facility tax credit. However, investing to comply with a regulatory requirement that itself has the sole

Michael B. Huston
December 4, 1995
Page 2

purpose of preventing, controlling, or reducing pollution arguably still is an investment with only one purpose.

Such an interpretation is within DEQ's discretion, given the statutory language. Moreover, that interpretation would also fill in a gap left between the current definitions of "principal purpose" facilities and "sole purpose" facilities. An investment qualifies as a "principal purpose" facility if its *principal* purpose is to comply with state environmental or federal EPA regulations. ORS 468.155(1)(a)(A) (1993). Because the "sole purpose" definition does not discuss what DEQ should do for investments whose *exclusive* purpose is to comply with these regulations, and because the statutes obviously distinguish between principal and exclusive purposes, DEQ has discretion to fill in the gap through interpretation.¹ In addition, because the "sole purpose" statutory definition is not limited to state and EPA regulations, compliance with regulatory requirements of other agencies that have the sole purpose of preventing, controlling, or reducing pollution arguably qualifies for the sole purpose facility tax credit.

However, if the applicant makes the investment to comply with a regulatory requirement unrelated to environmental regulation or a regulatory requirement that itself has more than one purpose, the investment cannot, under the current definitions, qualify as a sole purpose facility. As such, it must qualify as a principal purpose facility or be denied the tax credit.

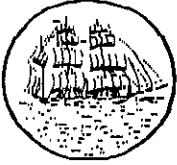
B. Application to Tidewater Barge

It is unclear from DEQ's information what the exact purpose of the Coast Guard's double hull requirement is. However, my guess would be that it is not solely pollution-related but also pertains to safety *of the vessel itself*. If so, then the regulation does not have pollution control as its sole purpose, and Tidewater Barge's investments to comply with the regulation cannot qualify as a sole purpose facility.

Even if pollution control *is* the regulation's sole purpose, however, DEQ has the discretion to deny the tax credit to an investment that is both controlling pollution and complying with regulatory requirements.

MH:RC:kv/RKC0214.MEM

¹It should be noted, however, that it would be equally logical for DEQ to interpret the statutes so that compliance with environmental regulations qualifies *only* for the principal purpose facility tax credit, leaving the sole purpose tax credit for investments that applicants were not already required to make.



DURHAM AND BATES AGENCIES, INC.
INSURANCE BROKERS & AGENTS

January 21, 1999

Mr. David Filippi
Stoel Rives LLP
900 SW Fifth
Portland, OR 97204-1268

RE: TIDEWATER BARGE LINES, INC.

Mr. Filippi,

Further to a request from Bill Pattison of Tidewater Barge Lines, Inc., we are providing information to you regarding the insurance arrangements for Tidewater, specifically their double-hulled tank barges.

We have been the insurance brokers for Tidewater Barge Lines, Inc. since 1994. We handle all of their insurance coverages, including the liability insurance for their fleet of vessels. The liability coverage is placed in a Protection & Indemnity Club, and includes a \$500 million limit for oil pollution.

Tidewater took delivery of "THE PROSPECTOR" on March 25, 1996 and "TRI-CITIES VOYAGER" on May 10, 1997. Though these were double-hulled barges, they were both added to the liability policy at the same rates as Tidewater's other single-hulled petroleum barges. In fact, because of the larger size of these barges, they pay the highest premium of all the petroleum barges on the fleet.

We trust you will contact us if we can be of any further assistance.

Sincerely,

DURHAM AND BATES AGENCIES, INC.


William D. Hurst
Chairman

RATE \$

Cancels

RATE SCHEDULE NO. 4-C

Original Title Page

Correction No. 0

TIDEWATER BARGE LINES, INC.

SCAC CODE TBLW
MC W-0909

RATE SCHEDULE NO. 4-D

NAMING

LOCAL RATES, RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF:

BULK
FERTILIZER and PETROLEUM PRODUCTS
(As Described in Item 60)

Via BARGE

On the Following Rivers:			
Clearwater	Columbia	Snake	Willamette

For Reference To Governing Publications, Refer To Item 100.

RULES AND REGULATIONS OUTLINED HEREIN WILL APPLY UNLESS SUPERSEDED BY CUSTOMER SPECIFIC CONTRACTS OR TARIFFS CONTAINING EXCEPTIONS TO ITEMS IN THIS TARIFF.

For explanation of abbreviations and reference marks not explained on this page, see last page.

ISSUED: December 15, 1997

EFFECTIVE: February 1, 1998

ISSUED BY:
Wesley Hickey, President
P.O. Box 1210
Vancouver, WA 98666-1210

Tidewater Barge Lines, Inc.

ISSUED: December 15, 1997

Original Page

Correction No. 0

EFFECTIVE: February 1, 1998

SECTION 1

RULES

ITEM

MARINE CARGO INSURANCE

A: Rates named in this Schedule do NOT include Marine Cargo Insurance. The carrier will, however, upon written request of the shipper or consignee, provide Marine Cargo Insurance, as described hereinafter. The cost thereof will be charged to the shipper or consignee, as the case may be, in addition to all other transportation charges applicable.

120

The cargoes of bulk petroleum and fertilizer products are insured subject to the following and/or as may be amended or provided for in the policy on Marine Cargo Insurance on file in the carrier's office and available for inspection:

Insured against all risk of physical loss or damage from any external cause excluding the risks excepted by the F.C. & S. "Free of Capture & Seizure" Warranty; also excluding claims for shortage, leakage and/or contamination unless caused by or arising out of:

- a: fire or explosion, howsoever or wheresoever occurring;
- b: the vessel or craft being stranded, sunk, burn or in collision or in contact with any substance or thing (ice included) other than water;
- c: a forced discharge of cargo,

PROVIDED, however, that notwithstanding the foregoing, Underwriters shall be liable for:

- 1: contamination resulting from heavy weather; and
- 2: loss of the liquid insured from connecting pipe lines, flexible or otherwise, in loading, transshipment or discharge; and

PROVIDED, further, that from all claims payable hereunder, a deduction shall be made for normal shortage.

- B: In the event the shipper, owner or consignee shall elect to procure Marine Cargo Insurance other than that made available by the carrier, it or they shall and hereby do agree to name as a co-assured with the shipper, owner or consignee as the case may be, with full waiver or subrogation as against the carrier, its agents, employees, servants and the carrying and/or towing vessel or vessels.
- C: In the event the shipper, owner or consignee shall elect to move said cargo without Marine Cargo Insurance, it or they agree that it or they shall be deemed as self-insurers and thereby agree to waive any and all claims for loss, damage or destruction of said cargo which would otherwise have been covered by the said insurance provided by the carrier

For explanation of abbreviations and reference marks not explained on this page, see last page.

ISSUED BY:

Wesley Hickey, President
P.O. Box 1210
Vancouver, WA 98666-1210


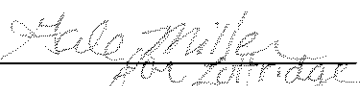
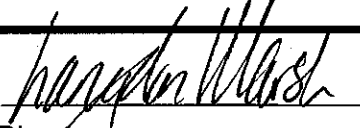
Tax Credit Actions

App. No.	Applicant	Certified Cost	Percent Allocable	Attachment B Recommendation	Attachment C Recommendation	Commission Action
4635	NPI, Inc. dba/Northwest Polymers	\$ 26,787	100%	Approve		
4687	Intel Corporation	\$ 242,195	100%	Approve		
4806	Willamette Industries, Inc.	\$ 156,122	100%	Approve		
4863	NPI, Inc. dba/Northwest Polymers	\$ 1,343	100%	Approve		
4903	Willamette Industries, Inc.	\$ 45,788	100%	Approve		
5007	Widmire Brothers Brewing Company	\$ 81,767	100%	Approve		
5053	Wellons, Inc.	\$ 265,583	100%	Approve		
5063	WWDD Partnership	\$ 9,747	100%	Approve		
5132	Portland General Electric Company	\$ 20,487	100%	Approve		
5134	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve		
5135	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve		
5136	Willamette Industries, Inc.	\$ 62,966	100%	Approve		
5143	Thomas & Son Beverage, Inc.	\$ 257,212	100%	Approve		
5144	Sam Trakul Investments, Inc.	\$ 1,884	100%	Approve		
5149	Dunn & Leblanc, Inc.	\$ 120,338	100%	Approve		
5150	Dunn & Leblanc, Inc.	\$ 11,367	100%	Approve		
5151	Dunn & Leblanc, Inc.	\$ 600	100%	Approve		
5153	United Disposal Service, Inc.	\$ 47,016	100%	Approve		
5155	United Disposal Service, Inc.	\$ 163,489	100%	Approve		
5164	United Disposal Service, Inc.	\$ 9,010	100%	Approve		
5166	Willamette Industries, Inc.	\$ 27,842	100%	Approve		
5171	Johns Ranch, Inc.	\$ 30,340	100%	Approve		
5172	Matthew L. Carlough	\$ 108,975	84%	Approve		
5176	United Disposal Service, Inc.	\$ 142,089	100%	Approve		
5180	United Disposal Service, Inc.	\$ 8,440	100%	Approve		
5182	Capitol Recycling & Disposal, Inc.	\$ 5,032	100%	Approve		
5183	Capitol Recycling & Disposal, Inc.	\$ 4,950	100%	Approve		
5192	Dunn & Leblanc, Inc.	\$ 136,198	100%	Approve		
5201	Timothy & Lori Van Leeuwen	\$ 34,558	100%	Approve		
5202	KG Farms	\$ 94,000	56%	Approve		
4801	Valmont Industries, Inc.	\$ 407,722	100%		Remove From Agenda	
4860	Waste Control Systems, Inc.	\$ 3,091,970	0%		Remove From Agenda	
4959	Tidewater Barge Lines, Inc.	\$ 775,000	100%		Provide Guidance Remove From Agenda	
4965	Tidewater Barge Lines, Inc.	\$ 775,000	100%		Provide Guidance Remove From Agenda	
4980	Willamette Industries, Inc.	\$ 18,041	100%		Remove From Agenda	

Environmental Quality Commission

- Rule Adoption Item
- X Action Item
- Information Item

Agenda Item F
June 25, 1999, Meeting

Title: Approval and Denial of Tax Credit Applications		
Summary: Staff recommends the following actions regarding tax credits:		
	<u>Facility Cost</u>	<u>Value</u>
Approve		
<i>Pollution Control Facility Tax Credit</i>		
Air (6 applications)	\$414,778	\$207,389
Noise (2 application)	\$66,275	\$33,138
Field Burning (2 applications)	\$128,558	\$43,599
Hazardous Waste (2 applications)	\$144,638	\$72,319
Solid Waste (12 applications)	\$798,692	\$399,346
USTs (2 applications)	\$139,315	\$60,940
Water (2 applications)	\$398,317	\$199,159
<i>Pollution Control Facility Tax Credit (29 applications)</i>	\$2,090,573	\$1,015,889
<i>Reclaimed Plastics Products Tax Credit</i>		
Plastics (2 applications)	\$28,130	\$14,065
	\$2,118,703	\$1,029,953
Approve (31 applications)		
Deny		
<i>Pollution Control Facility Tax Credit</i>		
Air (1 application)	\$18,041	
Hazardous Waste (1 application)	\$407,722	
Solid Waste (1 application)	\$2,145,788	
Water (2 applications)	\$1,550,000	
	\$4,121,551	
Deny (5 applications)		
Approve issuance of tax credit certificates for the applications presented in Attachment B. Deny issuance of tax credit certificate for the application presented in Attachment C.		
 Report Author	 Division Administrator	 Director

June 8, 1999

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)

Date: June 8, 1999
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Agenda Item F, June 25, 1999, EQC Meeting
Tax Credit Applications

Statement of the Need for Action

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

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

Staff also presents the annual tax credit program report titled *Pollution Control Facility Tax Credit Program History 1968 – 1998* found behind the staff report.

Background APPROVALS: Attachment B

Wellons, Inc. – Application 5053

On March 3, 1999, staff removed application number 5053 from the list of applications recommended for Commission approval. Staff addressed the Commission's concerns in this staff report by:

- Clarifying the relationship between Wellons, Inc. and Willamette Industry, Inc;
- Clarifying which components staff recommends for approval; and
- Removing the multi-cone collector, and the conveyors and augers as ineligible costs.

The clarified and adjusted report is located in Attachment B.

Background DENIALS: Attachment C

Valmont Industries, Inc. – Application 4801

Valmont Industries claimed a series of external secondary containment tanks to contain corrosive hazardous materials to be used in the manufacturing process. The applicant stated the principal purpose of the facility is to comply with secondary containment for hazardous materials and hazardous waste as required by DEQ. Staff recommends the denial of

application number 4801 because:

- The “most important or primary purpose” is not to prevent, control or reduce a substantial quantity of hazardous waste. Valmont Industries’ material is a pre-production material not a spent post-production material that defines a hazardous waste.
- The facility does not treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005. The facility only contains hazardous materials.
- The facility does not use a material recovery process which obtains useful material from material that would otherwise be hazardous waste as defined in ORS 466.005.

Waste Control Systems, Inc. – Application 4860

The applicant claimed a recycling station at its Willamette Resources, Inc. location. The applicant claimed that the facility was not integral to the operation of the their business. They based this upon the premise that the facility operates under the name Willamette Resources, Inc. (WRI), a wholly-owned subsidiary of Waste Control Systems, Inc. (WCS), and that WCS files the consolidated tax return. The applicant states that WRI was incorporated to operate the facility and to simplify the accounting and reporting requirements. Since the percentage allocable to pollution control was zero percent without the more stringent return on investment calculation that accompanies a facility that the Commission determines to be integral, staff did not address this portion of the rule.

When considering revenue and expenditures, the applicant included commodity sales but did not include tipping fees. Once the return on investment was recalculated 1) excluding ineligible costs identified by the reviewers and 2) including the tipping fees, and 3) utilizing actual operating results, the percentage of the facility cost allocable to pollution control is zero percent.

Tidewater Barge Lines, Inc. – Applications Numbered 4959 & 4965

Tidewater Barge Line, Inc. submitted tax credit applications for two of their petroleum barges, *The Prospector* and *The Tri-Cities Voyager*, each claiming double hull construction. These two applications were presented to the Commission on December 11, 1998. At that time, David Fillippi of Stoel Rives LLP, attorney for Tidewater Barge Lines, Inc., requested that the two denials be postponed.

The Department recommends the denial of applications numbered 4959 and 4965 because the sole and “exclusive” purpose of these installations are not to prevent, control or reduce pollution according to the pollution control facility tax credit program statute and rules. Double-hulling also provides improved safety of the vessel and crew in case of grounding or collision; lowering insurance costs; meeting the requirements of the Coast Guard; and the possibility of avoiding the loss of petroleum product.

The Department recognizes that whenever an applicant installs a pollution control facility, there

will always be incidental benefits even if those benefits are only to improve public relations and reputation. However, the EQC has the discretion to determine when an incidental benefit becomes the "purpose" of the facility. The Department's recommendation is consistent with the December 28, 1995, Commission determination that there were a number of business reasons for the double-hulling of *The Pioneer* — a barge presented by Tidewater Barge Line, Inc. on application number 4417.

Willamette Industries, Inc. – Application Number 4980

The applicant claimed that their new Bobcat front-end loader reduces fugitive wood particulate from all areas of the plant site. They claimed the principal purpose of the Bobcat is to comply with DEQ's ACDP requirements that specify wood waste must be picked up within 24 hours in order to reduce particulate. For a facility to be certified as a pollution control facility for tax credit purposes it must dispose of or eliminate a substantial quantity of air pollution from being emitted to the atmosphere. In addition, the definition of principal purpose "...means the most important or primary purpose. Each facility may have only one principal purpose."

Staff recommends denial of application number 4980 since the Bobcat:

- does not eliminate a substantial quantity of air pollution; and
- it has other important purposes such as keeping the plant site clean and for transporting production materials.

Conclusions

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

Recommendation for Commission Action

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

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

Intended Follow-up Actions

Notify applicants of Environmental Quality Commission actions. Notify Department of Revenue of issued certificates. Transmit electronic files to Department of Revenue.

Attachments

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

Pollution Control Facility tax Credit Program History 1968 - 1998

Reference Documents (available upon request)

1. ORS 468.150 through 468.190.
2. OAR 340-16-100 through 340-16-125.
3. OAR 340-16-005 through 340-16-050.

Approved:

Section:

Division:

JRK

Gale Miller for Lottidge

Report Prepared by: Margaret Vandehey
Phone: (503) 229-6878
Date Prepared: June 8, 1999

Attachment A

Summary

Action	Appl#	Applicant	Certified Cost	Percent	Value
Approve	4635	NPI, Inc. dba/Northwest Polymers	\$26,787	100%	\$13,393
Approve	4687	Intel Corporation	\$242,195	100%	\$121,098
Approve	4806	Willamette Industries, Inc.	\$156,122	100%	\$78,061
Approve	4863	NPI, Inc. dba/Northwest Polymers	\$1,343	100%	\$672
Approve	4903	Willamette Industries, Inc.	\$45,788	100%	\$22,894
Approve	5007	Widmere Brothers Brewing Compan	\$81,767	100%	\$40,884
Approve	5053	Wellons, Inc.	\$265,583	100%	\$132,792
Approve	5063	WWDD Partnership	\$9,747	100%	\$4,874
Approve	5132	Portland General Electric Company	\$20,487	100%	\$10,244
Approve	5134	Aire-Flo Heating & Air Conditioning, I	\$1,289	100%	\$645
Approve	5135	Aire-Flo Heating & Air Conditioning, I	\$1,289	100%	\$645
Approve	5136	Willamette Industries, Inc.	\$62,966	100%	\$31,483
Approve	5143	Thomas & Son Beverage, Inc. Recyc	\$257,212	100%	\$128,606
Approve	5144	Sam Trakul Investments, Inc.	\$1,884	100%	\$942
Approve	5149	Dunn & Leblanc, Inc.	\$120,338	100%	\$60,169
Approve	5150	Dunn & Leblanc, Inc.	\$11,367	100%	\$5,683
Approve	5151	Dunn & Leblanc, Inc.	\$600	100%	\$300
Approve	5153	United Disposal Service, Inc.	\$47,016	100%	\$23,508
Approve	5155	United Disposal Service, Inc.	\$163,489	100%	\$81,745
Approve	5164	United Disposal Service, Inc.	\$9,010	100%	\$4,505
Approve	5166	Willamette Industries, Inc.	\$27,842	100%	\$13,921
Approve	5171	Johns Ranch, Inc.	\$30,340	100%	\$15,170
Approve	5172	Matthew L. Carlough	\$108,975	84%	\$45,770
Approve	5176	United Disposal Service, Inc.	\$142,089	100%	\$71,045
Approve	5180	United Disposal Service, Inc.	\$8,440	100%	\$4,220
Approve	5182	Capitol Recycling & Disposal, Inc.	\$5,032	100%	\$2,516
Approve	5183	Capitol Recycling & Disposal, Inc.	\$4,950	100%	\$2,475
Approve	5192	Dunn & Leblanc, Inc.	\$136,198	100%	\$68,099
Approve	5201	Timothy & Lori Van Leeuwen	\$34,558	100%	\$17,279
Approve	5202	KG Farms	\$94,000	56%	\$26,320
Deny	4801	Valmont Industries, Inc.	\$407,722	100%	\$203,861
Deny	4860	Waste Control Systems, Inc.	\$3,091,970	0%	\$0
Deny	4959	Tidewater Barge Lines, Inc.	\$775,000	100%	\$387,500
Deny	4965	Tidewater Barge Lines, Inc.	\$775,000	100%	\$387,500
Deny	4980	Willamette Industries, Inc.	\$18,041	100%	\$9,021

Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Approvals Pollution Control Facility Tax Credit					
Air					
5007	Widmere Brothers Brewing Company	A grain dust collection system.	\$81,767	100%	\$40,884
5053	Wellons, Inc.	An electrostatic precipitator (ESP), a multiple cone collector	\$265,583	100%	\$132,792
5134	Aire-Flo Heating & Air Conditioning, Inc.	A 4000 Chlorofluorocarbon (CFC) recovery system, Model #H-85-289	\$1,289	100%	\$645
5135	Aire-Flo Heating & Air Conditioning, Inc.	A 4000 Chlorofluorocarbons (CFC) recovery system, model #H-85-289	\$1,289	100%	\$645
5136	Willamette Industries, Inc.	A pneumatic dust control system	\$62,966	100%	\$31,483
5144	Sam Trakul Investments, Inc.	R-12 and R-134A Automotive A/C Recycling Equipment model #RTI RRC770	\$1,884	100%	\$942
Air (6 applications)			\$414,778		\$207,389
Field Burning					
5201	Timothy & Lori Van Leeuwen	purchased an 18' 6" Disk and a Rears 15' Flail	\$34,558	100%	\$17,279
5202	KG Farms	Allen Rake, model #8827, serial #880957; 3 New Holland Balers model #505, serial #753963; #547895; #753990; New Holland Stack Cruiser model #1085 serial #553404	\$94,000	56%	\$26,320
Field Burning (2 applications)			\$128,558		\$43,599
Hazardous Waste					
5180	United Disposal Service, Inc.	One Inter-Teco Plasti-Pac Mobile Compactor	\$8,440	100%	\$4,220
5192	Dunn & Leblanc, Inc.	1998 Volvo model WXLL42, serial #4VEHAKHE2XN768734 and ADR Technologies recycling body, serial #011698	\$136,198	100%	\$68,099
Hazardous Waste (2 applications)			\$144,638		\$72,319

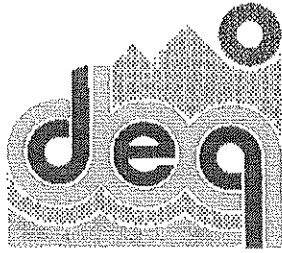
Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Noise					
4903	Willamette Industries, Inc.	A MAC Equipment Inc. bagfilter, model # 96-MCF-153, serial # 95-FMCF-09-008	\$45,788	100%	\$22,894
5132	Portland General Electric Company	18 noise barrier panels	\$20,487	100%	\$10,244
Noise (2 applications)			\$66,275		\$33,138
Solid Waste					
5063	WWDD Partnership	HDI-20-30 flat belt conveyor	\$9,747	100%	\$4,874
5143	Thomas & Son Beverage, Inc. Recycling	Beverage container and packaging recycling facility including: Excel Baler, Model 2R9, 60" Krause conveyor, building, doors, and security fence	\$257,212	100%	\$128,606
5149	Dunn & Leblanc, Inc.	Ferrodyne Baler model #OA-7X serial #F00896; Ferrodyne Conveyor serial #F00996; Baler building	\$120,338	100%	\$60,169
5150	Dunn & Leblanc, Inc.	1670-18 gallon collection bins and 400-18 gallon bin lids	\$11,367	100%	\$5,683
5151	Dunn & Leblanc, Inc.	Thirty 90-gallon roll carts for residential customers	\$600	100%	\$300
5153	United Disposal Service, Inc.	Twelve 48.9 SC style drop boxes, serial numbers #10676 thru #10683 and #10686 thru #10689.	\$47,016	100%	\$23,508
5155	United Disposal Service, Inc.	One 1998 Volvo truck, serial #4VDDBKNE1WN749594, and one new Heil Rapid Star trailer loading sstem serial #8200117	\$163,489	100%	\$81,745
5164	United Disposal Service, Inc.	Two thousand red 14-gallon recycling collection bins	\$9,010	100%	\$4,505
5166	Willamette Industries, Inc.	sanderdust conveyor system	\$27,842	100%	\$13,921
5176	United Disposal Service, Inc.	One 1998 Volvo Truck serial # 4VMHCMME3WN753755, and one new Maxon body front end loader body.	\$142,089	100%	\$71,045
5182	Capitol Recycling & Disposal, Inc.	One 48.9-yd SC style drop box	\$5,032	100%	\$2,516
5183	Capitol Recycling & Disposal, Inc.	1000 - 14-gallon recycling bins .	\$4,950	100%	\$2,475
Solid Waste (12 applications)			\$798,692		\$399,346

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
USTs					
5171	Johns Ranch, Inc.	Epoxy lining in two steel underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm and turbine leak detectors.	\$30,340	100%	\$15,170
5172	Matthew L. Carlough	Two doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, turbine leak detectors, sumps, oil/water separator, automatic shutoff valves and Stage II vapor recovery piping	\$108,975	84%	\$45,770
USTs (2 applications)			\$139,315		\$60,940
Water					
4687	Intel Corporation	A Water Pollution control facility consisting of an Acid Waste Neutralization system	\$242,195	100%	\$121,098
4806	Willamette Industries, Inc.	Self-contained closed loop system, where wash water is filtered and recycled.	\$156,122	100%	\$78,061
Water (2 applications)			\$398,317		\$199,159
Summary for Pollution Control Facility Tax Credit (28 applications)			\$2,090,573		\$1,015,889
Reclaimed Plastics Products Tax Credit					
Plastics					
4635	NPI, Inc. dba/Northwest Polymers	magnetic separation and screening system	\$26,787	100%	\$13,393
4863	NPI, Inc. dba/Northwest Polymers	Formost metal separator Model SEP-2-C, SIN 33458	\$1,343	100%	\$672
Summary for Reclaimed Plastics Products Tax Credit (2 applications)			\$28,130		\$14,065
Summary for Approvals (30 applications)			\$2,118,703		\$1,029,953

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Deny					
Pollution Control Facility Tax Credit					
Air					
4980	Willamette Industries, Inc.	A Bobcat Front-end Loader, model 753C Series.	\$18,041	100%	\$9,021
Hazardous Waste					
4801	Valmont Industries, Inc.	Secondary containment tanks, trenches, containment pit & other building modifications for secondary containment of hazardous materials.	\$407,722	100%	\$203,861
Solid Waste					
4860	Waste-Control Systems, Inc.	Mixed Waste processing/recovery facility & equipment	\$3,019,970	0%	\$0
Water					
4959	Tidewater Barge Lines, Inc.	Double hull for The Prospector to create a void between the cargo area and water.	\$775,000	100%	\$387,500
4965	Tidewater Barge Lines, Inc.	Double hull for The Tri-Cities Voyager to create a void between the cargo area and water.	\$775,000	100%	\$387,500
Summary for Denials (5 applications)					\$987,882

Attachment B

Approvals



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant **NPI Inc.**
Application No. **4635**
Facility Cost **\$26,787**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

The applicant is a C corporation operating as a **recycler and reprocessor of post consumer & industrial plastics**. The taxpayer's identification number is 91-181-6316. The applicant's address is:

**201 Dixon Ave.
Molalla OR 97038**

Facility Identification

The certificate will identify the facility as:

Magnetic separation and screening system.

The applicant is the owner and operator of the facility located at:

**201 Dixon Ave.
Molalla OR 97038**

Technical Information

The claimed equipment is part of a system that classifies and removes contaminants from reclaimed plastic including a magnetic separator, metal ejection system, auger, gaylord dumper, hoppers, screens, and air compressor.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	<u>07/02/1996</u>
<i>Preliminary approval Granted</i>	<u>07/02/1996</u>
<i>Date of investment</i>	<u>12/07/1997</u>
<i>Final application received</i>	<u>12/19/1997</u>
<i>Application substantially complete</i>	<u>09/29/1998</u>

Facility Cost

Facility Cost	\$26,787
Ineligible Costs	0
Eligible Facility Cost	<u>\$26,787</u>

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

Facility Cost Allocable to Pollution Control

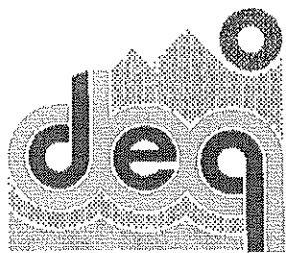
Pursuant to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product. Considering the following factors, the percentage allocable to pollution control is 100%.

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant	Intel Corporation
Application No.	4687
Facility Cost	\$242,195
Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility: Air Final Certification

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

Applicant Identification

The applicant is a C corporation, a **microcomputer chip manufacturer**. The taxpayer's identification number is 94-1672743. The applicant's address is:

**Oregon Division
3065 Bowers Avenue
Santa Clara, CA 95051**

Facility Identification

The certificate will identify the facility as:

A water pollution control facility consisting of an Acid Waste Neutralization system.

The applicant is the **owner** of the facility located at the D1E site:

**520 NE Elam Young Parkway
Hillsboro, OR 97124**

Technical Information

The water pollution control systems associate with the applicant's project known as D1E are:

Acid waste collection piping (AWP). The piping system installed in the basement and subfab level for equipment to drain acid wastes. This system is not eligible as noted below under the *Facility Cost* section.

Acid waste neutralization (AWN) system expansion. This system was installed to provide sufficient treatment capacity to consistently neutralize facility wastewater in accordance with Washington county Unified Sewerage Agency (USA) permit pH requirements. The facility includes modifications made to expand an existing neutralization system, which would ensure sufficient treatment capacity.

Eligibility

1993 ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) The disposal or elimination of or redesign to eliminate **industrial waste** and the use of treatment works for industrial as defined in ORS 468B.005.

Timeliness of Application

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

<i>Application Received</i>	10/28/96
<i>Application Substantially Complete</i>	<u>11/16/96</u>
<i>Construction Started</i>	12/93
<i>Construction Completed</i>	7/95
<i>Facility Placed into Operation</i>	7/95

Facility Cost

		<u>Determination of Allowable Costs</u>	
<i>Applicant Identified</i>			
Claimed		\$ 3,255,168	
Removed during review		\$ (2,572,374)	
	Final Claimed Amount		\$ 682,794
 <i>Reviewer Identified</i>			
<u>Direct Costs</u>			
Parshall Flume – a flow control device to measure and record the flow of wastewater		\$ (13,271)	
Relocation of valve and piping due to electrical/mechanical interference		\$ (1,431)	
Sump level switch		\$ (1,687)	
RO pipeline modification		\$ (2,508)	
Fiberglass supports braces for the main PVC acid waste line in the sub-fab trench		\$ (24,045)	
Check valves		\$ (1,237)	
AWP as requirement of the Uniform Fire Code for H occupancies		\$ (215,833)	
Drain lines from factory tools. The piping system installed to provide drainage of acid waste is ineligible it is a requirement of the Uniform Fire Code for H occupancies		\$ (96,180)	
	Non-Allowable Direct		\$ (356,192)
 <u>Indirect Costs Incorrectly Calculated</u>			
AWP		\$ (58,480)	
AWN		\$ (66,578)	
			\$ (125,058)
	Base Cost		\$ 201,544
	Base Cost X Indirect Ratio of 20.17%		\$ 40,651
	Eligible Facility Cost		\$ 242,195

Kessler & Company, PC provided the certified public accountant's statement on behalf of the applicant. Symonds, Evens and Larson, P.C. performed the accounting review for the Department. The non-allowable components in the claimed facility do not contribute to water pollution control or prevention. The indirect ratio of 20.17% was recalculated based upon the entire D1E project cost of \$96,249,258 and the associated indirect costs of \$19,415,296.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

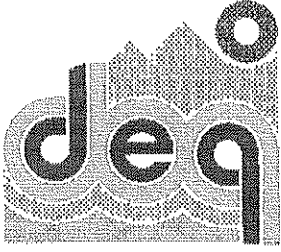
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity is produced.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Intel reported that alternatives were investigated but were not considered cost effective.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: Air Permit #34-2681, and NPDES #100917

Reviewers: Lois Payne, P.E.
Dennis Cartier, Associate
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 12/11/1998

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **4806**
Facility Cost **\$156,122**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Identification

The applicant is a C corporation and is operating a **paper mill**. The taxpayer's identification number is 93-0312940. The applicant's address is:

**1300 SW Fifth Ave., Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

Self-contained closed loop system, where wash water is filtered and recycled.

The applicant is the owner of the facility located at:

**1551 SW Lyle Street
Dallas, OR 97338**

Technical Information

Facility consists of three areas: 1) pre-wash area for removing heavy accumulation of mud and dirt. 2) main wash area. Both areas are self-contained with a closed loop system to separate solids through a settling tank, and separate oils through a skimming and filtration system. 3) self-contained area for proper disposition of oil and other pollutants.

- ORS 468.155 The **principal purpose** of this **new installation** is to control wastewater and
(1)(a) chemical pollutants Storm Water Discharge Permit Number 1200-W.
OAR-16-025 Installation or construction of facilities which will be used to deter, or prevent spills
(2)(g) or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	07/21/1997
<i>EQC Meeting Where Postponed</i>	<u>4/3/1998</u>
<i>Additional Information Requested</i>	4/9/1998
<i>Additional Information Provided</i>	9/23/1998
<i>Application Substantially Complete</i>	9/23/1998
<i>Construction Started</i>	12/01/1994
<i>Construction Completed</i>	12/01/1994
<i>Facility Placed into Operation</i>	07/31/1995

Facility Cost

Facility Cost	\$246,159
Other Tax Credits	
Ineligible Costs ¹	
Restrooms	- \$ 7,800
Mechanical Shop	- \$ 53,669
Storage Area	-\$ 23,853
Fire Protection System	- \$ 4,715
Eligible Facility Cost	\$156,122

A cost summary accompanied the application. Peat Marwick, LLP provided the independent auditor's report.

Several costs were subtracted from the claimed cost of the facility because they made an insignificant contribution to pollution control [ORS 468.155(2)(d)] or the primary and most important purpose is not pollution control. [ORS 360-016-0060 (2)(a)]² The mechanical shop and the storage area costs were determined using the square footage cost (\$33.13) of the concrete slab and cover. The restroom costs were based upon square footage and the costs associated with the fixtures.

The applicant claims that the entire facility should be included since their stormwater permit requires them to utilize best management practices in implementing a stormwater plan that includes: 1) containment of potential spills of hazardous chemicals; 2) control of debris and sediment; and 3) diversion of stormwater away from potential stormwater contamination. They claim that "Utilizing a machanic[al] shop with a concrete slab for containment and a cover to shield the maintenance activities from weather provide both

² (2) Purpose of Facility. The facility shall meet the principal purpose requirement to be eligible for a pollution control facility tax credit certification...

(a) Principal Purpose Requirement. The principal purpose of the facility is the most important or primary purpose of the facility. Each facility shall have only one principal purpose...

containment of potential spills and diversion of stormwater away from potential stormwater contamination of nearby Ash Creek.”

Facility Cost Allocable to Pollution Control

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

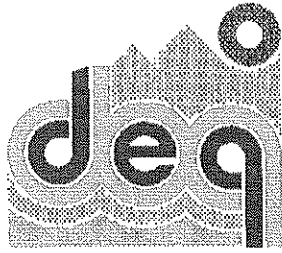
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues associated with this facility.
ORS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

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

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. Permits issued by DEQ: ACDP No. 27-0177; Storm Water Discharge Permit Number 1200-W.

Reviewers: Elliot J. Zais
Maggie Vandehey



Tax Credit Review Report

EQC 6/25/1999

Director's Recommendation: **APPROVE**

Applicant **NPI Inc.**
Application No. **4863**
Facility Cost **\$1,343**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

The applicant is a C corporation and is a **recycler and reprocessor of post consumer & industrial plastics**. The taxpayer's identification number 91-1816316. The applicant's address is:

**201 Dixon Ave.
Molalla OR 97038**

Facility Identification

The certificate will identify the facility as:

Formost metal separator Model SEP-2-C, SIN 33458.

The applicant is the **owner and operator** of the facility located at:

**201 Dixon Ave.
Molalla OR 97038**

Technical Information

The claimed equipment is part of a system that removes metal contaminants from reclaimed plastic.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	<u>10/24/1997</u>
<i>Preliminary approval Granted</i>	<u>10/24/1997</u>
<i>Date of investment</i>	<u>10/29/1997</u>
<i>Final application received</i>	<u>12/19/1997</u>
<i>Application substantially complete</i>	<u>09/29/1998</u>

Facility Cost

Facility Cost	\$1,323
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$1,323

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

Facility Cost Allocable to Pollution Control

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

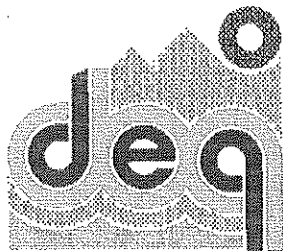
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent Used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time to for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods,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

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 12/11/98

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **4903**
Facility Cost **\$45,788**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility Tax Credit: Air Final Certification

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

Applicant Identification

The applicant is a C corporation. They operate a **paper mill**. The applicant's taxpayer identification number is 93-0312940 and their address is:

**1300 SW Fifth Avenue, Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

A MAC Equipment Inc. bagfilter, model # 96-MCF-153, serial # 95-FMCF-09-008.

The applicant is the **owner** of the facility located at:

**1551 SW Lyle Street
Dallas, OR 97338**

Technical Information

A Mac Equipment Inc. bagfilter designed for 15,028 ACFM was installed to control particulate emissions from a new trim saw and an existing horizontal saw. The new bagfilter has 1,484 square feet of cloth area for a 10:1 air to cloth ratio. The emissions from the bagfilter are negligible (0.00 lbs/hour).

Eligibility

ORS 468.155 The **principal purpose** of this **new equipment** is to reduce or eliminate a
(1)(a) substantial quantity of pollution as required by Air Contaminant Discharge Permit #27-0177.

ORS 468.155 The disposal or elimination of or redesign to eliminate air contamination sources and
(1)(b)(B) the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). However, Willamette Industries was notified by mail on March 3, 1998 that they had 180 days to supply any documentation to substantiate the allocation of labor costs for the project.

<i>Application Received</i>	<u>12/30/97</u>
<i>Application Substantially Complete</i>	<u>9/01/98</u>
<i>Additional Information Requested</i>	<u>3/4/1998</u>
<i>Construction Started</i>	<u>11/13/95</u>
<i>Construction Completed</i>	<u>1/31/96</u>
<i>Facility Placed into Operation</i>	<u>1/31/96</u>

Facility Cost

	<u>Allowable Cost Determination</u>	
<i>Applicant Identified</i>		
Air System Installation-Days Metal Fabrication	\$90,000	
Electrical Equipment/Installation - various	\$6,952	
Claimed Facility Cost		<u>\$96,952</u>
<i>Reviewer Identified</i>		
Pipe and Conveyor System – determined by subtracting the cost of the bagfilter and associated costs.	(\$47,758)	
49% of Electrical – based upon the ratio of the Pipe & Conveyor System to the Claimed Facility Cost	(\$3,406)	
		<u>\$ (51,164)</u>
Eligible Facility Cost		\$ 45,788

The applicant provided a “List of Expenditures” with the application containing only two line items listed above. Mac Industries, Inc., the manufacturer, provided a cost estimate for the bagfilter and the associate equipment. The supplier and installer, Days Metal Fabrication’s invoice included pipe and conveyor system as a line item but they did not wish to disclose specific charges or specific equipment costs. The conveyor system and the piping are material handling devices and not allowable pollution control devices. Therefore, the cost associated with the installation of the ineligible components could not be substantiated but were allocated as indicated above.

KPMG- Peat Marwick LLP, provided the certified public accountant’s statement on behalf of the applicant verifying that Willamette Industries made the investment claimed on the application.

Facility Cost Allocable to Pollution Control

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

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

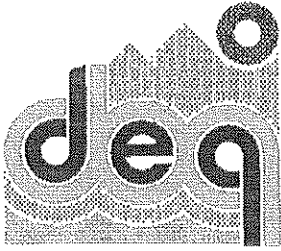
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

Based on file review and the applicant's claims, the facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:
Air Contaminant Discharge Permit #27-0177

Reviewers: Cascade Earth Sciences, Ltd.
David Kauth



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant **Widmer Brothers Brewing Company**
Application No. **5007**
Facility Cost **\$81,767**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Final Certification

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

Applicant Identification

The applicant is a C corporation operating as a **brewery**. The taxpayer's identification number is 93-0866469. The applicant's address is:

**929 N Russell Street
Portland, OR 97227**

Facility Identification

The certificate will identify the facility as:

A grain dust collection system.

The applicant is the **owner** of the facility located at:

**924 N Russell Street
Portland, OR 97227**

Technical Information

The claimed facility consists of a grain dust collection system designed to comply with the requirements of the EPA Clean Air Act.

The major components of the system are:

- 1) Two vacuum blowers for suction of grain dust from the open area above the grain handling equipment, thereby preventing fugitive emissions;
- 2) Two 98% efficient air jet filters with electronic fluidic controllers to collect the dust captured by the vacuum blowers;
- 3) A single air blast blower for both air jet filters with electronic timing to pulse clean the filter media;
- 4) Two rotary airlocks for unloading the filters; and
- 5) Associated piping to and automatic valves for selection of the grain handling system generating the dust.

The claimed facility reduces fugitive dust emissions during grain handling. Grain handling is composed of two separate systems. The first is the truck unloading system to the brewery storage bins. The second is the storage bin transfer to the weighing hopper, elevation to the malt mill, grinding of the malt, and finally the drop into the grist hopper.

The grain truck unloads by a positive blower attached to the trailer. The computer control system opens the vent valve on the selected grain bin. A computer control starts the vacuum blower and functions to remove dust from the air stream as the grain is pushed to the bin. The electronic controller pneumatically shocks the air jet filter to clear the filter bags of dust. The dust drops to the cone bottom of the filter housing where a rotary airlock valve discharges the powder into bags for removal.

The second system starts with the selection and initiation of sequencing by the computer controller. The outlet of the selected bin is automatically opened and the bucket transfer conveyor to the weigh hopper is started. After the weight is reached, another bucket conveyor transfers the grain to the Malt Mill. The ground malt drops from the Malt Mill to the Grist Hopper by gravity. The transferring, weighing, milling, and hopper filling processes are connected by duct collection lines back to the second air jet filter. Again under computer control, the air jet filter is shocked to clear the filter bags of dust. The dust drops into the cone bottom of the air jet filter housing, where a rotary airlock valve discharges the powder into bags for removal.

These systems ensure that malt dust is properly separated from airflow and collected rather than being released directly into the environment with the exhaust air from the Malt Handling System. The collected dust is added to the spent grains from the brew house and is subsequently used as animal feed.

The system captures approximately 15,600 pounds of dust a year.

Eligibility

- ORS 468.155 The **principal purpose** of the **installation of this new equipment** is to control a
 (1)(a) substantial quantity of air pollution.
- ORS 468.155 The elimination of air contamination sources and the use of air cleaning devices
 (1)(b)(B) as defined in ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	4/29/1998
<i>Additional Information Requested</i>	8/28/1998
<i>Additional Information Received</i>	2/15/1999
<i>Application Substantially Complete</i>	7/13/1999
<i>Construction Started</i>	4/1/1996
<i>Construction Completed</i>	4/30/1996
<i>Facility Placed into Operation</i>	4/30/1996

Facility Cost

Claimed Facility Cost	\$81,767
Ineligible Costs	<u>0</u>
Eligible Facility Cost	\$81,767

Copies of the contractor's applications for payment, invoices and canceled checks and letters from contractors were provided which substantiated the cost of the facility. The facility cost was greater than \$50,000 but less than \$500,000. **Coopers and Lybrand L.L.P.**, accounting review on behalf of the applicant and according to Department guidelines.

Facility Cost Allocable to Pollution Control

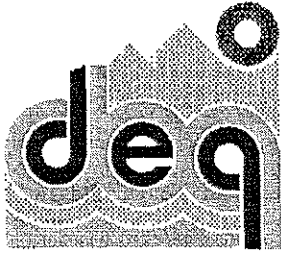
According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering the following factors, the percentage allocable to pollution control is 100%.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	The dust emissions are added to the spent grain and utilized as animal feed. The applicant does not receive any compensation in exchange for the grain.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 15 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	Annual operating costs increased approximately \$246.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: None

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers
Dennis Cartier, Associate, SJO Consulting Engineers
Margaret C. Vandehey, DEQ



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant **Wellons, Inc.**
Application No. **5053**
Facility Cost **\$265,583**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Air Final Certification

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

Applicant Identification

The applicant is an S corporation operating as
an equipment manufacturer and supplier.
The taxpayer's identification number is 93-
0547956. The applicant's address is:

**PO Box 1030
Sherwood, OR 97140-1030**

Facility Identification

The certificate will identify the facility as:

**An Electrostatic Precipitator (ESP) and a
multiple cone collector.**

The applicant is the owner of the facility
installed at the Willamette Industries Foster
Plywood Plant located at:

**611 E. Hwy 20
Sweet Home, OR 97386**

Technical Information

The air pollution control facility consists of a **multiple cone collector** that collects large cinders and other particles from the exhaust air stream of a hog fuel boiler. The air off of the multiple cone collector travels to an **electrostatic precipitator** that collects very fine particles by giving them an electrical charge and then attracting them to charged surfaces, thereby removing them from the air stream. The clean air is then discharged through an exhaust stack (not claimed in this application) into the atmosphere. The air pollution control facility is installed to reduce and control boiler emissions.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new equipment installation** is to meet the requirements of Air Contaminant Discharge Permit No. 22-3010.

ORS 468.155 (1)(b)(B) The the use of air cleaning devices as defined in ORS 468A.005.

Wellons owns the boiler and the air pollution control equipment which is located at the Willamette Industries Foster Plywood site. Willamette Industries operates the boiler and provides hog fuel, waste bark, sander dust and other wood waste used to fuel the gasifier which delivers combustible gas to the boiler for steam production. Wellons sells the steam to Willamette Industries and performs maintenance work on their entire system. Willamette Industries holds the Air Contaminant Discharge Permit for the site.

Timeliness of Application

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

<i>Application Received</i>	<u>08/06/1998</u>
<i>Additional Information Requested</i>	<u>11/13/1998</u>
<i>Additional Information Received</i>	<u>11/13/1998</u>
<i>Application Substantially Complete</i>	<u>03/26/1999</u>
<i>Construction Started</i>	<u>02/01/1996</u>
<i>Construction Completed</i>	<u>12/02/1996</u>
<i>Facility Placed into Operation</i>	<u>12/02/1996</u>

Facility Cost

Facility Cost	\$ 294,745
Ineligible Costs	
Opacity monitor – no feedback loop	(17,363)
Conveyor and Auger	(11,799)
Eligible Facility Cost	<u>\$ 265,583</u>

The applicant claimed an **opacity monitoring system** that is installed on the stack to monitor and record performance to meet DEQ ACDP reporting requirements. There is no feedback loop that controls the pollution control equipment. However, plant personnel may use this data to control the boiler as required to maintain opacity within allowable limits. The applicant also claimed **conveyors and augers** that move the cinders and ash from the bottom of the multiple cone-collector and the ESP to a bin for disposal. This is a material handling system, not a pollution control device or equipment. Neither system is an air cleaning devices as defined in ORS 468A.005.

A cost summary prepared by Wellons substantiated the cost of the facility. The facility cost was greater than \$50,000 but less than \$500,000. **Aldrich, Kilbride, & Tatone** performed an accounting review according to Department guidelines on behalf of the applicant.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000; therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering these factors, the percentage allocable to pollution control is 100%.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues were associated with this facility.

ORS 468.190(1)(c) Alternative Methods
ORS 468.190(1)(d) Savings or Increase in Costs
ORS 468.190(1)(e) Other Relevant Factors

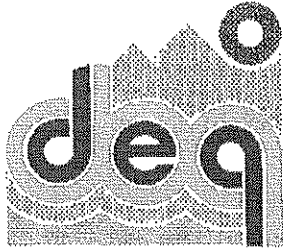
No alternative investigated.
No savings or increase in costs.
No other relevant factors.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to Willamette Industries which cover the claimed facility:

Air Contaminant Discharge Permit No. 22-3010, issued 10/26/93; Addendum 1 issued 3/28/95;
Addendum 2 issued 2/2/96; Addendum 3 issued 2/5/97; Addendum 4 issued 5/21/97.

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers, Inc.
Waldemar Seton, Principal, SJO Consulting Engineers, Inc.
Dave Kauth, A-DEQ
Margaret C. Vandehey, DEQ, 5/4/99



Director's
Recommendation: **APPROVE**

Applicant **Denton Plastic, Inc.**
Application No. **5063**
Facility Cost **\$9,747**
Percentage Allocable **100%**
Useful Life **5 years**

Tax Credit Review Report

10/15/98 3:10 PM

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

The applicant is a C corporation and is operating as **recycler, repressor & manufacturer of post consumer & industrial plastics**. The taxpayer's identification number is 93-085-2298. The applicant's address is:

**4427 NE 158th
Portland, Oregon 97230**

Facility Identification

The certificate will identify the facility as:

HDI - 20 - 30 flat belt conveyor

The applicant is the owner of the facility located at:

**4427 NE 158th
Portland, Oregon**

Technical Information

This equipment is used to move scrap plastic to processing equipment where it is granulated, re-melted and molded into reclaimed plastic pellets.

Eligibility

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

Timeliness of Application

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

<i>Preliminary Application Received</i>	08/07/1998
<i>Preliminary approval granted</i>	08/07/1998
<i>Date of investment</i>	09/15/1998
<i>Final application received</i>	02/17/1999
<i>Application substantially complete</i>	02/17/1999

Facility Cost

Facility Cost	\$9,747
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$9,747</u>

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

Facility Cost Allocable to Pollution Control

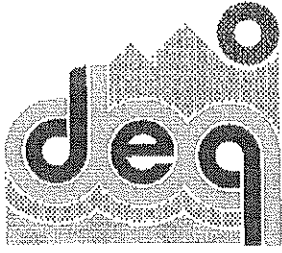
Pursuant to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product. Considering the following factors, the percentage allocable to pollution control is 100%.

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant	Portland General Electric
Application No.	5132
Facility Cost	\$20,487
Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility: Noise

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is a C Corporation and operating as a **supplier of electrical energy**. The taxpayer's identification number 93-0256820.

The applicant's address is:

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

Facility Identification

The certificate will identify the facility as:

Eighteen Noise Barrier Panels

The applicant is the owner of the facility located at:

**46625 SW Scoggins Valley Road
Gaston, OR 97119**

Technical Information

The claimed facility consists of eighteen combination panels and associated supporting structures installed along the west property line at the Scoggins substation. The product was provided by Barrier Corporation, part number 031138 and consists of eight layers of 5'-8" wide by 8'-0" long quilted fiberglass and sound barrier combination. It was installed with the quilted side toward the transformer.

The sound decibal (dB) level along the west property line measured 59 dBA before installation of the sound barrier. This level is due to the substation transformer BR-2 and is approximately 6 dBA above the DEQ limit for night time steady sounds. The applicant's property line is shared with the property line of a noise sensitive dwelling. After installation of the sound barrier, the noise level measured below 50 dBA at the property line.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of the **installation** of the **new sound device** is to comply with the requirements of OAR 340 Division 35 to control noise pollution. The requirement is set forth in OAR 340-035-0035.

Timeliness of Application

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

<i>Application Received</i>	12/8/98
<i>Additional Information Received</i>	3/1/99
<i>Application Substantially Complete</i>	6/1/99
<i>Construction Started</i>	7/2/96
<i>Construction Completed</i>	12/19/96
<i>Facility Placed into Operation</i>	12/19/96

Facility Cost

Facility Cost	\$20,487
Ineligible Cost	0
Eligible Facility Cost	\$20,487

Copies of invoices and PGE ledger sheets were provided which substantiated the cost of the facility.

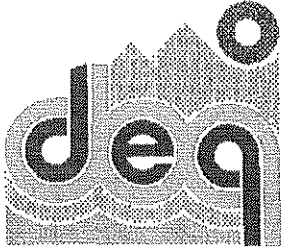
Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

Compliance

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

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



Tax Credit Review Report

EQC 03/19/99

Director's
Recommendation: **Approve**

Applicant **Aire-Flo Heating & Air Conditioning,
Inc.**

Application No.	5134
Facility Cost	\$1,289
Percentage Allocable	100%
Useful Life	3 years

Pollution Control Facility: Air :CFC

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is an S corporation and operates a heating and air conditioning business. The taxpayer's identification number is 93-0928436. The applicant's address is:

**1601 SE River Road
Hillsboro, OR 97123**

Facility Identification

The certificate will identify the facility as:

**A 4000 Chlorofluorocarbon (CFC)
recovery system, Model # H-85-289,
serial # 9353448.**

The applicant is the owner of the facility located at:

**1601 SE River Road
Hillsboro, OR 97123**

Technical Information

The 4000 Recovery system is used to service older air conditioning units that emit CFC's. The machine extracts CFC's and stores them in a tank until they can be properly disposed of according to DEQ Regulation. The 4000 Recovery system is self contained and includes automatic liquid/gas discriminator, sub-cool switch for pulling deep vacuums and a safety shutoff to prevent tank overflow. This unit does not have recycling capabilities.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to control a substantial quantity of air pollution. The requirement is imposed by the EPA.
- ORS 468.155 (1)(b)(B) The equipment ensures the disposal of air contamination sources and the use of air cleaning devices as defined in ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	<u>12/28/1998</u>
<i>Application Substantially Complete</i>	<u>01/23/1999</u>
<i>Construction Started</i>	<u>04/08/1997</u>
<i>Construction Completed</i>	<u>04/08/1997</u>
<i>Facility Placed into Operation</i>	<u>04/08/1997</u>

Facility Cost

Facility Cost	\$1,289
Ineligible Costs	<u>0</u>
Eligible Facility Cost	<u>\$1,289</u>

The facility cost does not exceed \$50,000. Therefore, an independent accounting review was not required. An invoice substantiated the cost of the facility. This unit does not have recycling capabilities

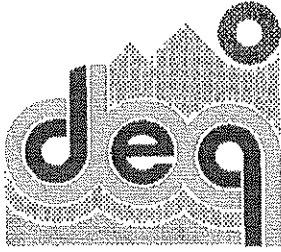
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: Maggie Vandehey



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant **Aire-Flo Heating and Air
Conditioning**

Application No. **5135**
Facility Cost **\$1,289**
Percentage Allocable **100%**
Useful Life **3 years**

**Pollution Control Facility: AIR:CFC
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Applicant Identification

The applicant is an S corporation and is operating a **heating and air conditioning business**. The taxpayer's identification number 93-0928436. The applicant's address is:

**Aire-Flo Heating and Air Conditioning
1601 SE River Road
Hillsboro, OR 97123**

Facility Identification

The certificate will identify the facility as:

A 4000 Chlorofluorocarbons (CFC) recovery system, model #H-85-289, serial # 9351637.

The applicant is the **owner and operator** of the facility located at:

**1601 SE River Road
Hillsboro, OR 97123**

Technical Information

The 4000 Recovery system is used to service older air conditioning units that emit CFC's. The machine extracts CFC's and stores them in a tank until they can be properly disposed of, according to DEQ regulation. The 4000 Recovery system is self contained and includes automatic liquid/gas discriminator, sub-cool switch for pulling deep vacuums and a safety shutoff to prevent tank overflow. This system does not have recycling capabilities

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to control a substantial quantity of air pollution. The requirement is imposed by the EPA.
- ORS 468.155 (1)(b)(B) The machinery ensures the disposal of contamination sources and the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

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

<i>Application Received</i>	12/28/1998
<i>Application Substantially Complete</i>	12/28/1998
<i>Construction Started</i>	12/30/1996
<i>Construction Completed</i>	12/30/1996
<i>Facility Placed into Operation</i>	12/30/1996

Facility Cost

Facility Cost	\$1,289
Ineligible Cost	0
Eligible Facility Cost	\$1,289

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, an invoice substantiated the cost of the facility. This unit does not have recycling capabilities

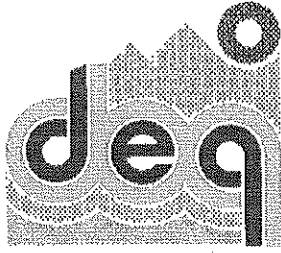
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Maggie Vandehey



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **5136**
Facility Cost **\$62,966**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Air Final Certification

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

Applicant Identification

The applicant is a C corporation **processing raw logs into a variety of building materials.** The taxpayer's identification number is 93-0312940. The applicant's address is:

**Warrenton Sawmill Division
1300 SW Fifth Avenue
Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

A Pneumatic Dust Control System

The applicant is the **owner** of the facility located at:

**550 NE Skipanon Drive
Warrenton, OR 97146**

Technical Information

The claimed facility consists of a low-pressure pneumatic dust control system designed to pick up the fine particulate emissions from the sawmill trimmer and optimized board edger (OTE). The system is sized for 11,760 cfm and removes the dust not captured by the existing mechanical conveying system. The dust-laden air is routed through outside air ducts to a Donaldson-Day primary filter (Model 80 HPT, BH-3) where it is filtered. The residual dust is dropped from the baghouse into the sawdust bin. Clean air is ducted to a Qualair Pneumatics #50 draw-through fan with 60 hp motor, and discharged to the atmosphere.

As a result of this installation particulate emissions from this process equipment was reduced by approximately 98%.

Eligibility

ORS 468.155 (1)(a) The applicant claimed the facility as **sole purpose** of this **new equipment installation** is to control a substantial quantity of air pollution.

ORS 468.155 (1)(b)(B) The redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	12/21/98
<i>Additional Information Requested</i>	2/22/99
<i>Additional Information Received</i>	4/5/99
<i>Application Substantially Complete</i>	4/7/99
<i>Construction Started</i>	10/6/96
<i>Construction Completed</i>	1/6/97
<i>Facility Placed into Operation</i>	1/13/97

Facility Cost

Claimed Facility Cost	\$ 62,966
Ineligible Costs	0
Eligible Facility Cost	\$ 62,966

A copy of one invoice was provided which substantiated 97.6% of the cost of the claimed facility. A certified public accountant's statement was provided by **KPMG Peat Marwick** on behalf of Willamette Industries.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering the following factors, the percentage allocable to pollution control is 100%.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternatives were investigated
ORS 468.190(1)(d) Savings or Increase in Costs	Annual operating costs increase approximately \$6,389.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the Warrenton Division plant:

Title V #04-0041, issued 1/10/96 issued to

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers, Inc.
Dave Kauth, AQ-DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Solid Waste Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant	Thomas & Son Beverage, Inc.
Application No.	5143
Facility Cost	\$257,212
Percentage Allocable	100%
Useful Life	7 years

Applicant Identification

The applicant is a C corporation operating as a **beverage distributor**. The taxpayer's identification number is 93-1093686. The applicant's address is:

**840 S. Front St.
P.O. Box 1030
Coos Bay, Oregon 97420**

Facility Identification

The certificate will identify the facility as:

Beverage container and packaging recycling facility including: Excel Baler, Model 2R9, 60" Krause conveyor, building, doors, and security fence.

The applicant is the **owner** of the facility located at:

**840 S. Front St.
Coos Bay, Oregon 97420**

Technical Information

The Excel Baler and Krause conveyor are part of a recycling facility to process returned beverage containers and associated paper and plastic packaging. This equipment is housed in a building expansion with some outside storage area enclosed by a security fence to protect redeemable containers.

Eligibility

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

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

Timeliness of Application

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

<i>Application Received</i>	12/31/1998
<i>Application Substantially Complete</i>	01/27/1999
<i>Construction Started</i>	10/15/1996
<i>Construction Completed</i>	04/01/1997
<i>Facility Placed into Operation</i>	04/01/1997

Facility Cost

Facility Cost	\$257,212
Ineligible Cost	0
Eligible Facility Cost	\$257,212

The facility cost exceeds \$50,000. The applicant provided invoices and cancelled checks for expenses for the purchase of all of the claimed equipment and has requested a waiver of the independent accountant's certification. Maggie Vandehey performed an accounting review on behalf of the Department. The documentation supported the claimed facility cost.

Facility Cost Allocable to Pollution Control

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

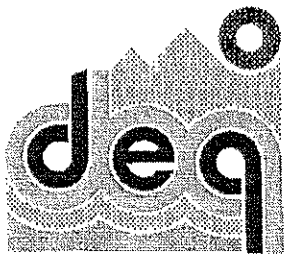
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility processes recyclable materials and sells them to other recycling companies.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. Based on the applicant's average annual income The return on investment factor is 6.97. The return on investment from Table 1 is 0% and the portion of the investment allocable to pollution control is 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Air Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant **Sam Trakul Investments, Inc.
dba: Jiffy-Lube Tigard**

Application No. **5144**
Facility Cost **\$1,884**
Percentage Allocable **100%**
Useful Life **3 years**

Applicant Identification

The applicant is an S corporation operating as a **quick-lube automotive maintenance business**. The taxpayer's identification number is 93-1102315. The applicant's address is:

**12860 SW Pacific Hwy
Tigard, OR**

Facility Identification

The certificate will identify the facility as:

**R-12 and R-134A Automotive A/C
Recycling Equipment Model # RTI
RRC770.**

The applicant is the owner of the facility located at:

**12860 SW Pacific Hwy
Tigard, OR**

Technical Information

The applicant purchased an EPA approved automotive air conditioning refrigerant recovery and recycling system. Model RRC770 is manufactured by RTI Technologies, Inc. The equipment is certified by UL as meeting the purity standards of the Society of Automotive Engineering Specification J191.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>1/11/99</u>
<i>Application Substantially Complete</i>	<u>4/13/99</u>
<i>Construction Started</i>	<u>3/2/98</u>
<i>Construction Completed</i>	<u>3/2/98</u>
<i>Facility Placed into Operation</i>	<u>3/2/98</u>

Facility Cost

Facility Cost		\$2,584
Ineligible Costs		
	Recharge Capabilities DEQ standard deduction	-700
Eligible Facility Cost		\$1,884

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

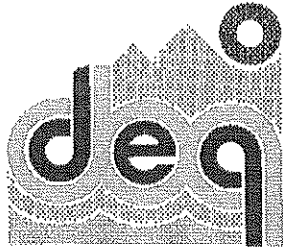
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: Maggie Vandehey



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Solid Waste

Final Certification

ORS 468.150 -- 468.190

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

Director's
Recommendation: **APPROVE**

Applicant	North Lincoln Sanitary Service
Application No.	5149
Facility Cost	\$120,338
Percentage Allocable	100%
Useful Life	10 years

Applicant Identification

The applicant is a S corporation and is operating as a **beverage distributor**. The taxpayer's identification number 93-0554178. The applicant's address is:

**North Lincoln Sanitary Service
1726 SE Highway 101
Lincoln City, Oregon 97367**

Facility Identification

The certificate will identify the facility as:

**Ferrodyne Baler Model # OA-7X Serial
Number F00896; Ferrodyne Conveyor Serial
Number F00996; Baler building.**

The applicant is the **owner** of the facility located at:

**1726 SE Highway 101
Lincoln City, Oregon 97367**

Technical Information

The Ferrodyne baler and conveyor are part of a recycling facility to process commercial and residential recyclable material collected as part of providing the opportunity to recycle in Lincoln County. The building was constructed to house the new baler system and other recycling activities. Both the baler system and the building are used exclusively for recycling.

Eligibility

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

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

Timeliness of Application

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

<i>Application Received</i>	01/28/1999
<i>Application Substantially Complete</i>	03/12/1999
<i>Construction Started</i>	08/01/1997
<i>Construction Completed</i>	01/20/1998
<i>Facility Placed into Operation</i>	01/20/1998

Facility Cost

Facility Cost	\$120,338
Ineligible Costs	\$ 0
Eligible Facility Cost	\$120,338

The facility cost exceeds \$50,000. The accounting firm of Anderson, Searcy, Magednz & Crowe, LLC reviewed the invoices associated with the claimed facility and has certified that the claimed facility cost is accurate and documented and that ineligible expenses have not been included in the claimed cost.

Facility Cost Allocable to Pollution Control

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

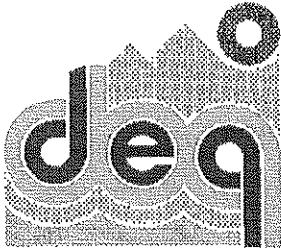
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility processes recyclable materials and sells them to other recycling companies.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 20 years for the building and 7 years for the equipment. The adjusted useful life is 13.5 years. Based on the applicant's average annual income The return on investment factor is 27.7. The return on investment from Table 1 is 0% and the portion of the investment allocable to pollution control is 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

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

Director's
Recommendation: **APPROVE**

Applicant **Dunn & Leblanc, Inc.**
Application No. **5150**
Facility Cost **\$11,367**
Percentage Allocable **100%**
Useful Life **7 years**

Applicant Identification

Organized As: **S corporation**
Business: **a residential and commercial
solid waste recycler**
Taxpayer ID: **93-0554178**

The applicant's address is:

**dba North Lincoln Sanitary Service
1726 SE Hwy 101
Lincoln City, OR 97367**

Facility Identification

The certificate will identify the facility as:

**1670-18 gallon collection bins and
400 18 gallon bin lids.**

The applicant is the **owner** of the facility located at:

**dba North Lincoln Sanitary Service
1726 SE Hwy 101
Lincoln City, OR 97367**

Technical Information

These bins and lids are used for the collection of recyclable materials from residential customers.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>01/28/1999</u>
<i>Application Substantially Complete</i>	<u> </u>
<i>Construction Started</i>	<u>12/09/1996</u>
<i>Construction Completed</i>	<u>10/08/1998</u>
<i>Facility Placed into Operation</i>	<u>10/01/1997</u>

Facility Cost

Facility Cost	\$11,367
Ineligible Costs	\$ 0
Eligible Facility Cost	\$11,367

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, the accounting firm of Anderson, Searcy, Magedanz & Crowe, LLC reviewed the invoices associated with the claimed facility and has certified that the claimed facility cost is accurate and documented and that ineligible expenses have not been included in the claimed cost.

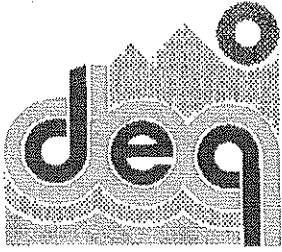
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190(3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

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

Director's
Recommendation: **APPROVE**

Applicant **Dunn & Leblanc, Inc.**
Application No. **5151**
Facility Cost **\$600.00**
Percentage Allocable **100%**
Useful Life **5 years**

Applicant Identification

Organized As: **S corporation**
Business: **a residential and commercial
solid waste recycler**
Taxpayer ID: **93-0554178**

The applicant's address is:

Dunn & Leblanc, Inc.
dba North Lincoln Sanitary Service
1726 SE Hwy 101
Lincoln City, OR 97367

Facility Identification

The certificate will identify the facility as:

**Thirty 90-gallon roll carts for residential
customers.**

The applicant is the **owner** of the facility located
at:

dba North Lincoln Sanitary Service
1726 SE Hwy 101
Lincoln City, OR 97367

Technical Information

These rolling bins are used for the collection of recyclable materials from residential collection service customers.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>01/28/1999</u>
<i>Application Substantially Complete</i>	<u>01/18/1999</u>
<i>Construction Started</i>	<u>09/01/1998</u>
<i>Construction Completed</i>	<u>09/01/1998</u>
<i>Facility Placed into Operation</i>	<u>09/01/1998</u>

Facility Cost

Facility Cost	\$600.00
Ineligible Cost	\$ 0
Eligible Facility Cost	\$600.00

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, the accounting firm of Anderson, Searcy, Magednz & Crowe, LLC reviewed the invoices associated with the claimed facility and has certified that the claimed facility cost is accurate and documented and that ineligible expenses have not been included in the claimed cost.

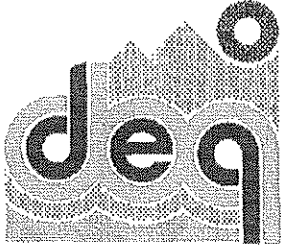
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190(3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: William R Bree



Tax Credit Review Report

03/12/99 AM

Pollution Control Facility: Solid Waste Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant **United Disposal Service Inc.**
Application No. **5153**
Facility Cost **\$47,016**
Percentage Allocable **100%**
Useful Life **10 years**

Applicant Identification

The applicant is a C corporation and is operating as a **recycle facility**. The taxpayer's identification number is 93-0625022. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**Twelve 48.9-yd SC style drop boxes, serial #
10676 thru 10683 and 10686 thru 10689.**

The applicant is the **owner** of the facility located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These drop boxes are used for the collection of recyclable material that is generated from commercial customers. These containers are a part of a service-area-wide recycling collection program offered by United Disposal for its commercial collection customers.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control, or reduce a substantial quantity of solid waste. These drop boxes are painted a different color than similar solid waste collection equipment and are used exclusively for the collection of recyclable material.
- ORS 468.155 (1)(b)(D) The use of a **material recovery process** which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>02/06/1999</u>
<i>Application Substantially Complete</i>	<u>03/12/1999</u>
<i>Construction Started</i>	<u>06/30/1998</u>
<i>Construction Completed</i>	<u>08/02/1998</u>
<i>Facility Placed into Operation</i>	<u>08/10/1998</u>

Facility Cost

Facility Cost	\$47,016
Ineligible Costs	\$ 0
Eligible Facility Cost	<u>\$47,016</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

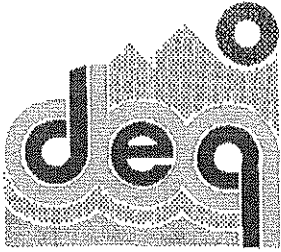
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100%.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

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

Director's
Recommendation: **APPROVE**

Applicant	United Disposal Service Inc.
Application No.	5155
Facility Cost	163,489
Percentage Allocable	100%
Useful Life	5 years

Applicant Identification

The applicant is a C corporation operating as a **recycling service**. Their taxpayer identification number is 93-0625022. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**One 1998 Volvo Truck, serial
#4VDDBKNE1WN749594 and one Heil
Rapid Starr trailer loading system serial #
8200117**

The applicant is the **owner** of the facility located at:

**2215 N. Front Street
Woodburn, OR 97071**

Technical Information

This truck and trailer will be used solely for the collection and transport of source separated yard debris.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **equipment** is to prevent, control or reduce a substantial quantity of solid waste. This truck and trailers are specially designed for yard debris collection from residential customers and are used solely for that purpose.
- ORS 468.155 (1)(b)(D) The use of a **material recovery process** which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>02/08/1999</u>
<i>Application Substantially Complete</i>	<u>03/12/1999</u>
<i>Construction Started</i>	<u>08/31/1997</u>
<i>Construction Completed</i>	<u>11/11/1997</u>
<i>Facility Placed into Operation</i>	<u>07/01/1998</u>

Facility Cost

Facility Cost	\$163,489
Ineligible Costs	\$0
Eligible Facility Cost	<u>\$163,489</u>

The facility cost was greater than \$50,000 but less than \$500,000; therefore, Theodore R. Ahre, CPA, performed an accounting review according to Department guidelines on behalf of the Applicant.

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. Therefore, according to ORS 468.190(1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

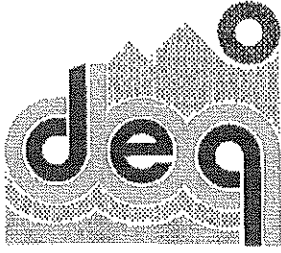
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. The reported average annual cash flow is \$8,197. This produces a return on investment factor of 19.94 and the portion of the facility allocable to pollution control is 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 06/25/99

Pollution Control Facility: Solid Waste Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant	United Disposal Service Inc..
Application No.	5164
Facility Cost	\$9,010
Percentage Allocable	100%
Useful Life	10 years

Applicant Identification

The applicant is a C corporation operating as a **recycle facility**. The taxpayer's identification number is 93-0625022. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**Two thousand red 14 gallon recycling
collection bins.**

The applicant is the **owner** of the facility located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These collection bins are used for the collection of residential recyclable material that is generated from homes in Marion County. These containers are a service-area-wide recycling collection program offered by United Disposal for its residential collection customers.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>02/22/1999</u>
<i>Application Substantially Complete</i>	<u>03/12/1999</u>
<i>Construction Started</i>	<u>09/01/1998</u>
<i>Construction Completed</i>	<u>09/23/1998</u>
<i>Facility Placed into Operation</i>	<u>10/01/1998</u>

Facility Cost

Facility Cost	\$9,010
Ineligible Costs	\$ (0)
Eligible Facility Cost	<u>\$9,010</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

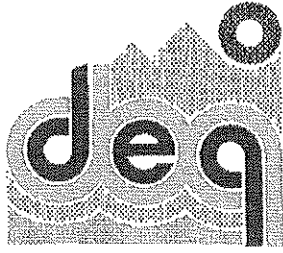
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100%.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Director's
Recommendation: **APPROVE**

Applicant	Willamette Industries, Inc.
Application No.	5166
Facility Cost	\$27,842
Percentage Allocable	100%
Useful Life	7 years

Applicant Identification

The applicant is a C corporation operating as a **recycle facility**. Their taxpayer identification number is 93-0312940. The applicant's address is:

Willamette Industries, Inc.
1300 SW Fifth Ave, Suite 3800
Portland, OR 97201

Facility Identification

The certificate will identify the facility as:

Sanderdust conveyor system.

The applicant is the **owner** of the facility is located at:

50 North Danebo
Eugene, OR 97402

Technical Information

This facility is a high-pressure pipeline used to transport sanderdust from an existing fuel bin to the existing medium-density-fiberboard production line. The pipeline is to transport sanderdust that was previously burned as solid waste. The new system utilizes 2500 tons per year of material that was previously solid waste.

Eligibility

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

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

Timeliness of Application

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

<i>Application Received</i>	<u>02/23/1999</u>
<i>Application Substantially Complete</i>	<u>03/12/1999</u>
<i>Construction Started</i>	<u>09/01/1997</u>
<i>Construction Completed</i>	<u>10/31/1997</u>
<i>Facility Placed into Operation</i>	<u>10/31/1997</u>

Facility Cost

Facility Cost	\$27,842
Ineligible Costs	\$ 0
Eligible Facility Cost	<u>\$27,842</u>

The applicant provided invoices to substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

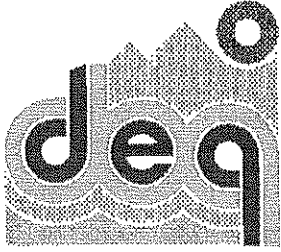
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100%.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

**Pollution Control Facility: USTs
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Director's
Recommendation: **APPROVE**

Applicant **Johns Ranch, Inc.**
Application No. **5171**
Facility Cost **\$30,340**
Percentage Allocable **100%**
Useful Life **10 years**

Applicant Identification

Organized As: **an S corporation**
Business: **agricultural operation**
Taxpayer ID: **93-0687179**

The applicant's address is:

**Johns Ranch, Inc.
PO Box 637
Athena, OR 97813**

Facility Identification

The certificate will identify the facility as:

Epoxy lining in two steel underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm and turbine leak detectors.

The applicant is the **owner** of DEQ Facility ID 9149, located at:

**78627 3rd Street
Athena, OR 97813**

Technical Information

Eligibility

- ORS 468.155 The **principal purpose** of this **upgrade installation and equipment** is to
(1)(a) prevent, control or reduce a substantial quantity of air and water pollution.
OAR-016-0025 Installation or construction of facilities which will be used to detect, deter, or
(2)(g) prevent spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	<u>02/26/1999</u>
<i>Application Substantially Complete</i>	<u>05/13/1999</u>
<i>Construction Started</i>	<u>12/01/1997</u>
<i>Construction Completed</i>	<u>02/01/1998</u>
<i>Facility Placed into Operation</i>	<u>02/01/1998</u>

Facility Cost

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

Claimed Facility Cost \$

Corrosion Protection

Epoxy lining on underground tanks	\$16,934
Flexible plastic piping – doublewall – in misc. cost	

Spill & Overfill Prevention

Spill Containment basins	700
Overfill alarm	350

Leak Detection

Automatic tank gauge system	4,442
Turbine Leak detectors	500

Labor, material, misc. parts

7,414

Eligible Facility Cost \$30,340

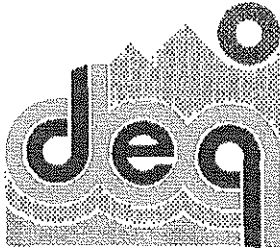
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of the facility cost allocable to pollution control **100%**.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders, especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewers: Barbara J Anderson



Tax Credit Review Report

EQC 6/25/99

**Pollution Control Facility: USTs
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Director's
Recommendation: **APPROVE**

Applicant **Matthew L. Carlough**
Application No. **5172**
Facility Cost **\$108,975.00**
Percentage Allocable **84%**
Useful Life **10 years**

Applicant Identification

Organized As: **an individual**
Business: **retail gas station**
Taxpayer ID: **93-1081503**

The applicant's address is:

**Matthew L. Carlough
835 NE Haven Acres Rd.
Clatskanie, OR 97016**

Facility Identification

The certificate will identify the facility as:

Two doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, turbine leak detectors, sumps, oil/water separator, automatic shutoff valves and Stage II vapor recovery piping.

The applicant is the **owner** of DEQ Facility ID 17730, located at:

**2264 Marine Drive
Astoria, OR 97016**

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation and equipment** is to prevent
(1)(a) and control a substantial quantity of air and water pollution.
- OAR-016-0025 Installation or construction of facilities which will be used to detect, deter, or
(2)(g) prevent spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	02/26/1999
<i>Application Substantially Complete</i>	05/07/1999
<i>Construction Started</i>	05/15/1997
<i>Construction Completed</i>	07/01/1997
<i>Facility Placed into Operation</i>	07/01/1997

Facility Cost

Claimed Facility Cost **\$108,975**

Corrosion Protection

Fiberglass tanks – doublewall	32,500
Flexible plastic piping – doublewall	9,500

Spill & Overfill Prevention

Spill Containment basins	1,280
Overfill alarm	300
Sumps	2,600
Automatic shutoff valves	1,450
Oil/Water separator	7,500

Leak Detection

Automatic tank gauge system	7,500
Turbine Leak detectors	1,500

VOC Reduction

Stage II vapor recovery (piping only)	925
---------------------------------------	-----

Labor, material, misc. parts

\$108,975

Ineligible Costs

Ten percent of the Tank Gauge System is ineligible since the device can serve other purposes, for example, inventory control.

(\$750)

Eligible Facility Cost \$108,225

The applicant applied for a waiver of the independent accounting review since invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>	
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.	
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 20 years. No gross annual revenues were associated with this facility.	
ORS 468.190(1)(c) Alternative Methods	The most cost effective method was chosen.	
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.	
ORS 468.190(1)(e) Other Relevant Factors	Eligible Facility Cost	\$108,225
	Less Claimed Corrosion Protection	(\$ 42,000)

The Department determines the allocable cost of the corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to this application:

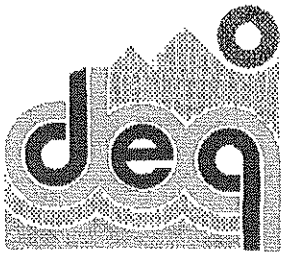
<u>System Cost</u>				
Protected system cost	\$42,000	less bare steel cost	\$17,070	=24,930
			Total Reduced Cost	\$91,155

Total Reduced Cost ÷ Eligible Facility Cost = the percentage of the facility cost allocable to pollution control 84%

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders, especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewers: Barbara J Anderson



Tax Credit Review Report

EQC 06/25/99

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Director's
Recommendation: **APPROVE**

Applicant	United Disposal Service Inc.
Application No.	5176
Facility Cost	\$142,089
Percentage Allocable	100%
Useful Life	5 years

Applicant Identification

The applicant is a C corporation operating as a **recycling service**. Their taxpayer identification number is 93-0625022. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**One 1998 Volvo truck, serial
#4VMHCMME3WN753755 and
one Maxon front end loader body.**

The applicant is the **owner** of the facility located at:

**2215 N. Front Street
Woodburn, OR 97071**

Technical Information

This truck and trailer will be used solely for the collection and transport of source separated cardboard.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **equipment** is to prevent, control or reduce a substantial quantity of solid waste. This truck and loader are designated for cardboard collection from commercial customers and are used solely for that purpose.
- ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>03/08/1999</u>
<i>Application Substantially Complete</i>	<u>03/18/1999</u>
<i>Construction Started</i>	<u>06/01/1997</u>
<i>Construction Completed</i>	<u>01/15/1998</u>
<i>Facility Placed into Operation</i>	<u>03/12/1998</u>

Facility Cost

Facility Cost	\$147,089
Salvage Value	-\$ 5,000
Eligible Facility Cost	\$142,089

The facility cost was greater than \$50,000 but less than \$500,000; therefore, Theodore R. Ahre, CPA, performed an accounting review according to Department guidelines on behalf of the Applicant.

Facility Cost Allocable to Pollution Control

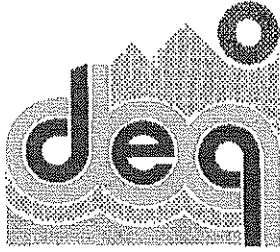
The facility cost exceeds \$50,000. Therefore, according to ORS 468.190(1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. The reported average annual cash flow is \$19,985. This produces a return on investment factor of 7.1 and the portion of the facility allocable to pollution control is 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/1999

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

Director's
Recommendation: **APPROVE**

Applicant	United Disposal Service Inc.
Application No.	5180
Facility Cost	8,440
Percentage Allocable	100%
Useful Life	5 years

Applicant Identification

The applicant is a C corporation operating as a **recycling service**. The taxpayer's identification number is 93-0625022. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**One Inter-Teco Plasti-Pac Mobile
Compactor**

The applicant is the **owner** of the facility located at:

**2215 N. Front Street
Woodburn, OR 97071**

Technical Information

This plastic compactor unit is placed on an on-route collection truck and is used solely for the processing of source separated plastic containers from residential customers.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **equipment** is to prevent, control or reduce a substantial quantity of solid waste. This compactor is specially designed for plastic container collection from residential customers and is used solely for that purpose.
- ORS 468.155 (1)(b)(D) The use of a **material recovery process** which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>03/23/1999</u>
<i>Application Substantially Complete</i>	<u>03/23/1999</u>
<i>Construction Started</i>	<u>06/30/1998</u>
<i>Construction Completed</i>	<u>08/26/1998</u>
<i>Facility Placed into Operation</i>	<u>11/01/1998</u>

Facility Cost

Facility Cost	\$8,440
Ineligible Costs	(0)
Eligible Facility Cost	<u>\$8,440</u>

The facility cost does not exceed \$50,000. Therefore, an independent accounting review was not required. Invoices and cancelled checks substantiated the cost of the facility.

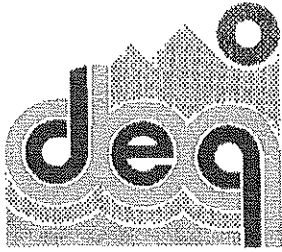
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100 %.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

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

Director's
Recommendation: **APPROVE**

Applicant **Capitol Recycling & Disposal, Inc.**
Application No. **5182**
Facility Cost **\$5,032**
Percentage Allocable **100%**
Useful Life **10 years**

Applicant Identification

The applicant is a C corporation operating as a recycling service. The taxpayer's identification number is 93-1197641. The applicant's address is:

Capitol Recycling & Disposal, Inc.
1890 16th Street S.E.
Salem, OR 97302

Facility Identification

The certificate will identify the facility as:

One 48.9 yd. SC style drop box

The applicant is the **owner** of the facility located at:

1890 16th Street S.E.
Salem, OR 97302

Technical Information

This drop box is used for the collection of recyclable materials from commercial customers.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>03/29/1999</u>
<i>Application Substantially Complete</i>	<u>04/28/1999</u>
<i>Construction Started</i>	<u>07/15/1997</u>
<i>Construction Completed</i>	<u>08/26/1997</u>
<i>Facility Placed into Operation</i>	<u>09/05/1997</u>

Facility Cost

Facility Cost	\$5,032
Ineligible Costs	\$ 0
Eligible Facility Cost	<u>\$5,032</u>

The facility cost does not exceed \$50,000. Therefore, an independent accounting review was not required. Invoices and cancelled checks substantiated the cost of the facility.

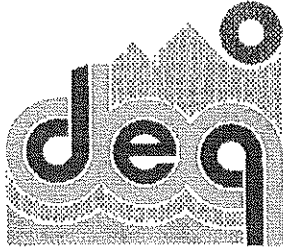
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100%.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Solid Waste

Final Certification

ORS 468.150 -- 468.190

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

Director's

Recommendation: **APPROVE**

Applicant	Capitol Recycling & Disposal, Inc.
Application No.	5183
Facility Cost	\$4,950
Percentage Allocable	100%
Useful Life	10 years

Applicant Identification

The applicant is a C corporation operating as a recycling service. The taxpayer's identification number is 93-1197641. The applicant's address is:

**Capitol Recycling & Disposal, Inc.
1890 16th Street S.E.
Salem, OR 97302**

Facility Identification

The certificate will identify the facility as:

1,000 - 14-gallon recycling bins

The applicant is the owner of the facility located at:

**1890 16th Street S.E.
Salem, OR 97302**

Technical Information

These bins are used for the separation and collection of recyclable materials from residential on-route recycling collection customers.

Eligibility

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

Timeliness of Application

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

<i>Application Received</i>	<u>03/29/1999</u>
<i>Application Substantially Complete</i>	<u>04/28/1999</u>
<i>Construction Started</i>	<u>05/01/1997</u>
<i>Construction Completed</i>	<u>06/18/1997</u>
<i>Facility Placed into Operation</i>	<u>07/01/1997</u>

Facility Cost

Facility Cost	\$4,950
Ineligible Costs	\$
Eligible Facility Cost	<u>\$ 4,950</u>

The facility cost does not exceed \$50,000. Therefore, an independent accounting review was not required. Invoices and cancelled checks substantiated the cost of the facility.

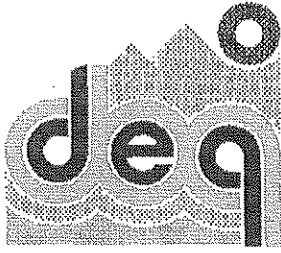
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. Therefore, according to ORS 468.190(3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control is 100%.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/25/99

Pollution Control Facility: Solid Waste Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant	Dunn & Leblanc, Inc.
Application No.	5192
Facility Cost	\$136,198
Percentage Allocable	100%
Useful Life	5 years

Applicant Identification

The applicant is a S corporation operating as a **beverage distributor**. The taxpayer's identification number is 93-0554178. The applicant's address is:

**North Lincoln Sanitary Service
1726 SE Highway 101
Lincoln City, Oregon 97367**

Facility Identification

The certificate will identify the facility as:

**1998 Volvo Model WXLL42, serial
number 4vehakhe2xn768734 and ADR
Technologies recycling body, serial
number 011698.**

The applicant is the owner of the facility located at:

**1726 SE Highway 101
Lincoln City, Oregon 97367**

Technical Information

This recycling truck is used for the weekly on-route collection of recyclable materials from residential and commercial customers

Eligibility

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

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

Timeliness of Application

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

<i>Application Received</i>	04/21/1999
<i>Application Substantially Complete</i>	04/28/1999
<i>Construction Started</i>	12/31/1998
<i>Construction Completed</i>	12/31/1998
<i>Facility Placed into Operation</i>	12/31/1998

Facility Cost

Facility Cost	\$136,198
Ineligible Costs	\$ 0
Eligible Facility Cost	\$136,198

The facility cost exceeds \$50,000. The accounting firm of Anderson, Searcy, Magednz & Crowe, LLC reviewed the invoices associated with the claimed facility and has certified that the claimed facility cost is accurate and documented and that ineligible expenses have not been included in the claimed cost.

Facility Cost Allocable to Pollution Control

Pursuant to ORS 468.190(1), the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering the following factors, the percentage allocable to pollution control is 100%.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility collects recyclable materials that are processed and recycled into new products .
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. Based on the applicant's average annual income The return on investment factor is negative. The return on investment from Table 1 is 0% and the portion of the investment allocable to pollution control is 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 6/30/99

**Pollution Control Facility: Field Burning
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Director's
Recommendation: **APPROVE**

Applicant **Timothy & Lori Van Leeuwen**
Application No. **5201**
Facility Cost **\$34,558**
Percentage Allocable **100%**
Useful Life **10 years**

Applicant Identification

Organized As: **an individual**
Business: **a grass seed farm**
Taxpayer ID: **542-66-0313**

The applicant's address is:

**30466 Creek Bend Rd
Halsey, OR 97340**

Facility Identification

The certificate will identify the facility as:

An 18' 6" Disk and a Rears 15' Flail

The applicant is the **owner** of the facility located at:

**30466 Creek Bend Rd
Halsey, OR 97340**

Technical Information

Prior to investigating alternatives to open field burning, the applicants flame sanitized as many acres of grass seed fields as the weather and smoke management program permitted. They have removed 350 acres of perennial varieties from field burning by having the fields bailed, flailing the remaining straw and stubble, and plowing and disking to incorporate the straw into the soil in preparation for re-planting.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to prevent, or reduce a substantial quantity of air pollution.
OAR-016-025 (2)(f)(A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.

Timeliness of Application

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

<i>Application Received</i>	<u>5/3/99</u>
<i>Application Substantially Complete</i>	<u>5/3/99</u>
<i>Construction Started</i>	<u>5/30/97</u>
<i>Construction Completed</i>	<u>7/30/97</u>
<i>Facility Placed into Operation</i>	<u>7/30/97</u>

Facility Cost

Facility Cost	\$34,558
Ineligible Costs	0
Eligible Facility Cost	<u>\$34,558</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

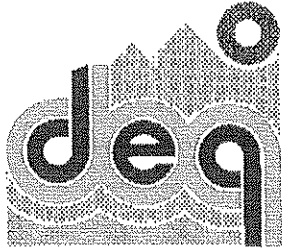
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: James Britton



Tax Credit Review Report

EQC 6/25/99

**Pollution Control Facility: Field Burning
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Director's
Recommendation: **APPROVE**

Applicant **KG Farms**
Application No. **5202**
Facility Cost **\$94,000**
Percentage Allocable **56%**
Useful Life **10 years**

Applicant Identification

Organized As: a Sole Proprietor
Business: a grass seed farm
Taxpayer ID: 93-0851054

The applicant's address is:

**KG Farms
18995 Arbor Grove Rd NE
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**Allen Rake, model #8827, serial #880957; 3
New Holland Balers model #505, serial
#753963; #547895; #753990; New Holland
Stack Cruiser model #1085 serial #553404.**

The applicant is the owner of the facility located
at:

**18995 Arbor Grove Rd NE
Woodburn, OR 97071**

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of air pollution.
OAR-016-025 (2)(f)(A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.

Timeliness of Application

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

<i>Application Received</i>	<u>5/3/1999</u>
<i>Application Substantially Complete</i>	<u>5/17/1999</u>
<i>Construction Started</i>	<u>4/20/1999</u>
<i>Construction Completed</i>	<u>4/20/1999</u>
<i>Facility Placed into Operation</i>	<u>4/20/1999</u>

Facility Cost

Facility Cost	\$94,000
Insignificant Contribution ORS 468.155(2)(d)	\$ -
Eligible Facility Cost	\$94,000

The applicant applied for a waiver of the independent accounting review since invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **56%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The equipment produces baled straw.
ORS 468.190(1)(b) Return on Investment	The facility cost of \$94,000 divided by the average annual cash flow of \$10,945 produces the return on investment factor of 8.59. Using Table 1, the Facility ROI is 2.75 for the 10-year useful life. Since the Facility ROI is less than the National ROI of 6.3 from Table 2 the percentage allocable to pollution control is calculated according to rule to be 56%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

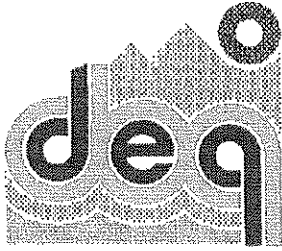
Compliance and Other Tax Credits

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

Reviewers: James Britton

Attachment C

Denial



Tax Credit Review Report

EQC 6/25/99

Director's
Recommendation: **DENY- Fails Definition**

Applicant	Valmont Industries
Application No.	4801
<u>Claimed</u> Facility Cost	\$407,722
<u>Claimed</u> Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility: Hazardous Waste Final Certification

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

Applicant Identification

The applicant is a C corporation operating as a **galvanizing plant**. The taxpayer's identification number is 93-0781997. The applicant's address is:

**9700 SW Herman Road
Tualatin, OR 97062**

Facility Identification

The facility is identified as:

**Secondary containment tanks, trenches,
containment pit & other building
modifications for secondary containment
of hazardous materials.**

The applicant is the **owner** of the facility located at:

**9700 SW Herman Road
Tualatin, OR 97062**

Technical Information

The secondary containment system consists of a series of external secondary containment tanks, and trenches designed to contain corrosive hazardous materials which will be used in the manufacturing process. The floor of the system is constructed of concrete and sealed to prevent spilled hazardous materials from breaching the concrete and entering the environment.

Eligibility

ORS 468.155 (1)(a) The applicant claimed the **principal purpose** of this **new installation** is to conform to Department's regulations with respect to "secondary containment, for hazardous materials and hazardous waste. Under the tax credit statutes the principal purpose must be the "most important or primary purpose" to prevent, control or reduce a substantial quantity of hazardous waste. This material is a pre-production material not a spent post-production material (hazardous waste.) For this same reason, the facility does not meet the **sole purpose** definition.

- ORS 468.155 (1)(b)(E) The facility does not treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005. The facility only contains hazardous materials but no spent hazardous wastes are being stored inside the containment system.
- ORS 468.155 (1)(b)(D) The facility does not use a material recovery process which obtains useful material from material that would otherwise be hazardous waste as defined in ORS 466.005, ...
- OAR-016-0025 (2)(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases. The definition of a spill is:

OAR 340-016-0010 (10)(a) "Spill or Unauthorized Release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leakage or placing of oil, hazardous materials or other polluting substances into the air or into or on any land or waters of the state, as defined in ORS 468.700, except as authorized by a permit issued under ORS Chapter 454, 459, 468 or 469, ORS 466.005 to 466.385, 466.880(1) and (2), 466.890 and 466.995(1) and (2) or federal law while being stored or used for intended purpose;

Timeliness of Application

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

<i>Application Received</i>	<u>7/21/97</u>
<i>Application Substantially Complete</i>	<u>3/26/99</u>
<i>Construction Started</i>	<u>7/1/95</u>
<i>Construction Completed</i>	<u>2/15/97</u>
<i>Facility Placed into Operation</i>	<u>1/1/97</u>

Facility Cost

Facility Cost	\$407,722
Ineligible Costs	-\$407,722
Eligible Facility Cost	<u>0</u>

Van Beek and Company provided the certified public accountant's statement.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 20 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

The applicant claimed the percentage of the facility cost allocable to pollution control as 100%. The Department did not verify this amount.

Compliance

DEQ permits issued to facility: Air Quality Permit, 34-005 (ACDP).

Reviewers: Gary J Calaba
7/24/98



Director's
Recommendation: **Deny – Zero Percent Allocable**
Percent Allocable:
Applicant **Waste Control Systems, Inc.**
Application No. **4860**
Claimed Facility Cost **\$3,091,970**
Percentage Allocable **0%**
Useful Life **10 years**

Tax Credit Review Report

EQC 6/25/1999

Pollution Control Facility Tax Credit: Solid Waste Final Certification

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

Applicant Identification

The applicant is a C Corporation operating as a **holding company**. The taxpayer identification number is 93-0608475. The applicant's address is:

**Division: Willamette Resources, Inc.
PO Box 807
Corvallis, OR 97339**

Facility Identification

The certificate will identify the facility as:

**Mixed waste processing/recovery facility &
equipment**

The applicant is the **owner** of the facility located at:

**10295 SW Ridder Road
Wilsonville, OR**

Technical Information

The claimed facility is a solid waste material recovery facility that accepts selected loads of solid waste and processes that material to remove all of the recoverable materials. Materials recovered include cardboard, scrap paper, ferrous and non-ferrous metal, wood, sheet rock, plastic, concrete, bricks and reusable building materials. The facility consists of the building, scales, mobile material handling equipment, conveyor systems, sorting equipment, balers, and storage bins. Specific portion of the facility include: Hustler Conveyor company infeed conveyor, oscillating screen, sort conveyor and platform, and baler infeed conveyors; Unitec Scales, Model 10000N2D1; Cat 416 Backhoe loader; Case 1840 Skid Steer loader; and Yale fork lift.

The facility is permitted to receive up to 35,000 tons per year and presently process about 30,000 tons with approximately 15,000 tons per year recovered.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new building and equipment** is to prevent, control or reduce a substantial quantity of solid waste through separation for the purposes of material recovery. The Department, under ORS 459A.010, indirectly imposes the requirement upon the applicant by requiring that Metro meet the Oregon Recycling Act's recovery goal of 50%. Metro imposes the requirement upon the applicant as part of the "Metro Regional Solid Waste Management Plan" recovery rate goal of 53%. In this plan, Metro established certain recommended practices including privately owned and operated material recovery facilities. The Metro plan identifies Willamette Resources' material recovery facility, a Metro Franchised facility in Wilsonville, as a major component of the regional plan to achieve the recovery goal.

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

Timeliness of Application

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

<i>Application Dated</i>	<u>10/22/97</u>
<i>Application Received</i>	<u>10/24/97</u>
<i>Application Substantially Complete</i>	<u>5/12/98</u>
<i>Construction Started</i>	<u>11/4/94</u>
<i>Construction Completed</i>	<u>1/10/96</u>
<i>Initial facility start-up</i>	<u>10/23/95</u>
<i>Completion of essential modification</i>	<u>1/10/96</u>
<i>Final certificate of occupancy issued</i>	<u>1/10/96</u>
<i>Majority of facility placed on company books</i>	<u>1/1/96</u>
<i>Remainder of facility placed on company books</i>	<u>4/1/96</u>

Facility Cost

Between April 1996 and January 1999, the claimed facility functioned as a material recovery facility. On January 1, 1999 the facility was authorized to function as a transfer station. Since that time a portion of the facility has been used as a transfer station. The cost of that portion of the facility has been identified and excluded from other facility costs as not eligible to tax credit.

	<u>Allowable Costs</u>	
<i>Applicant Identified</i>		
Total Project		\$4,053,530
Ineligible		<u>(\$961,560)</u>
Claimed		\$3,091,970
<i>Reviewer Identified</i>		
416B Backhoe		19,210
*Land allocable to the facility		<u>55,973</u>
Subtotal Eligible		3,167,153
Reimbursement from the general contractor		(19,213)
Fire reels and pipe		(15,673)
Compressor		(3,199)

Welder	(2,616)
Pressure washer	(1,350)
Miscellaneous tools	(3,934)
Special storage shed	(5,099)
Fire protection	(57,607)
HVAC/Plumbing	(124,448)
Radios	(4,949)
Fuel tank	(13,495)
* Maintenance shop/employee locker room	(121,200)
Fencing	(3,348)
*Site preparation costs not directly related to the facility	(287,847)
Recalculation of allowable design, permit, and general condition costs based on adjusted facility cost	(89,919)
Specialty items	(5,645)
Exhaust fans	(3,583)
Eye wash pipe	(398)
Barriers, rail and guard	(11,746)
Drench shower	(1,122)
Air lines	(6,464)
Total	\$2,384,298

** Calculations based upon square footage*

The Department identified ineligible costs for items as listed above because they do not contribute substantially to recycling. A cost summary accompanied the application. The accounting firm of Boldt, Carlisle & Smith, LLC reviewed the underlying documentation of project costs. Symonds, Evans & Larson, P.C. performed the accounting review on behalf of the Department.

Facility Cost Allocable to Pollution Control

The applicant claimed that the facility is not integral to the operation of the their business. They base this upon the premise that the facility operates under the name Willamette Resources, Inc. (WRI), which is a wholly-owned subsidiary of Waste Control Systems, Inc. (WCS) and that WCS files the consolidated tax return. The applicant states that WRI was incorporated to operate the facility and to simplify the accounting and reporting requirements. As a part of this larger entity the claimed facility a small portion of the corporation's investment, income and operations, is not integral, and, if necessary, would meet the exemption provided in OAR 340-016 0030(1)(g).

In addition to WRI, Waste Control Systems operates Albany Disposal, Lebanon Disposal, Dallas Disposal, Corvallis Disposal, United Disposal, Grants Pass Disposal, Capital Recycling and Disposal, Agritech, Keller Drop Box, Valley Landfills, Source Recycling, Peltier Real Estate, BIO MED, and Total Transfer and Storage.

When evaluating the whole of WCS's business, the claimed facility is not considered integral to the operation of the applicant's business. The percent allocable to pollution control would be 100% percent.

However, the Department does not look beyond a single site or location when making this determination. When considering WRI alone, the facility fails to meet the exemption in OAR 340-016-0030(1)(g) for a facility that is integral to the applicant's business. The percent allocable to pollution control for this facility as an integral facility would have been zero percent.

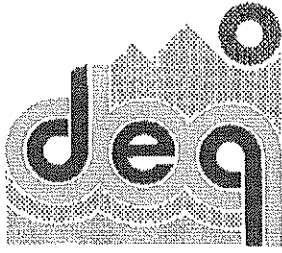
For facilities that are not integral to the operation of the applicant's business, the Commission must consider the following factors:

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The claimed facility produces salable and useable product of real economic value and is competitive with an end product produced in another state.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 25 years. The applicant estimated revenue related only to commodity sales in computing the return on investment. The ROI was recalculated utilizing actual operating results related to the commodity sales and tipping fees, and adjusted for excludable expenses, such as, depreciation of interest for the facility from July 1, 1996 through December 31, 1998. When adjusted for all ineligible costs and income and expenses generated from ineligible activities the applicants average annual cash flow is \$632,764. This results in a return on investment factor of 3.8 (\$2,384,298 ÷ \$632,764) and a Facility ROI of 26%. Since the Facility ROI is greater than the National ROI of 5.2 from Table 2, the portion of the facility cost allocable to pollution control is 0%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	The costs of the facility included in the application did not separate, nor allocate out, all of the transfer station- related costs for the portion of the building (\$14,807) and scales (\$15,509) that are used in connection with transfer station activities. These two amounts would have reduced the percentage allocable to pollution control by about 1%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. The facility has a DEQ solid waste disposal site permit #435.

Reviewers: William R Bree
Maggie Vandehey
Independent Accountant's Report provided by Symonds, Evans & Larson, P.C.



Tax Credit Review Report

EQC 03/19/99

Director's
Recommendation: **DENY – Ineligible Facility**

Applicant	Tidewater Barge Lines, Inc.
Application No.	4959
<u>Claimed</u> Facility Cost	\$775,000
<u>Claimed</u> Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

The applicant is a C corporation and is operating as a tow boat company. The applicant's taxpayer identification number is 93-0278300. The applicant's address is:

**63050 NW Old Lower River Road
Vancouver, WA 98660**

The applicant is the leasee of the facility. Tidewater Barge Lines is an Oregon corporation. *The Prospector* is under lease to Tidewater from Banc One Leasing Corporation, the barge owner. A copy of the lease agreement was attached to the application as required for leased facilities.

Technical Information

The facility is the newly constructed double hulling of the steel petroleum barge, *The Prospector*. *The Prospector's* dimensions are 272' X 18' 6" and it has the capacity of 62,500 bbls. The barge was constructed by Zidell Marine Corporation. The double hull is constructed of plate steel and steel beams that create a void between the cargo tanks and the water. Thus providing some assurance that a puncture or damage to the exterior hull will not reach the cargo tanks.

Specific requirements for double-hulled construction are outlined in the Oil Pollution Act of 1990.

Facility Identification

The facility is identified as:

Double hull for *The Prospector* to create a void between the cargo area and water.

The applicant is the leasee of the facility. The facility is portable and used in Oregon and Washington waters and may sometimes be located at:

**Portland Harbor
Portland, OR**

Eligibility

ORS 468.155 The **principal purpose** of this **new installation** was not required by DEQ or
 (1)(a) EPA in order to prevent, control or reduce a substantial quantity of water
 pollution. The applicant claims the **sole purpose** of the facility is to prevent
 water pollution. The Department claims the sole purpose and “exclusive
 purpose” of double-hulling is not to control water pollution as determined by the
 Environmental Quality Commission on December 28, 1995. The Department
 states that double-hulling also provides improved safety of the vessel and crew in
 case of grounding or collision; lowering insurance costs; meeting the
 requirements of the Coast Guard; and the possibility of avoiding the loss of
 petroleum product.

On December 28, 1995, the Commission determined that there were a number of
 business reasons for double-hulling *The Pioneer* — a barge presented by
 Tidewater Barge Line, Inc. on application number 4417. They determined that
 the applicant accrued the same types of benefits as state above from investing in
 the double-hulling of a barge.

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

Timeliness of Application

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

<i>Application Received</i>	<u>3/16/98</u>
<i>Application Substantially Complete</i>	<u>10/3/1998</u>
<i>Construction Started</i>	<u>6/1/95</u>
<i>Construction Completed</i>	<u>3/27/96</u>
<i>Facility Placed into Operation</i>	<u>3/27/96</u>

Facility Cost

Facility Cost	\$775,000
Ineligible Costs	\$775,000
Eligible Facility Cost	<u>\$0</u>

Copies of the invoice and checks were attached to the application substantiating the total cost of the
 barge as paid to Zidell Marine Corporation. The Department did not perform an accounting review
 because the facility does not meet the eligibility criteria.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 30 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	This facility is portable and used in Oregon and Washington waters. The applicant's revenue analysis shows that approximately 56% of the tonnage hauled by <i>The Prospector</i> is to ports within the state of Oregon. Therefore, only 56% of the benefits would be allocable to pollution control.

Compliance

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

Reviewers: Elliot Zais, DEQ
Margaret C.Vandehey, DEQ



Tax Credit Review Report

EQC: 6/25/99

Director's
Recommendation: **DENY – Ineligible Facility**

Applicant	Tidewater Barge Lines, Inc.
Application No.	4965
<u>Claimed</u> Facility Cost	\$775,000
<u>Claimed</u> Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

The applicant is a C corporation and is operating as a tow boat company. The applicant's taxpayer identification number is 93-0278300. The applicant's address is:

**63050 NW Old Lower River Road
Vancouver, WA 98660**

A notarized statement from the lessor, Sanwa Business Credit Corporation, authorizes Tidewater Barge Lines, Inc. to take any allowable credit on the facility. A copy of the lease agreement between Sanwa Business Credit Corporation, ship owner, and Tidewater Barge Lines, Inc. is attached to the application as required for leased facilities.

Technical Information

The facility is the newly constructed double hulling of the steel petroleum barge, *The Tri-Cities Voyager*'s dimensions are 272' X 18' 6" and it has the capacity of 62,500 bbls. The barge was constructed by Zidell Marine Corporation. The double hull is constructed of plate steel and steel beams that create a void between the cargo tanks and the water. Thus providing some assurance that a puncture or damage to the exterior hull will not reach the cargo tanks. Specific requirements for double-hulled construction are outlined in the Oil Pollution Act of 1990.

Facility Identification

The certificate will identify the facility as:

Double hull for *The Tri-Cities Voyager* to create a void between the cargo area and water.

The applicant is the leasee of the facility. The facility is portable and used in Oregon and Washington waters and may sometimes be located at:

**Portland Harbor
Portland, OR**

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new installation** was not required by DEQ or EPA in order to prevent, control or reduce a substantial quantity of water pollution. The applicant claims the **sole purpose** of the facility is to prevent water pollution. The Department claims the sole purpose and “exclusive purpose” of double-hulling is not to control water pollution as determined by the Environmental Quality Commission on December 28, 1995. The Department states that double-hulling also provides improved safety of the vessel and crew in case of grounding or collision; lowering insurance costs; meeting the requirements of the Coast Guard; and the possibility of avoiding the loss of petroleum product.

On December 28, 1995, the Commission determined that there were a number of business reasons for double-hulling *The Pioneer* — a barge presented by Tidewater Barge Line, Inc. on application number 4417. They determined that the applicant accrued the same types of benefits as state above from investing in the double-hulling of a barge.

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

Timeliness of Application

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

<i>Application Received</i>	<u>3/23/98</u>
<i>Application Substantially Complete</i>	<u>5/21/98</u>
<i>Construction Started</i>	<u>6/1/95</u>
<i>Construction Completed</i>	<u>5/13/97</u>
<i>Facility Placed into Operation</i>	<u>5/13/97</u>

Facility Cost

Facility Cost	\$775,000
Ineligible Costs	<u>(\$775,000)</u>
Eligible Facility Cost	\$0

Copies of the invoice and checks were attached to the application substantiating the total cost of the barge as paid to Zidell Marine Corporation. The Department did not perform an accounting review because the facility does not meet the eligibility criteria.

Facility Cost Allocable to Pollution Control

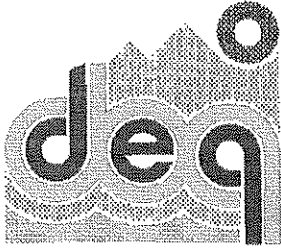
According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 30 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	This facility is portable and used in Oregon and Washington waters. The applicant's revenue analysis shows that approximately 55% of the tonnage hauled by <i>The Tri-Cities Voyager's</i> is to ports within the state of Oregon. Therefore, only 55% of the benefits would be allocable to pollution control.

Compliance

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

Reviewers: Elliot Zais, DEQ
Margaret C.Vandehey, DEQ



Tax Credit Review Report

EQC 12/11/1998

Director's
Recommendation: **Deny - Ineligible Facility**

Applicant	Willamette Industries, Inc.
Application No.	4980
Claimed Facility Cost	\$18,041
Claimed Percentage Allocable	100%
Useful Life	7 years

Pollution Control Facility: Air Final Certification

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

Applicant Identification

The applicant is a C corporation and is operating a **paper mill**. The taxpayer's identification number is 93-0312940. The applicant's address is:

**1300 SW Fifth Avenue
Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

A Bobcat front-end loader, model 753C series.

The applicant is the **owner** of the facility located at:

**550 NE Skipanon Drive
Warrenton, OR 97146**

Technical Information

The facility is a new Bobcat front-end loader purchased to reduce fugitive wood particulate from all areas of the plant site including the sawmill area, log decks and barker.

Eligibility

ORS 468.155 (1)(a) The applicant claimed the **principal purpose** of this facility is to comply with ACDP requirements as set forth by the DEQ. They claimed the new requirements specify that in order to reduce particulate, wood waste must be picked up within 24 hours.

The **sole** and "exclusive" **purpose** of the **new equipment** is not to prevent, control or reduce a **substantial quantity** of air pollution. The applicant claimed "A sweeper/loader is the most effective facility for controlling fugative wood particulate in and around the plant." Because the sweeper/loader is used for things other than removal of particulate matter from the **atmosphere** (airborne, external to buildings) the facility is not used "exclusively" for pollution control

and it does not provide a substantial reduction in air pollution.
 ORS 468.155 The disposal or elimination of or redesign to eliminate air contamination sources
 (1)(b)(B) and the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

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

<i>Application Received</i>	<u>4/2/98</u>
<i>Application Substantially Complete</i>	<u>5/29/98</u>
<i>Construction Started</i>	<u>6/30/97</u>
<i>Construction Completed</i>	<u>6/30/97</u>
<i>Facility Placed into Operation</i>	<u>6/30/97</u>

Facility Cost

Facility Cost	\$18,041
Ineligible Costs	<u>-\$18,041</u>
Eligible Facility Cost	\$ 0

The facility cost does not exceed \$50,000 and therefore, an external accounting review was not required.

Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The applicant claimed the facility is used 100% of time this facility for pollution control.

Compliance

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

Reviewers: Dave Kauth
 Margaret C. Vandehey

Pollution Control
Facility Tax Credit
Program History
1968 - 1998

Pollution Control Facility Tax Credit¹

Oregon's Pollution Control Tax Credit statute was enacted in 1967 to help businesses comply with new federal environmental laws. Businesses were not accustomed to and not financially prepared to comply with environmental regulations. The statute gave them financial support in the new situation. In 1987, the Oregon legislature began a shift toward more effective environmental use of these tax credit dollars by including pollution controls not required by law, but constructed only for the purpose of pollution control. Since 1967, the Environmental Quality Commission (EQC) has awarded tax credit certificates valued at \$586 million² to Oregon taxpayers who made capital investments in eligible facilities.

Eligible Facilities

Facilities that are eligible for pollution control tax credits prevent, reduce, eliminate or control:

- Emissions to the atmosphere;
- Contamination of ground or surface waters;
- Solid waste by recycling or material recovery;
- Hazardous waste; and
- Noise pollution.

Amount of Tax Credit

An Oregon taxpayer may take up to 50% of the certified cost of a facility as a credit to reduce their Oregon tax liability. The actual amount of the tax credit depends on how much of the facility cost is attributed to pollution control. In general, the Oregon taxpayer may apply the credit against income or corporate excise taxes, at a rate of 5%³ per year for 10 years.

EQC Certification

The EQC's certification that a facility is a pollution control facility is required before a taxpayer may legally take relief from their Oregon tax liability. The certification is based upon the Department of Environmental Quality (DEQ) recommendation and assurance that an installation meets the definition of a pollution control facility; that it reduces a substantial quantity of pollution; and that the costs are properly allocable to pollution control according to the controlling regulations.

Not all facilities that prevent, control or reduce pollution are eligible for certification according to the statute. Not all costs incurred during the construction of a facility may be allocated to pollution control according to statute and rule. Therefore, DEQ reviews engineering and financial information before making their recommendation to the EQC.

¹ OAR 468.150, implemented by OAR Chapter 340, Division 16

² See *Value of Certificates Issued Each Year* for a history of certificates issued each year since the inception of the program.

³ Determined by multiplying the certified facility cost by the percentage of the cost allocable to pollution control.

Required Facilities

Most of the certificates issued for pollution control tax credits still subsidize actions that are required by regulations. Since 1967, environmental compliance has become a planned expense of doing business. These actions would be taken with or without the benefit of a tax credit. Today, 75% of the dollar value of tax credits are for pollution controls installed to comply with environmental laws.

Stack scrubbers and bag houses are examples of required pollution control. In smokestack industries, environmental regulations require that emissions from these stacks be "scrubbed", and pollution captured in bag houses, which acts as a kind of dust collector. This prevents hazardous substances from being set loose into the air. Forest products and high tech industries are the major beneficiaries of tax credits for this purpose.

Facilities Used Exclusively for Pollution Control

The legislature expanded the pollution control tax credit program in 1987. This expansion was intended to encourage businesses to invest in technologies and processes that prevent, control or reduce significant amounts of pollution. Today, 25% of the dollar value of tax credits are for pollution controls installed not because they were required but solely for the pollution control benefit.

An example of this type of facility is a truck washing facility that has a wash pad, over-spray protection, an oil and water separator, and water recycling capabilities. This type of facility prevents contamination of surface- and ground-water.

Material recovery facilities are the fastest growing segment of facilities installed exclusively for pollution control benefits. Paper and fiber products industries are the major beneficiaries of this type of tax credit.

Certificate Holders' Profile

The top five companies that benefit from the pollution control tax credit program hold certificates worth 36% of the value of all tax credits issued by the EQC.⁴ Portland General Electric Company has been number one beneficiary with certified facility costs in the amount of \$152 million of which \$76 million may be taken as credit to offset their Oregon tax liability. Small business owners hold the majority of the certificates valued under \$25,000

When considering the population of communities where the pollution control facilities have been installed, 62% were in rural areas where the population is under 10,000.⁵ However, the certificate holders are located in areas with populations over 40,000 on 71% of all certificates issued.

⁴ See *Certificates Issued by Applicant - Ranked by Certified Cost 1968 through 1998*

⁵ See *Certificates Issued by Location of the Facility 1968 through 1998*

Value of Certificates Issued Each Year 1968 through 1998

Year	Count	Sum	Average	Minimum	Maximum
1968	39	\$2,618,426	\$67,139	\$1,174	\$710,525
1969	37	\$2,606,028	\$70,433	\$2,428	\$526,352
1970	50	\$3,553,209	\$71,064	\$833	\$2,017,852
1971	65	\$8,566,588	\$131,794	\$597	\$3,202,811
1972	123	\$7,659,505	\$62,272	\$506	\$2,702,638
1973	142	\$12,720,643	\$90,197	\$383	\$3,050,909
1974	80	\$11,744,998	\$146,812	\$2,169	\$4,255,991
1975	94	\$17,339,494	\$184,463	\$1,369	\$6,025,886
1976	112	\$18,026,115	\$160,947	\$660	\$3,701,457
1977	95	\$10,099,350	\$107,355	\$251	\$2,356,183
1978	80	\$30,427,490	\$385,082	\$882	\$12,118,804
1979	85	\$17,714,066	\$208,401	\$734	\$4,392,593
1980	161	\$34,440,257	\$215,230	\$1,129	\$7,079,554
1981	141	\$47,809,943	\$341,389	\$317	\$23,676,924
1982	98	\$40,679,273	\$415,095	\$336	\$15,491,404
1983	79	\$33,871,933	\$423,435	\$1,600	\$6,621,993
1984	60	\$15,553,898	\$259,232	\$1,279	\$5,687,760
1985	48	\$3,420,580	\$71,262	\$1,151	\$306,282
1986	77	\$23,718,062	\$308,027	\$1,500	\$19,625,635
1987	70	\$1,839,775	\$26,282	\$2,461	\$384,698
1988	46	\$7,852,420	\$170,705	\$1,323	\$2,413,003
1989	61	\$4,998,086	\$86,682	\$1,750	\$1,226,911
1990	205	\$4,451,995	\$22,181	\$0	\$797,565
1991	410	\$21,536,030	\$54,893	\$601	\$3,928,543
1992	215	\$16,048,583	\$79,753	\$0	\$5,059,650
1993	254	\$33,808,944	\$137,545	\$539	\$7,758,430
1994	138	\$19,999,544	\$103,496	\$0	\$5,993,396
1995	168	\$50,107,149	\$296,523	\$349	\$16,400,000
1996	131	\$7,326,070	\$56,749	\$598	\$933,372
1997	126	\$7,783,337	\$62,267	\$479	\$2,492,441
1998	226	\$67,657,217	\$ 299,368	\$ 1,050	\$ 39,577,895
Total	3716	\$585,979,008	\$157,691	\$0	\$ 39,577,895

1/1/99 - 6/30/99

Projected	67	\$ 20,604,087	\$ 316,986	\$ 645	\$ 3,110,132
	3783	\$606,583,095			

Assumptions

- 1 The statistics represented on this sheet are based on the certificate value (maximum potential revenue impact) of all certificates issued by the Environmental Quality Commission according to the pollution control, pollution prevention and the reclaimed plastics tax credit programs' statutes and rules.
- 2 The certificate value is determined by: facility cost X the percentage of the facility cost allocable to pollution control X 50%.
- 3 This document does not represent the amount of credit actually taken to offset Oregon taxpayers' tax liability.

**Certificates Issued by Applicant
Ranked by Certified Cost
1968 through 1998**

Applicant	Facility Cost	Certificate Value	No. of Certificates
Portland General Electric Company	152,026,223	75,687,783	140
Georgia-Pacific West, Inc.	84,847,190	42,423,595	2
Boise Cascade Corp.	80,652,142	40,210,753	86
Weyerhaeuser Co.	61,861,600	29,501,257	142
Willamette Industries, Inc.	40,765,285	20,035,698	126
Pacificorp Financial Services	52,335,027	19,625,635	1
REYNOLDS METALS CO	34,043,890	17,021,945	21
Publishers Paper Co.	56,874,390	28,102,516	46
International Paper Co.	29,752,468	13,968,056	48
Georgia Pacific Corp.	24,720,086	12,122,633	80
Pope & Talbot, Inc.	23,774,824	11,887,412	1
Bergsoe Metal Corp	23,771,898	11,885,949	1
Hyundai Semiconductor America, Inc.	18,619,419	9,309,710	3
CROWN ZELLERBACH CORP	18,298,676	8,899,858	34
Medford Corp.	16,644,403	7,949,478	11
James River - Wauna Mill	15,516,859	7,758,430	1
Intel Corporation	14,629,702	7,314,851	15
Spauding Pulp Paper Co.	14,159,107	7,079,554	1
Oregon Waste Systems, Inc.	12,698,061	6,349,031	4
ORE IDA Foods, Inc.	12,747,637	6,335,945	5
Bohemia, Inc.-Now Willamette Industries	12,540,376	6,270,188	27
Oregon Portland Cement Co.	12,532,188	6,266,094	26
Tektronix, Inc.	12,452,652	6,203,305	46
Chemical Waste Management of the NW	10,119,299	5,059,650	1
MARTIN MARIETTA ALUMINUM INC	9,319,815	4,659,908	6
Teledyne Industries, Inc.	8,991,470	4,495,735	82
Menasha Corp	7,846,890	3,919,903	26
ROSEBURG LUMBER CO	6,991,829	3,495,915	21
GILMORE STEEL CORP	6,735,061	3,367,531	6
Western Kraft Corp.	6,381,247	3,190,624	14
Wacker Siltronic Corp.	6,212,367	3,106,184	8
Timber Products Co.	6,215,742	3,105,056	21
Smurfit Newsprint Corp.	5,371,121	2,685,561	5
Roseburg Forest Products Co.	5,337,924	2,668,962	6
FUJITSU MICROELECTRONICS INC	5,325,125	2,662,563	4
PRECISION CASTPARTS CORP	5,293,401	2,581,799	17
HANNA NICKEL SMELTING CO	4,740,267	2,370,134	11
Ellingson Lumber Co.	4,672,324	2,336,162	1
Lamb-Weston, Inc.	4,981,847	2,290,304	4
Willamina Lumber Co.	4,503,101	2,251,551	10
Tillamook County Creamery Association	4,587,030	2,164,057	3
HARVEY ALUMINUM INC	4,276,377	2,138,189	2
Champion International Corp	4,078,983	2,039,492	29
Elf Atochem North America	3,940,316	1,970,158	9
American Can Co.	3,856,800	1,928,400	12
Diamond International Corp.	3,808,000	1,904,000	1
DOW CORNING CORP	3,714,849	1,857,425	5
Roseburg Lumber Co.	3,572,819	1,786,410	2
Amalgamated Sugar Co.	3,520,945	1,719,452	12
FINLEY BUTTES LTD PARTNERSHIP	3,377,202	1,688,601	1

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Chevron USA, Inc.	3,515,439	1,662,992	28
Oregon Waste Systems, Inc./Columbia Ridge Landfill	3,093,687	1,546,844	1
Boeing Company	2,923,115	1,461,558	8
Johnson Controls Battery Group, Inc.	2,915,463	1,449,897	5
CO	2,874,000	1,437,000	1
Teledyne Wah Chang Albany	2,692,077	1,346,039	36
Western Stations Co.	2,753,329	1,273,450	26
Atlantic Richfield Co.	2,833,331	1,235,595	36
BLUE MT FOREST PRODUCTS INC	5,842,431	1,226,911	1
Jeld Wen, Inc.	2,433,675	1,216,838	11
Pennwalt Corp.	2,360,889	1,178,082	10
JR SIMPLOT CO	2,342,511	1,171,256	1
BROOKSSCANLON INC	2,694,418	1,168,165	3
Far West Fibers, Inc.	2,179,206	1,089,464	11
JAMES RIVER CORP	2,169,936	1,084,968	12
CASCADE STEEL ROLLING MILLS INC	2,126,773	1,063,387	2
SOUTHWEST FOREST PRODUCTS INC	2,106,161	1,053,081	4
EMARK INC	2,102,951	1,051,476	1
POTTERS INDUSTRIES INC	1,952,954	976,477	1
Louisiana Pacific Corp.	1,935,071	967,536	3
RHODIA INC	1,894,027	947,014	2
Truax Harris Energy Co., LLC	1,877,710	870,955	18
United Disposal Service, Inc.	1,805,841	870,075	58
STAYTON CANNING CO COOP INC	1,715,677	857,839	13
Columbia Steel Casting Co., Inc.	1,598,696	799,348	16
Columbia Plywood Corp.	1,557,264	766,113	3
Texaco Refining & Marketing, Inc.	1,756,262	757,789	12
Simpson Timber Co.	1,473,088	736,544	2
ESCO CORP	1,471,926	733,264	22
RIEDEL ENVIRONMENTAL SERVICES	1,438,742	719,371	1
GREGORY FOREST PRODUCTS INC	1,754,938	718,290	4
Quality Trading Co., LLC	1,433,263	709,787	2
Integrated Device Technology (IDT)	1,378,688	689,344	5
Leathers Enterprises	1,505,820	685,345	7
Avison Lumber	1,345,229	672,615	4
Dee Forest Products, Inc.	1,343,960	671,980	1
Neste Resin Corp.	1,294,499	647,250	2
Cain Petroleum, Inc.	1,346,574	634,528	9
EDWARD HINES LUMBER CO	1,261,705	630,853	3
CHEMICAL WASTE MGMT OF THE NW	1,253,758	626,879	3
Husky Industries Inc	1,356,150	625,415	2
3M CO	1,473,832	589,533	1
Truax Corp.	1,234,649	584,072	46
STIMSON LUMBER CO	1,199,568	574,650	4
Woolley Enterprises, Inc.	1,137,709	568,855	9
Anodizing, Inc.	1,136,691	568,346	9
Leathers Oil Co.	1,183,626	558,390	10
EAGLEPICHER MINERALS	1,104,430	552,215	1
BP OIL CO	1,275,442	548,550	14
OLSON LAWYER TIMBER CO	1,084,126	542,063	2

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Golden Valley Farms	1,357,177	527,443	8
Finley Buttes Landfill, Co.	1,052,041	526,021	1
TAYLOR LUMBER & TREATING INC	1,010,220	505,110	1
Stein Oil Co., Inc.	1,062,743	480,806	12
JAMES RIVER PAPER CO INC	930,535	465,268	1
MT MAZAMA PLYWOOD CO	898,015	449,008	1
LANE PLYWOOD INC	896,888	448,444	2
PRAEGITZER INDUSTRIES INC	882,060	441,030	5
Blount, Inc.	879,696	439,848	6
Mt. Hood Metals, Inc.	877,644	438,822	1
KINZUA CORP	862,560	431,280	1
CHEVRON CHEMICAL CO.	857,646	428,823	1
Dee Forest Products Inc	852,061	426,031	2
NORTH SANTIAM VEENER INC	1,176,725	410,306	3
Oregon Steel Mills, Inc.	12,832,159	407,345	4
Precision Castparts Corp.	1,229,373	403,711	3
EVERGREEN FOREST PRODUCTS INC	1,255,201	401,664	1
HILLSBORO LANDFILL	799,859	399,930	1
SWF Plywood Co.	797,665	398,833	8
LINNTON PLYWOOD ASSOCIATION	792,984	396,312	4
DALLES CHERRY GROWERS INC	791,512	395,756	2
Georgia-Pacific Corp.	788,845	394,423	1
NATIONAL FRUIT CANNING CO INC	780,354	390,177	1
SHELL OIL CO	767,134	383,567	2
EVANS PRODUCTS CO	756,849	378,425	8
WARRENTON LUMBER CO	733,344	366,672	1
Tidewater Barge Lines, Inc.	724,000	362,000	3
Pacific Petroleum Corp.	782,337	357,909	6
Owens Illinois, Inc.	713,647	356,824	3
Pacific Power & Light Co.	695,066	347,533	27
SOUTH COAST LUMBER CO	668,663	334,332	4
JSG Inc.	778,747	331,457	9
UNION CARBIDE CORP	656,746	328,373	2
PACIFIC CARBIDE ALLOYS CO	653,714	326,857	4
Safeway, Inc.	650,431	325,216	1
MAZAMA TIMBER PRODUCTS INC	656,417	316,934	4
Avison Timber Company	624,142	312,071	1
Albany-Lebanon Sanitation, Inc.	610,391	305,195	14
Wilco Farmers, INC.	654,714	302,882	3
Fred Meyer, Inc.	577,180	288,590	1
Blue Mountain Forest Products	574,524	287,262	1
KAISER GYPSUM CO INC	553,108	276,554	7
GRAY & CO	549,564	274,782	4
OR/PAC Feed & Forage, LTD	571,547	273,507	3
AMFAC FOODS INC	542,092	271,046	2
Hilton Fuel Supply Co.	541,331	270,666	4
BROOKSWILLAMETTE CORP	541,427	269,906	10
STADLEMAN FRUIT CO INC	539,130	269,565	1
ROSBORO LUMBER CO	551,217	267,764	4
SOUTHWEST FOREST PRODUCTS INC/CHANGED TO	528,547	264,274	1

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INC	524,607	262,304	2
Venell Farms, Inc.	524,231	262,116	5
ROUGH READY LUMBER CO	510,549	255,275	1
CHEMICAL WASTE OF THE NORTHWEST	508,289	254,145	1
GRAPHIC ARTS CENTER INC	508,213	254,107	4
CARGILL INC	507,950	253,975	1
COLUMBIA GRAIN INC	504,932	252,466	1
NATIONAL METALLURGICAL CO	504,241	252,121	1
Nicolai Co.	505,064	248,237	5
Ash Grove Cement Co.	533,387	247,214	4
GLACIER SAND GRAVEL CO	492,602	246,301	5
BABLER BROTHERS INC	473,775	236,888	5
Estergard: Estergard Farms	471,072	235,536	5
HULLOAKES LUMBER CO	464,873	232,437	2
Western Foundry Co.	460,357	230,179	3
RFD PUBLICATIONS INC	459,770	229,885	1
STEINFELD'S PRODUCTS CO	447,790	223,895	1
INC	434,355	217,178	1
Corvallis Disposal Co.	429,378	214,689	16
Smith Brothers Farm	413,103	206,552	5
MERRITT TRUAX INC	457,688	204,005	16
TRECO	454,589	200,646	5
ROSEBORO LUMBER CO	400,611	200,306	1
NORTHWEST MARINE IRON WORKS	395,040	197,520	1
CONTINENTAL CAN CO INC	394,676	197,338	5
RETER FRUIT CO	651,618	197,187	2
LAKEVIEW LUMBER PRODUCTS CO	393,303	196,652	2
MIDLANDROSS CORP	692,068	196,548	6
BRAND S CORP'	392,916	196,458	1
LANE INTERNATIONAL CORP	384,138	192,069	9
FREIGHTLINER CORP	429,284	189,575	6
GLENBROOK NICKEL CO	376,400	188,200	1
Owens Corning Fiberglas Corp.	374,811	187,406	3
Younger Oil Co.	380,139	185,889	13
Mullen Farms, Inc.	367,973	183,987	4
STADELMAN FRUIT INC	354,367	177,184	1
NORPAC FOODS INC	353,170	176,585	3
Oak Creek Farms, Inc.	477,904	175,301	8
ELLINGSON LUMBER CO	400,722	175,214	3
PACIFIC RESINS CHEMICALS INC	348,650	174,325	1
FRERES LUMBER CO INC	345,219	172,610	2
Chevron USA Products, Co.	345,216	172,608	7
BI-MOR STATIONS INC	385,653	171,573	5
CASCADE CONSTRUCTION CO INC	339,226	169,613	7
Phalan, Gerald E.	419,398	169,479	6
GENERAL FOODS CORP	337,727	168,864	5
SPACE AGE FUEL INC	394,014	167,323	5
WWDD Partnership	324,335	162,168	11
Polk County Farmers' Co-op	319,006	159,503	5
S-S Bailing	401,465	156,571	1
STATES INDUSTRIES INC	308,693	154,347	1

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Astoria Plywood Corp.	208,990	104,495	2
Norm Poole Oil, Inc.	232,706	104,362	3
Northwest Pipeline Corp.	208,520	104,260	4
Capital City Companies, Inc	251,363	104,185	3
Schrock: Dean & Kathleen	213,512	103,991	2
Columbia Helicopter, INC.	207,925	103,963	1
DANT RUSSELL INC	206,938	103,469	1
Pliska, Harold & Jim	214,928	102,500	2
OSTRANDER CONSTRUCTION CO	204,764	102,382	2
SANITARY SERVICES INC	204,407	102,204	1
ROUGE RUSSET ORCHARDS INC	204,000	102,000	1
4 B Farms, Inc.	203,865	101,933	2
Pacific Pride Cardlock	215,553	99,154	1
Dinihanian Recycling & Manufacturing, Inc.	197,902	98,951	7
McLagan Farms, Inc.	197,583	98,792	2
RIDENOUR OIL CO INC	224,255	98,642	2
ALBINA FUEL CO	196,115	97,077	1
Power Rents, Inc	193,519	96,760	3
Melrose Orchards, Inc.	192,200	96,100	3
ELECTRONIC CONTROLS DESIGN	192,048	96,024	1
Park Market Texaco	199,735	95,873	1
CONTINENTAL BRASS INC	190,478	95,239	1
B & C Leasing, INC.	196,080	95,099	1
LICORICE LANE FARM INC	187,682	93,841	1
MacPherson, Robert D.	183,561	91,781	3
Eugene Truck Haven, Inc.	216,400	90,190	2
Gage Industries, Inc.	178,668	89,334	1
GRASS FIBER INC	178,376	89,188	1
Carson, John A.	185,291	88,940	1
Troutwood, Inc.	194,738	88,606	1
UNION PACIFIC RAILROAD CO	176,653	88,327	1
Glaser: Steve Glaser Farm, Inc.	529,026	88,171	3
Denton Plastics, Inc.	175,751	87,876	8
KIRSCH Family Farms Inc.	175,057	87,529	1
Pohlschneider Farms, Inc.	184,104	87,443	3
UNION OIL CO OF CALIFORINA	174,874	87,437	1
McFarlane's Bark, Inc.	174,720	87,360	1
Gardner Paper Mill	173,239	86,620	1
Daniel D. & Steve C. Sandau	171,734	85,867	1
AGRIPAC, Inc.	283,751	85,792	7
MERRITT #2 INC	211,242	85,625	2
GRAHAM OIL CO INC	190,386	85,450	2
TREPLEX INC	170,598	85,299	1
MEDFORD PEAR CO INC	213,200	85,000	3
Double V Dairy	168,986	84,493	1
METROFUELING INC	174,668	84,104	27
CRYSTAL SPRINGS PACKING CO INC	210,233	84,093	1
Walser Enterprises	173,000	83,905	2
Devin Oil Co., Inc.	175,923	83,050	2
Stellmacher, William	217,527	82,957	4
PRIESTLEY OIL & CHEMICAL CO INC	183,503	82,513	2

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AMERICAN INDUSTRIAL SERVICE	302,339	151,170	1
Ruckert, Roger A. DBA G & R Seeds	301,057	150,529	5
LTM, Inc.	299,677	149,839	2
Consolidated METCO, Inc.	295,405	147,703	4
Mill Waste Recycling Co.	299,723	145,474	3
Morse Bros., Inc.	288,317	144,159	7
TIMES LITHO INC	284,119	142,060	1
ROSEBURG PAVING CO	283,582	141,791	5
Knez Building Materials Co.	282,719	141,360	2
Patrick Industries, Inc.	277,030	138,515	1
HERMISTON FOODS INC	276,826	138,413	1
DBD LEASING	276,500	138,250	1
HAYS OIL CO	321,297	137,575	4
1180 CORP	274,591	137,296	3
Truax Harris Energy, LLC	289,506	134,620	1
The Halton Company	267,014	132,987	3
Blasen Lumber Corp.	265,645	132,823	1
Valmont Industries, Inc.	264,597	132,299	2
Springfield Chevron/Pacific Pride	285,672	129,981	1
POPE & TALBOT INC	309,401	129,948	1
Ernest Glaser Farms	252,268	126,134	2
Byrnes Oil Co., Inc.	275,982	125,442	7
OREGON FIR SUPPLY CO INC	250,460	125,230	1
HUDSPETH PINE INC	250,400	125,200	1
WASTE RECOVERY INC	250,186	125,093	1
Flanagan Farms, Inc.	291,744	125,040	2
McKay: Dean McKay Farms, Inc.	249,836	124,918	1
CARMICHAEL COLUMBIA OIL INC	315,780	124,872	3
PERMANEER CORP	248,607	124,304	7
McKay: Mark McKay Farms, Inc.	248,496	124,248	1
Laughlin Oil Company	288,793	124,181	1
Eichler Hay Co.	979,603	122,450	1
DAYTON SAND & GRAVEL CO INC	244,810	122,405	1
May Slade Oil Co., Inc.	242,186	121,093	8
Roseburg Paving Co.	239,360	119,680	1
BILL TERPENING INC	250,975	118,087	3
NORTH SANTIAM PLYWOOD CO	233,381	116,691	2
JOHNSON OIL CO INC	232,789	116,395	4
NORTHWEST PRINTED CIRCUITS INC	229,698	114,849	1
Cersovski Farms	225,054	111,772	3
Indian Brook, Inc.	223,000	111,500	2
Wah Chang Albany Corp.	222,861	111,431	5
WHITE CITY PLYWOOD OREGON LTD	222,050	111,025	1
MODOC ORCHARD CO	367,698	110,309	5
Christensen Farms	220,280	109,741	6
Pendelton Sanitary Service, Inc.	215,856	107,928	1
Roselawn Seed Inc.	215,000	107,500	1
Northwest Brewer's Grain of Oregon, Inc.	211,738	105,869	1
CLEAR PINE MOULDINGS	209,962	104,981	3
AE STALEY MANUFACTURING CO	209,796	104,898	2
L P BUSCH INC	209,707	104,854	3

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Smith: Smith Brothers Farm	164,740	82,370	1
JC COMPTON CONTRACTOR INC	164,590	82,295	1
CASCADE WOOD PRODUCTS INC	164,538	82,269	1
RICH MANUFACTURING CO OF OREGON	162,155	81,078	2
D & O Garbage Service, Inc.	161,604	80,802	2
EVANITE BATTERY SEPARATOR	160,541	80,271	2
COATS ROBERT L	160,330	80,165	2
Mitsubishi Silicon Amercia	159,791	79,896	2
S & H Logging, Inc.	159,600	79,800	1
EMERALD FOREST PRODUCTS INC	158,010	79,005	1
COLUMBIA HELICOPTERS INC	157,399	78,700	1
J C COMPTON	156,255	78,128	1
CHAMPION BUILDING PRODUCTS	155,430	77,715	2
Rexius Forest By-Products Inc.	155,000	77,500	1
TELEGRAPH	154,807	77,404	1
RUSSELL OIL CO	186,166	77,332	5
SHIRTCLIFF OIL CO	234,055	77,061	4
Langdon, George E.	153,060	76,530	1
Jensen: Carl Jensen Farms	152,836	76,418	1
Baker: Richard D./Russell	164,562	75,698	1
VSCO Petroleum Corp	166,175	75,610	1
OREGON CAVES CHEVRON	165,715	75,400	1
Glaser: Ernest Glaser Farm, Inc.	150,304	75,152	3
Montgomery: Clyde Montgomery	148,557	74,279	4
POWELL DISTRIBUTING CO INC	165,294	73,269	3
ROAD & DRIVEWAY CO	146,496	73,248	2
HOOD RIVER SUPPLY ASSOCIATION	145,792	72,896	1
Vanleeuwen, James	161,730	72,629	4
Lake Oswego Shell	154,331	72,536	1
Powell Blvd. Chevron, Inc.	162,604	71,873	2
Berger Brothers	147,834	71,797	6
Oregon Precision Industries, Inc.	143,047	71,524	3
K F JACOBSEN CO INC	142,738	71,369	2
STOKELYVAN CAMP INC	141,916	70,958	1
BI-MOR-STATIONS INC	162,263	69,377	2
Columbia Forrest Products, Inc.	138,452	69,226	1
Capital City Companies, Inc.	150,211	69,097	1
CRAWFORD & DOHERTY FOUNDRY CO	138,061	69,031	2
Vanrich Casting	137,708	68,854	1
RADIO CAB CO	146,140	68,886	1
MERRITT #1 INC	173,970	68,681	2
Russell Oil Co.	145,882	68,502	3
Clear One Moulding, INC.	135,744	67,872	1
LES & TERRY'S CHEVRON SERVICE INC	150,968	67,345	2
3G LUMBER CO	134,420	67,210	2
EUGENE F BURRILL LUMBER CO	133,901	66,951	3
MERRITT TURAX INC	157,199	66,781	2
Carson Oil Co.	186,245	66,203	12
Hoestre, Franklin	179,002	66,171	2
GNB INC	131,602	65,801	3
Marx, Carol	131,499	65,750	1

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Cruickshank, Kenneth D. & Karen L.	131,339	65,670	1
McEwen, Richard T.	141,153	65,636	1
Balzer Painting, Inc.	131,173	65,587	1
Lou Dobbins, Inc.	142,378	65,494	2
Jerry Brown Company, Inc.	144,692	65,111	1
Sunnyslope Texaco	139,179	64,718	1
Alan Bowdish, Inc.	146,521	63,932	2
HEWLETT PACKARD CO	127,321	63,661	1
Arendell Properties, LLC	144,610	63,628	1
Davidson Farms, Inc.	126,747	63,374	3
Sunset Fuel Company	126,226	63,113	2
JERRY'S MILWAUKIE BP	134,121	61,696	1
FRED MEYER INC	133,866	61,578	1
JOHNSON ROCK PRODUCTS INC	123,011	61,506	2
JT.VENTURE	151,599	61,107	2
McKay Farms Inc.	122,177	61,089	1
WEST COAST BEET SEED CO	122,008	61,004	2
Valmont Industries	120,212	60,106	1
COIN MILLWORK CO	120,166	60,083	1
TERMINAL FLOUR MILLS CO	120,115	60,058	2
HAP TAYLOR INC	119,827	59,914	1
Blackman's 4-Way Grocery	137,633	59,870	1
Farrelly & Farrelly, LLC	135,723	59,718	1
Neuschwander, Carl	119,079	59,540	1
HAWK OIL CO	140,269	59,534	10
NAUMES ORCHARDS OF OREGON INC	119,000	59,500	1
Twigg Farm	118,557	59,279	1
Wirth, Dennis & Karen	120,310	58,915	2
Jenks-Olsen Farms, Inc.	117,331	58,666	1
Whittier Wood Products Co.	146,440	58,653	2
Wallace, Richard	118,220	58,519	1
Pendleton Flour Mills, Inc.	116,278	58,139	1
Brentano Farms, Inc.	121,852	57,880	1
Kayner, Kurt	115,752	57,876	1
F & Z RENTALS CO	127,826	57,522	1
HERBERT MALARKEY ROOFING CO	114,881	57,441	1
RED CARPET CAR WASH	114,699	57,350	1
Enserv, LLC	124,257	57,158	1
Reiling, Norman & Itha	113,623	56,812	1
Astoria Texaco	126,856	56,451	1
The Jerry Brown Company, Inc.	113,696	56,279	1
Smyth Hereford Ranch	114,706	56,206	1
Radke Farms	114,793	56,164	3
Portland Bolt & Manufacturing Co.	111,750	55,875	2
VAN BEEK DAIRY FARM	111,713	55,857	1
NACCO Materials Handling Group, Inc.	116,738	54,867	1
Arnett, Mark B.	116,937	54,376	1
RUEF FUR RANCH	107,374	53,687	1
DELTA ENGINEERING & MFG CO	107,284	53,642	2
Jersey Development Corp.	117,207	53,329	1
PAVING DIVISION	106,580	53,290	1

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Applicant	Facility Cost	Certificate Value	No. of Certificates
ENVIRONMENTAL RUBBER BONDING CO (ERBCO)	116,997	52,823	2
J & J Farming, LLC	194,324	52,467	1
Newberg Garbage Service, Inc.	104,738	52,369	3
MCCALL HEATING CO	123,846	52,015	1
Kroft, Leroy & Lowell	103,401	51,701	1
CJ'S ALPINE SERVICES INC	114,532	51,539	1
Container Recovery, INC.	858,046	51,483	1
MILLER REDWOOD CO	102,777	51,389	1
CONE LUMBER CO	102,524	51,262	1
Bassett-Hyland Energy Co.	103,286	51,127	1
PACIFIC STEEL FOUNDRY CO	102,250	51,125	2
LAUGHLIN-HALL INC	124,153	50,903	1
Smith Hill Recycling, Inc.	101,435	50,718	1
Neuschwander, Lyle D.	183,705	50,615	3
JERRY NOBLE DAIRY	101,047	50,524	1
Eagle Foundry Company	100,386	50,193	1
Stimson Lumber Co.	100,009	50,005	1
Ideal Door Components, Inc.	100,000	50,000	1
CITY GARBAGE SERVICE	99,720	49,860	2
TRUMIX CONSTRUCTION CO	99,552	49,776	2
SHELDON OIL CO	126,890	49,702	5
CAPUTO TEXACO	111,318	49,537	1
CRESWELL COMMERCIAL SERVICE INC	112,485	49,493	1
EVERETT E MILES, JR	111,633	49,452	2
Sayer Farms	101,501	49,228	1
Desbiens, Barry J.	107,227	49,200	3
LP BUSCH INC	109,041	49,068	1
Woodburn Fertilizer, Inc.	97,935	48,968	1
BICKFORD ORCHARDS INC	109,507	48,676	8
Cascade Construction Co., Inc.	96,475	48,238	1
Portland Willamette Buyer's Industries	101,328	48,131	1
Capitol Recycling & Disposal, Inc.	94,711	47,356	5
Bowers: Roy A. Bowers & Sons, Inc.	94,458	47,229	2
CASCADE CORP	94,402	47,201	1
Hilltop Chevron Foodmart	107,273	47,200	1
David L. Towry, Sr.	95,300	47,174	1
Eagle Foundry Co.	94,252	47,126	1
Avison Wood Specialties, INC.	93,968	46,984	2
LUMBER TECH INC	92,619	46,310	1
NAUMES JOE	121,000	46,100	2
K Farms Inc.	92,130	46,065	2
PACIFICORP	99,850	45,931	1
WEST CENTRAL SERVICE INC	113,149	45,825	1
DARIGOLD INC	97,926	45,626	2
Fisher Corp.	109,420	45,409	1
Langdon & Sons, Inc.	96,932	45,324	2
PED Manufacturing, LTD	90,332	45,166	2
Hockett Farms, Inc.	112,821	45,159	3
Bowers, Roy Dean	90,000	45,000	1
United Disposal Service Inc.	89,949	44,975	3

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Applicant	Facility Cost	Certificate Value	No. of Certificates
McKee Farms	115,705	44,919	3
Marguth: Jerry & Betty	89,834	44,917	1
Kizer Son	89,661	44,831	1
WILLAMETTE BEVERAGE CO	89,313	44,657	1
Tigard ARCO	96,606	44,414	2
WALTER WELLS SONS	88,763	44,382	4
Conrad Wood Preserving Co, INC.	88,657	44,329	2
Pendelton Grain Growers, Inc.	98,682	44,257	4
MEYER ORCHARDS	87,610	43,805	1
Jackson Oil, Inc.	89,295	43,755	1
Kroft, Vernon	86,599	43,300	1
Neher, Larry & Mary Lou	137,641	42,781	2
Ditchen Brothers:DBA Five Oaks Farms	85,404	42,702	1
HANEL LUMBER CO INC	85,349	42,675	2
ATSMA	85,286	42,643	1
PACIFIC MEAT CO	85,092	42,546	2
Bend Garbage	85,009	42,505	1
Kropf: Leroy & Lowell	109,765	42,117	3
Kroft, Veldon D.	99,003	42,076	1
CHEVRON ASPHALT CO	84,076	42,038	1
BROOKMAN CAST INDUSTIRES INC	83,576	41,788	1
SUNSET CRUSHED ROCK CO	83,500	41,750	1
PLUM FIERCE SHELL	95,643	41,605	1
RAINEY'S CORNER MARKET	92,186	41,554	2
Kennel Farms	82,411	41,206	1
Vernon and Galen Kropf	149,573	41,133	1
Vandehey: Robert C. Vandehey Farm	82,013	41,007	1
TRUS JOIST CORP	86,495	40,970	3
BIDDLE ROAD GAS-4-LESS	84,412	40,940	1
NORDSTRAND CEDAR PRODUCTS INC	81,822	40,911	1
J & S Farms	81,765	40,883	1
THIRD STREET SHELL	93,669	40,746	1
Wimer Logging Company	80,822	40,411	3
MCCULLUM'S TEXACO SERVICE INC	91,065	40,362	2
Winmar of Jatzen Beach, Inc.	90,656	40,342	1
Blue Sky Farms, Inc.	80,436	40,218	5
Bourdon, Robert W.	80,016	40,008	1
Lewis, Monte J.	79,925	39,963	2
Pohlschneider: J. & K. Pohlschneider Inc.	79,277	39,639	1
Bodtker, Michael & Lisa	79,239	39,620	1
Ditchen, Todd	79,000	39,500	1
BIRD SONS INC	78,893	39,447	1
Kelly Farms, Inc.	78,865	39,433	1
BRM Co.	78,800	39,400	1
Dinty's Enterprises, Inc.	88,477	39,372	1
MINI MART OF VERNONIA	88,337	39,310	1
EAGLE FOUNDRY INC	78,487	39,244	1
MAY SLADE OIL CO INC	77,917	38,959	4
OK'S AUTO SUPPLY INC	91,543	38,906	1
Rogge Forest Products, Inc.	76,493	38,247	1
Champion International CorpL	76,437	38,219	1

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MCCALL OIL CHEMICAL CO	75,981	37,991	1
KIRK Century Farms Inc.	78,280	37,852	2
LIBBY MCNEILL LIBBY INC	75,467	37,734	2
DUYCK VERNON E	75,224	37,612	1
OREGON CHERRY GROWERS INC	75,110	37,555	1
D E Wood Products	75,086	37,543	1
PECO Inc.	75,000	37,500	1
Instromedix, Inc.	75,000	37,500	1
SIDNEY VAN DYKE DAIRY	74,700	37,350	1
W.J. Wren & W.H. Wren, Partners	96,647	37,209	1
Jensen, Neils/DBA: Neils Jensen Farms	111,000	37,185	1
Thompson, Priscilla E.	74,014	37,007	1
Valley Lime, Inc.	73,882	36,941	1
JOHNSON OIL OF MANZANITA INC	80,183	36,884	1
WILLAMETTE POULTRY CO INC	73,686	36,843	1
Jake's Truck Stop	86,521	36,771	1
NATIONAL FROZEN FOODS CORP	73,480	36,740	1
DRKC, LLC	74,921	36,711	1
OTT DAIRY INC	73,240	36,620	1
Norman H. & Vivian Faulkner	79,508	36,574	1
The Cleanery - Santa Clara	72,898	36,449	1
MONARCH SHINGLE CO	72,884	36,442	3
L 3 Farms Inc.	72,860	36,430	1
Kropf, Gary J.	104,000	36,400	1
Talen Gas-\$-Less	83,621	36,375	1
Kokkeler, Louis L.	72,750	36,375	1
Van Leeuwen, Tim & Lori	72,712	36,356	1
TIME OIL CO	363,034	36,303	2
Malpass Farms	71,745	35,873	1
CLATSKANIE MINI MART	83,082	35,725	1
MCGRAWEDISON CO	71,401	35,701	2
ESTACADA OIL CO	92,607	35,191	1
Baker, Richard D.	72,677	35,009	2
Oregon Brewing Company	69,988	34,994	1
JANTZEN INC	69,961	34,981	3
PARSONS PINE PRODUCTS INC	69,955	34,978	1
JENCK KENNETH M	69,588	34,794	1
SISTER'S OIL CO INC	80,571	34,646	1
Vachter Spray Service, Inc.	69,076	34,538	1
MCDANIEL GRAIN FEED CORP	69,037	34,519	1
Neuschwander, Roger F.	96,634	34,503	4
Eichler, Ken W.	68,945	34,473	1
FRED N BAY NEWS CO	68,909	34,455	1
Welt & Welt, Inc.	86,717	34,253	1
PAPE' BORS INC	78,674	34,223	1
STATION MART	85,443	34,177	1
Argay Disposal Service	91,036	34,139	1
Scheffel Farms, Inc.	68,026	34,013	2
ROBERT W BYRAM	77,231	33,595	1
Quantum Resource Recovey, LLC	67,111	33,556	2
PERMAPOST PRODUCTS CO	67,066	33,533	2

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SPALDING & SON INC	66,818	33,409	2
ED DIRKSEN & SONS INC	82,111	33,255	1
Westmart Foodstores, Inc.	67,158	33,243	1
Reerslev Farms, Inc.	66,472	33,236	1
Keen, Gary	66,208	33,104	1
LLOYD A FRY ROOFING CO	66,151	33,076	1
Strome-Fisher Farms Inc.	65,803	32,902	1
WORKS	65,751	32,876	1
LAGE ORCHARDS INC	65,623	32,812	2
CONSOLIDATED PINE INC	65,608	32,804	1
FRANK LUMBER CO INC	65,430	32,715	1
SOURCE RECYCLING INC	65,390	32,695	1
HEMENWAY FARMS	65,185	32,593	1
NORTH SANTIAM VENEER INC	65,100	32,550	1
The Richwine Co.	64,761	32,381	1
THUN JERSEYS	64,681	32,341	1
Briggs, David R.	121,293	32,143	1
HCR INCDBA BEAVER STATE PLASTICS	64,266	32,133	1
Recycled Plastics Marketing	64,000	32,000	1
Rohner, Edwin J.	63,810	31,905	1
PIMM Farms Inc.	63,754	31,877	2
FAIRGROUNDS SERVICE INC/FAIRGROUNDS CHEV	78,474	31,782	1
Donald F. Wiltse	63,489	31,744	1
Roth, Cecil E.	63,251	31,626	1
HEATING OILS,	62,980	31,490	1
Winterbottom, Howard J. dba/H & H Auto	67,289	31,289	1
Kayner, Kurt & Ellen	62,537	31,269	1
Esterwin, Inc.	62,516	31,258	1
Universal Seed Co.	62,326	31,163	1
DIAMOND CABINETS/WHITE CONSOLIDATED IND	62,320	31,160	1
Burkland Lumber Co.	62,148	31,074	1
Grass Valley Station	66,087	31,061	1
Carl Jr. Farms	74,077	31,019	2
EMERY'S TEXACO	72,946	31,002	1
OREGON WATER CORP	61,886	30,943	2
SUNSET FUEL CO	62,369	30,873	1
FLINTKOTE CO	61,740	30,870	1
MORTON MILLING CO	61,721	30,861	3
Prince Seeds, Inc.	114,250	30,848	1
NORWEST PUBLISHING CO	61,525	30,763	1
PHOENIX TIGER MART	74,922	30,718	1
DON GILES GAS & OIL	70,560	30,694	1
STAR OIL CO	95,641	30,683	2
SOUTHERN OREGON PLYWOOD INC	61,300	30,650	1
Alpha Nursery, Inc.	61,208	30,604	1
FULLERS BP STATION	72,797	30,575	1
HAZEL E WHALEY	73,289	30,415	1
J H BAXTER CO	60,827	30,414	1
TIME OIL	60,723	30,362	1

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Vanport Manufacturing Co.	60,723	30,362	1
L. & D., Inc. of Oregon	61,880	30,321	1
Home Fuel Oil Co.	60,920	30,155	1
RICHARD L ALLEN	73,547	30,154	1
MAYFLOWER FARMS	60,089	30,045	1
PRATUM CO-OP WAREHOUSE INC	70,689	30,043	1
WINTER PRODUCTS CO	60,003	30,002	1
OI GLASS CONTAINER INC	59,880	29,940	1
Glacier Ranch	59,871	29,936	3
Inc.	72,201	29,602	1
DOWNTOWN TEXACO	67,946	29,557	1
Looney Farms Inc.	58,738	29,369	1
Hays, Robert W.	59,853	29,328	1
FIRPLY INC	58,654	29,327	2
Redmond Tallow Co., Inc.	58,408	29,204	1
KAMLADE SR NICOLAAS	57,758	28,879	1
Farm	60,154	28,874	2
WILD RIVER ORCHARDS INC	96,244	28,873	1
Herndon, Tom	57,508	28,754	2
Widmere Brothers Brewing Company	57,452	28,726	1
D & G RENTALS	66,647	28,658	1
Wirth, Dennis D.	57,239	28,620	1
ZIPOLOG MILLS INC	71,320	28,528	1
Phalen, Rodney G.	57,053	28,527	1
WILSONVILLE TEXACO	58,017	28,428	1
ROGUE VALLEY CO INC	56,778	28,389	1
HERVIN CO	56,682	28,341	3
The Bag Connection, Inc.	56,465	28,233	1
PUGH CENTURY DAIRY	56,250	28,125	1
PACIFIC COATINGS, INC	56,209	28,105	1
VAN WEST OIL CO INC	81,421	27,859	2
Kropf, Loyde	55,716	27,858	1
Mt. Jefferson Farms	55,309	27,655	2
Newport Drycleaners	55,143	27,572	1
LIBBY MCNEILL LIBBY	55,000	27,500	1
Irwin-Hodson Metal Manufacturing Co.	54,955	27,478	1
Rohner, Steven J.	121,750	27,394	1
PURDY CORP	91,000	27,300	1
SENECA SAWMILL CO	54,473	27,237	1
MOLECULAR PROBES INC	54,276	27,138	1
Horton: Chris & Joan	183,496	26,607	1
PAUL MEDINA DAIRY	53,124	26,562	1
DESCHUTES COUNTRY STORE INC	53,576	26,520	1
Leppin, Garold H.	52,759	26,380	1
TEXACO FOODMART	64,944	26,302	1
WEST FOODS INC	52,142	26,071	1
CENTER INC	57,118	25,989	1
QUENTIN PROBST	64,953	25,981	1
W.W. LUMBER CO	51,831	25,916	1
ROGUE VALLEY OIL CO INC	51,686	25,843	1
Kroft, Galen & Vernon	51,675	25,838	1

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MIGCO Northwest, Inc.	52,114	25,796	1
GIENGER FARMS INC	51,538	25,769	1
Rexius Forrest By-Products, Inc.	51,475	25,738	3
Davidson, Raymond T.	51,473	25,737	2
Hubbard: C.M. Hubbard Son	51,381	25,691	1
Duerst, John	86,637	25,626	2
Doerfler, David A.	86,637	25,626	2
VALLEY IRON STEEL CO	51,236	25,618	1
Dunn Leblanc	51,158	25,579	1
ROGUE RIVER EXXON	51,545	25,515	1
MEDFORD PEAR CORP	51,000	25,500	1
MT VIEW ORCHARDS	50,778	25,389	1
Reiling, Neal	50,660	25,330	1
Flying W. Ranch, Inc.	72,000	25,200	1
BAKER REDIMIX INC	50,061	25,031	1
Sunshine Dairy Foods Inc.	50,000	25,000	1
Dardanelles	49,860	24,930	1
O C WEBB-BOWEN INC	62,318	24,927	1
Michael J. Monroe dba Bert's Auto Salvage	49,650	24,825	1
T & C WASH SYSTEMS INC	62,019	24,808	1
Gearhart Service Station	49,467	24,734	1
R.D. Farms	79,700	24,707	1
SABROSO CO	49,328	24,664	2
GAMBLE FARMS	49,308	24,654	1
USA	49,107	24,554	1
Resco Plastics, Inc.	49,064	24,532	5
D & J TEXACO	58,377	24,518	1
P. M. Ranch, Inc.	48,504	24,252	1
Pendleton Sanitary Service, Inc.	48,486	24,243	1
Sheldon Oil Co.	48,149	24,074	1
HERBERT MALARKEY PAPER CO	47,521	23,761	1
Danny Dave Farm	47,248	23,624	1
INDEPAK INC	47,141	23,571	1
EVERETT E NILES, JR	57,983	23,483	1
Ferschweiler, Edward	48,408	23,478	1
ROBERT GUTHMILLER	58,500	23,400	1
GLIDE BP	54,918	23,340	1
Yaquina Sanitary, Inc./Thompson's San.	46,570	23,285	1
Bowers, R. Dean	46,545	23,273	1
Prince E. Seeds Inc.	46,396	23,198	1
Coulson Investment Co.	46,273	23,137	1
CFADLER	47,177	23,117	1
Oregon Steel Foundry Company	46,106	23,053	1
E & F EXXON	46,567	23,051	1
Briggs Farms, Inc.	68,600	22,900	2
Neher: Larry Neher, Inc.	45,432	22,716	2
Thomsen Orchard	45,289	22,645	4
Rejuvenation, Inc.	45,205	22,603	1
Wilmes, Walter J.	44,952	22,476	1
J & E ENTERPRISES	50,520	22,229	1
MILES OIL CO INC	45,272	22,183	1

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BARKER MANUFACTURING CO	44,095	22,048	1
NEWOOD PRODUCTS OF OR	43,918	21,959	1
MCGRADY KENNETHSHARON	43,706	21,853	1
PACIFIC DETROIT DIESEL ALLISON INC	43,441	21,721	1
Vanasche Farms	66,230	21,689	2
DON WILSON ENTERPRISES INC	52,800	21,648	1
MCMILLAN SHINGLES CO	43,161	21,581	1
May Slade Oil Co. Inc.	42,943	21,472	1
CLARK & POWELL	42,877	21,439	1
Schmidt, Robert	42,791	21,396	2
Miller's Sanitary Service, Inc.	42,742	21,371	1
Ropp, Lew	45,403	21,339	1
Anderson, Jonie/dba Rogue Cleaners	42,596	21,298	1
K-G'S ONE STOP MARKET	51,775	21,228	1
Lindsay Brothers	42,260	21,130	1
BONBRIGHT OIL CO	43,032	21,086	1
FORREST PAINT CO	41,672	20,836	1
La Point, Gary	66,109	20,824	1
STAUFFER CHEMICAL CO	41,591	20,796	1
WILSON MOTORS	41,545	20,773	1
HELLER & SONS DISTRIBUTING INC	43,500	20,663	1
ALLEN FRUIT CO INC	41,213	20,607	1
JASPAR SEED	41,136	20,568	1
MOORE CLEAR CO	41,075	20,538	1
Campbell Crane & Rigging Service Inc.	41,000	20,500	1
WILLIAM H BURRELL, JR	40,917	20,459	1
Solidur Pacific Co.	40,759	20,380	1
CO	40,415	20,208	2
Smith Hill Systems LTD	39,485	19,743	1
Plume, Edward Jean	39,426	19,713	1
Pioneer Truck Equipment, Inc.	39,244	19,622	1
LITHIA EXXON	39,624	19,614	1
Central Oregon Dry Cleaners	39,200	19,600	1
SMART MART INC	60,998	19,519	1
Miller: Scott Miller, Inc.	40,970	19,323	2
OREGON	38,631	19,316	1
Atkinson, Phillip	132,764	19,251	1
ROBERT WASSMER DAIRY	38,198	19,099	1
CO	38,140	19,070	1
CHARBONNEAU GOLF CLUB INC	38,062	19,031	1
STAUFFER CHEMICAL	37,998	18,999	1
Jubitz Truck Stop	37,678	18,839	1
Hopton Technologies, Inc.	37,667	18,834	1
BARNETT TIGER MART	37,958	18,789	1
Woodburn Fertilizer & Grain, Inc.	37,557	18,779	1
Weichman, Richard T., Jr.	37,500	18,750	1
Smith: Loren Smith Farms	37,417	18,709	5
OREGON POTATO CO	186,212	18,621	1
RONALD H GUSTOFSON	49,652	18,620	1
Stinebaugh, S.J.	48,771	18,533	1
COVERALL UNIFORM SUPPLY CO INC	37,033	18,517	1

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Riverside Cleaners, Inc.	37,000	18,500	1
EMPIRE BUILDING MATERIAL CO	36,849	18,425	1
CHENEY FOREST PRODUCTS	36,661	18,331	1
Don & Laura Christensen	36,590	18,295	1
DURSON FARMS	36,540	18,270	1
J & L DAIRY	36,535	18,268	1
Schwanke, Howard E.	40,466	18,239	2
BEACHMAN ORCHARDS INC	41,612	17,982	3
HOBIN LUMBER CO	35,947	17,974	2
KAISER CEMENT GYPSUM CORP	36,478	17,897	3
CRATER LAKE AVENUE EXXON	36,094	17,867	1
GRUNDER EQUIPMENT REPAIR	35,448	17,724	2
CEDAR HILLS ARCO	36,059	17,669	1
ROGUE RIVER ORCHARDS ORE LTD	175,500	17,550	1
COMCO CONSTRUCTION DBA RIVER BEND SAND	35,055	17,528	1
Schaumburg Investments	35,014	17,507	1
Quail Mountain, Inc.	35,000	17,500	1
CORVALLIS KENNELS	50,692	17,489	1
BEAR CREEK OPERATIONS INC	34,969	17,485	7
Lehl Disposal Co., Inc.	34,946	17,473	1
Tri County Construction Clean-up Inc.	34,866	17,433	1
Goffena, Stanley	34,787	17,394	3
GRIFFIN FARM	34,748	17,374	1
EDWARDS ORCHARDS	34,719	17,360	1
WILLIAMSON ROBERT G & ELIZABETH	34,712	17,356	1
Smith: Bill Smith ITH	34,471	17,236	1
CONTINENTAL GROUP INC	34,459	17,230	1
FRED MESSERLE SONS	34,444	17,222	2
Singer, John	34,226	17,113	1
International Paper	34,153	17,077	1
Loren's Sanitation Service, Inc.	34,025	17,013	2
BARBEY PACKING CORP	33,940	16,970	1
Nulf: Douglas K.	33,362	16,681	1
JC JONES OIL CO INC	33,026	16,513	2
Oldham's Classic Cleaners	32,993	16,497	1
HILLCREST CORP	82,049	16,410	1
DERYL FERGUSON	40,423	16,371	1
HAYWORTH SEED WAREHOUSE INC	32,399	16,200	1
ERIC & ROY PETERSON FARM	32,319	16,160	1
ORGANIC FERTILIZER CO	37,582	16,086	2
Union Cardlock	32,106	16,053	1
Keeley: Don & Joann	40,611	16,041	1
Richards, Martin	101,278	16,032	2
Truax Petroleum Sales, Inc	33,564	15,978	6
Craig's Cleaners	31,900	15,950	1
MCCLOSKEY VARNISH CO OF	31,882	15,941	2
Zulinski, Wallacel	59,000	15,930	1
JAMES D HOUCK	31,853	15,927	1
Sabrosco Co.	31,810	15,905	2
Sauter, Michele (50%) Gerald (50%)	31,598	15,799	1

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Applicant	Facility Cost	Certificate Value	No. of Certificates
HARRIS ENTERPRISES INC	31,484	15,742	19
LEMONS MILLWORK INC	31,200	15,600	1
Donaldson's Chevron Service	31,158	15,579	1
Campus Cleaners & Laundry, Inc.	31,000	15,500	1
Bowers, Eric & Vicki	30,852	15,426	1
HANCE OIL CO	31,450	15,411	1
RONDE VALLEY LUMBER CO	30,410	15,205	1
Stragey, Terry L.	30,398	15,199	1
West, Dwight	30,002	15,001	3
Ernst Hardware/dba Cascade Tractor Co.	30,516	14,910	3
PRIDE OF OREGON STATIONS INC	30,347	14,770	7
82ND & LIEBE - ARCO	29,538	14,769	1
West 11th Coin Laundry & Cleaners, Inc.	29,500	14,750	1
CO	29,111	14,556	1
Dallas City Cleaners	29,000	14,500	1
ROLLAND S PIATT	29,834	14,320	1
REIMANN MC KENNEY	28,600	14,300	1
RIEGER JOHN	28,565	14,283	1
Leavy Farms Inc.	28,409	14,205	1
Webster Cleaners	28,000	14,000	1
OREGON BULB FARMS	27,754	13,877	1
Ellison Timber CO	27,639	13,820	1
BRACELIN YEAGER ASPHALT CO	27,520	13,760	1
HERCULES	27,504	13,752	1
Eder Brothers, Inc	27,100	13,550	2
Lane International Corp.	26,937	13,469	1
BAKER AIRCRAFT INC	26,673	13,337	1
Ditche: Robert A. & Gregg	26,664	13,332	1
Eder, Roger	26,620	13,310	1
CULBERTSON ORCHARDS	44,337	13,301	1
MT HOOD REFUSE REMOVAL INC	26,582	13,291	1
Ackerman Orchards,, Inc.	26,510	13,255	1
GRANT'S PETROLEUM INC	31,545	13,091	1
NORMAN ARMSTRONG DAIRY	26,172	13,086	1
GILSONITE INC	26,059	13,030	2
WESTSIDE MOBIL CARWASH	26,435	12,953	1
Tillamook Veneer Co.	25,905	12,953	1
Pepsi-Cola Bottling Co. of Eugene	25,872	12,936	1
DAELCO INC	25,725	12,863	1
INC	26,592	12,764	1
HYSTER CO	26,196	12,753	2
MCCRACKEN MOTOR FREIGHT INC	25,500	12,750	1
JACKSON OIL INC	26,461	12,749	2
Winnoco, Inc.	25,881	12,686	2
GRANTS PASS MOULDING INC	25,321	12,661	1
CALBAG METALS CO	25,311	12,656	1
FRED MESSERLE & SONS	25,152	12,576	2
Warn Industries, Inc.	25,087	12,544	1
DIRKSEN INVESTMENTS	32,396	12,472	1
BLUE LAKE PACKERS INC	24,892	12,446	2
CHEMBOND CORP	24,882	12,441	5

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Applicant	Facility Cost	Certificate Value	No. of Certificates
Synthetech, Inc.	24,845	12,423	1
GRANGE CO-OP SUPPLY ASSOCIATION	24,639	12,320	2
H & S ENTERPRISES INC	25,120	12,309	1
BURNS BROS INC	25,366	12,303	1
T P PACKING CO	24,429	12,215	1
Langmack Seed Co., Inc.	36,565	12,188	2
Marshall's Oil and Insulation Co.	38,201	12,134	2
Nyquist Country Farms	24,170	12,085	1
DELPHIA OIL INC	24,147	12,074	3
Eastman, Burl J.	24,074	12,037	1
Swan Island Cardlock	24,033	12,017	1
PURDY KENNETH ELANORE S	119,700	11,970	1
Kropf, Mr. & Mrs. Gary J.	23,636	11,818	2
Willamette Seed Co.	23,445	11,723	1
U S PLYWOODCHAMPION PAPERS INC	23,413	11,707	1
HARRIS PINE MILLS	23,375	11,688	1
NORTHWEST NATURAL GAS CO	23,362	11,681	1
Loon Lake Lodge Resort	23,347	11,674	1
Trico Farms	23,325	11,663	1
DEJAGER	23,247	11,624	1
GOULD INC	23,208	11,604	2
Hubbard Cleaners & Laundromat	23,068	11,534	1
BEND MILLWORK SYSTEMS	22,836	11,418	2
OSTRANDER RESOURCES CO	22,695	11,348	1
MIAMI SHINGLE SHAKE CO	22,500	11,250	1
RKM, Inc.	86,446	11,238	1
PIONEER INTERNATIONAL INC	22,910	11,224	2
FENK CARL	22,205	11,103	2
Tee to Green II, Inc.	22,149	11,074	1
Carlton Truck Stop, INC.	22,110	11,055	1
CRATER LAKE ORCHARDS	110,139	11,014	1
MYRTLE CREEK GARAGE	37,316	11,008	1
Truax Oil	23,164	11,003	2
Inc.	22,000	11,000	1
CORDREY ENTERPRISES INC	21,960	10,980	1
SIXTH STREET SHELL	23,106	10,975	1
CASCADE ORCHARD INC	21,899	10,950	1
MERK WEAVER ENTERPRISES INC	21,609	10,805	1
Campbell's Cleaners, Inc.	21,605	10,803	1
ROGUE RUSSET ORCHARDS INC	108,000	10,800	1
WESTERN PULP PRODUCTS CO	21,585	10,793	1
Hobin Lumber Co.	21,550	10,775	1
Knox, Marion L.	23,750	10,725	2
OLSONLAWYER LUMBER INC	21,373	10,687	1
Van Wormer Service	21,135	10,568	1
Walker: Peter Walker & Son	21,042	10,521	1
DONALDSON'S CHEVRON	23,875	10,505	1
Schult Homes Corp., Marlette Homes, Inc	20,938	10,469	1
SHEIRBON JOE C	30,007	10,332	2
GEORGE'S TEXACO	25,802	10,192	1
BEND AGGREGATE PAVING CO	20,342	10,171	1

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Applicant	Facility Cost	Certificate Value	No. of Certificates
HEARIN FOREST PRODUCTS INC	33,870	10,161	1
CASCADE LOCKS LUMBER CO	20,151	10,076	1
Roth, Kenneth	27,036	10,003	1
SER	20,000	10,000	1
Peter J. Kryl	19,967	9,984	1
G & P Farms	24,585	9,927	3
Miller, Miller	32,768	9,830	1
MILLER-NORMAN	19,635	9,818	2
JAMES G & BERNICE D VOELZ	22,768	9,790	1
THOMAS MOTORS INC	21,754	9,789	1
KELLY FIELD PLANT PAC PRIDE	19,479	9,740	1
Schmidt, Ronald	19,445	9,723	2
Charles H Lilly	21,983	9,673	1
HT REA FARMING CORP	19,139	9,570	1
JIM'S MARKET	23,872	9,549	1
SPRINGFIELD FUEL CENTER INC	19,089	9,545	1
TOWER OIL CO	18,993	9,497	1
G & R AUTO WRECKERS INC	18,984	9,492	3
Phelan, Gerald E.	158,195	9,492	1
BURKHART JACK R	18,933	9,467	1
FOOD CONNECTION	18,922	9,461	1
TRAPP'S EASTSIDE VELTEX STATION	19,267	9,344	1
WILSONVILLE CARDLOCK	18,594	9,297	1
CASCADE FARM MACHINERY CO INC	19,238	9,274	2
TRASHCO INC	18,543	9,272	1
Burns Junction Station	18,482	9,241	1
Nosler, Inc.	18,334	9,167	1
SAMS SERVICE	18,855	9,145	1
Miller, Valentine & Delores	28,507	9,122	1
GEMCO WOOD PRODUCTS INC	18,226	9,113	1
LEONETTI FURNITURE CO	18,187	9,094	1
SUNRISE ACRES DAIRY	18,043	9,022	1
R C LONG SHAKE CO	18,010	9,005	1
VALLEY ENTERPRISES	17,953	8,977	1
DELONG SPORTSWEAR	17,899	8,950	1
WEBFOOT FERTILIZER CO	17,895	8,948	1
SANDY BLVD CARDLOCK	17,895	8,948	1
PAASCH ORCHARDS INC	24,421	8,915	2
COPELAND PAVING INC	30,918	8,812	1
Bingman, Elwyn D.	17,600	8,800	1
PRICE-LESS GAS	17,932	8,787	1
W.J. Voit Rubber Corp.	17,335	8,668	1
HARRY & DAVID	17,275	8,638	1
Grimes: Charles V.	17,270	8,635	1
HOMETTE CORP	17,105	8,553	1
Service	19,406	8,539	1
FRED MESSERLE SONS INC	16,961	8,481	2
Capitol Recycling & Disposal, Inc..	16,910	8,455	1
MCMINNVILLE CHEVRON	17,361	8,333	1
H P MINI STORAGE	16,500	8,250	1
SUNNY 70 FARMS INC	16,458	8,229	1

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7TH & ALDER CARDLOCK	16,298	8,149	1
WAYNE BURGER	19,803	8,119	1
Christensen, Don & Laura	16,195	8,098	1
TRUMIX LEASING CO	16,187	8,094	2
DBA THOMSEN ORCHARDS	16,132	8,066	1
MAINSTOP MINI MARKET & TEXACO	16,783	8,056	1
DBA POOLEY ORCHARDS	16,056	8,028	1
Northwest Foam Products, Inc.	16,000	8,000	1
Oregon Glass Co. Inc.	15,930	7,965	1
Krista Cody LTD. dba/Astoria Mini Mart	15,922	7,961	1
TALLMAN ORCHARDS INC	15,890	7,945	1
ACKERMAN GEORGE M	15,890	7,945	1
Kirkelie, Maynard	31,064	7,921	1
29TH AVENUE CARDLOCK	15,814	7,907	1
DEWW Farms	15,800	7,900	1
OCHOCO PELLET PLANT	15,728	7,864	1
MIDVALLEY GLASS CO	15,633	7,817	1
Knox Seed, Inc.	24,000	7,800	1
Van Dyke, Bernard	15,582	7,791	1
DELANY'S FUR RANCH INC	15,497	7,749	1
MARSH GLENN W	15,495	7,748	1
Whitney, Harold L.	15,408	7,704	1
CLIFFORD E JENKINS	18,571	7,614	1
PLANNED MARKETING SOLUTIONS	15,000	7,500	1
Truitt Bros., Inc.	15,000	7,500	1
DON MINEAR ORCHARD	24,729	7,419	1
CHALLENGE MANUFACTURING INC	14,798	7,399	1
Camp Sherman Stores	14,928	7,389	1
PACIFIC PRIDE CLACKAMAS CARDLOCK	27,772	7,360	1
CHATEAU BENOIT	14,676	7,338	1
M GOE & SON INC	14,569	7,285	1
JIM DURRER	14,506	7,253	1
KENTON PACKING CO	14,376	7,188	1
LANDOLT, RAMON G SUSAN M	14,305	7,153	1
PETER NAUMES ORCHARD	14,300	7,150	1
SUPREME PERLITE CO	14,283	7,142	1
BROWNLEE BUSH DAIRY	14,278	7,139	1
PORTLAND CANNING CO INC	14,227	7,114	1
Briggs, David R	14,200	7,100	1
CUMMINS OREGON DIESEL INC	14,140	7,070	1
McKee, Robert	13,966	6,983	1
VALLEY CHEM OF LAGRANDE	13,944	6,972	1
JARED L ROGERS CHEVRON	14,513	6,966	1
OLYMPIC PIPE LINE CO	17,392	6,957	1
TAMURA KENNETH WADE	13,891	6,946	1
PREMIER MANUFACTURING CO	13,594	6,797	1
PORTABLE EQUIPMENT SALVAGE CO	13,568	6,784	1
LARAWAY ORCHARDS	13,567	6,784	2
NIEHUS, ROBERT C	13,516	6,758	1
Jensen, Neils/DBA: Neils Jensen Farm	13,500	6,750	1
D P ORCHARDS INC	13,400	6,700	1

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Applicant	Facility Cost	Certificate Value	No. of Certificates
LOVELAND ENTERPRISES INC	13,340	6,670	1
Homebuilders Northwest, Inc.	13,305	6,653	1
PARK PLACE WOOD PRODUCTS INC	13,249	6,625	1
HYDRAULIC & MACHINE SERVICES INC	13,200	6,600	1
LAUREL VALLEY STORE	15,301	6,579	1
RAYMOND A WILHITE ORCHARD	13,000	6,500	1
WILBURELLIS CO INC	13,000	6,500	1
Ackerman, Wally F.	12,975	6,488	1
CONSOLIDATED FOODS CORP	12,908	6,454	1
GRESHAM TRANSFER INC	12,907	6,454	2
JAGER ROGER DE	12,850	6,425	1
Robertson, Kenneth L.	12,836	6,418	2
MT ANGEL MEAT CO	12,824	6,412	1
Chapman, Allen D.	12,750	6,375	1
PEERLESS PATTERN WORKS	12,732	6,366	1
G & S CHEVRON	13,194	6,333	1
CORVALLIS SAND & GRAVEL CO	12,609	6,305	1
Astoria Recycling, INC.	12,567	6,284	1
BISSINGER CO	12,540	6,270	1
BUTZIN ORCHARD	12,536	6,268	1
Versteeg, Lester L. & Ruth M.	12,501	6,251	1
MARWYN NAEGELI DAIRY	12,465	6,233	1
SALEM ROAD DRIVEWAY CO	12,377	6,189	1
Temple Distrubuting, Inc.	12,822	6,155	1
University Texaco	12,301	6,151	1
Mt. Harris Farms	12,250	6,125	1
Rieben, Erenest R	12,086	6,043	1
MARIE COCHRAN DAIRY	11,987	5,994	1
BAKER VALLEY CHEVRON	12,477	5,927	1
LITTLE RIVER BOX CO	11,825	5,913	1
NEHALEM VALLEY SANITARY SERVICE	11,805	5,903	1
MCISAAC RROBERT M	11,661	5,831	1
SUMICH JOHN G NICHOLAS D	11,629	5,815	1
DENNIS THOMPSON/TIGARD ARCO	15,010	5,779	1
CHRISTENSEN TIMOTHY JASE	44,050	5,727	1
Bashaw Land & Seed, Inc.	11,395	5,698	1
LARIZA FRANK	11,369	5,685	1
BOYD COFFEE CO	11,368	5,684	1
HAFCO INC	11,344	5,672	1
RYDER TRUCK RENTAL	11,323	5,662	3
MOE FRED E	11,186	5,593	1
CONCRETESTEEL CORP	11,161	5,581	1
APOLLO METAL FINISHING INC	11,089	5,545	1
HUMPHREY DAIRY FARM	11,048	5,524	1
Alberta Body & Paint	11,706	5,502	3
MARKMAN MARVIN L	10,940	5,470	1
PAGE PAVING CO	10,890	5,445	1
PETERS HARRISON	10,800	5,400	1
DOUGLAS L PICKELL	11,120	5,338	1
Vanleeuwen: George Vanleeuwen Farms	10,600	5,300	1
CHIAPPISI JEROME P & ANDREA L	10,580	5,290	1

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SPEAR BEVERAGE CO	10,529	5,265	1
Keeley: Daniel C.	16,942	5,252	1
MAY DEPARTMENT STORES CO	10,488	5,244	1
GALE ORCHARDS	10,469	5,235	1
OBERG SAMUEL	10,463	5,232	1
WALTON INC	10,367	5,184	1
COAST RANGE PLYWOOD INC	10,340	5,170	1
Temp Control Mechanical Corp.	11,022	5,169	5
CAL'S SERVICE CENTER	10,990	5,165	1
Kuenzi, Lowell & Elizabethl	10,325	5,163	1
CONCOR INC	10,212	5,106	1
Pistol River Store	10,085	5,043	1
Ellis: Merton Gordon	9,990	4,995	1
BREWED HOT COFFEE INC	9,765	4,883	1
ALTO AUTOMOTIVE INC	10,515	4,874	2
CLOVERCREST MARKET	10,745	4,835	1
KOBOS CO	9,560	4,780	1
JACKSONS MINI STATION	9,949	4,776	1
Warden Farms	9,500	4,750	1
Funrue, Sherrill A.	9,216	4,608	2
Pacific Sanitation	9,205	4,603	1
SAM OBERG	9,015	4,508	1
OATES, GREGORY H	9,000	4,500	1
FARM	8,995	4,498	1
KLINDT PAUL H	8,953	4,477	1
TOM BLANCHARD DAIRY	8,819	4,410	1
Roth, Scott	8,750	4,375	1
CARROLL PAUL E	8,749	4,375	1
MILL CITY CHEVRON STATION	8,600	4,300	1
Bellview Moulding Mill	8,584	4,292	1
United Grocers, Inc.	8,549	4,275	1
PORTLAND PROVISION CO	8,527	4,264	1
NPI, Inc. dba/Northwest Polymers	8,500	4,250	1
HEWLETT PACKAR	8,374	4,187	1
BELT HARLEY S	8,371	4,186	1
OREGON COAST TOWING CO	8,300	4,150	1
BENTON III CHARLES K	13,800	4,140	1
CUMMINS NW INC	8,200	4,100	4
WILLIS BOB G	7,995	3,998	1
ONTARIO FLIGHT SERVICE	8,141	3,989	1
ROOD JR FRANK B	7,971	3,986	1
LARAWAY W C	7,945	3,973	1
MARK'S TEXACO	7,940	3,970	1
LOUIS HILLECKE & SONS	7,843	3,922	1
FRANSSSEN B H	7,796	3,898	1
FORT HILL LUMBER CO	7,783	3,892	1
Knaupp Seed Farm, Inc.	7,749	3,875	1
KELLY FIELD CHEVRON	7,719	3,860	1
TRECO	7,620	3,810	1
Eder Brothers, Inc.	7,620	3,810	1
U R EXPRESS INC	7,532	3,766	1

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Neuschwander, Robert E.	7,515	3,758	1
SOLEM, INC.	7,507	3,753	1
Valley View Farms Inc.	7,250	3,625	1
CLIFF & WANDA BAUER	7,232	3,616	1
JOSEPH A HUFF	8,590	3,608	1
EGGER RICHARD HERMAN CAROL JEAN	7,209	3,605	1
NAUMES SUSAN F	36,000	3,600	1
CLACKAMAS PACIFIC PRIDE	7,146	3,573	1
J M SMUCKER CO	7,101	3,551	1
PITNEY JAMES B BETTY Z	7,086	3,543	1
Nixon Farms Inc.	7,076	3,538	1
WEST HARVARD FURNITURE CO	7,000	3,500	1
HORNING BROTHERS	6,989	3,495	1
PUTNAM ELWYN L	6,960	3,480	1
YANSY POINT FUEL CO	6,923	3,462	1
GEVURTZ FURNITURE CO	6,839	3,420	1
Davidson Leasing	6,775	3,388	1
EVERT FREDERIKS DAIRY	6,682	3,341	1
Knox: Arnold E. Knox Farm	6,500	3,250	1
Larvik Disposal, Inc./dba: City Garbage	6,488	3,244	1
METROFEULING INC	6,956	3,165	1
SILVER DOME FARMS	6,285	3,143	1
CORP	6,270	3,135	1
MERZ ORCHARDS INC	31,271	3,127	1
STEWART BERNARD A	6,241	3,121	1
SHADETREE LANDSCAPE	6,043	3,022	1
HEIDGERKEN DONALD R & JANET M	5,982	2,991	1
C & D LUMBER CO	7,551	2,983	1
PACIFIC RIM TRADING	5,950	2,975	1
BP GLADSTONE	5,826	2,913	1
Chestnut Place Apartments	5,803	2,902	1
HAWK TRANSPORTATION LTD	5,798	2,899	1
Wares Auto Body, Inc.	6,481	2,891	2
SANDRA & GARY POWELL	5,596	2,798	1
GHSM INC	5,572	2,786	1
PETER KRYL	5,568	2,784	1
MARC NELSON OIL CO	5,883	2,736	1
DELON OLDS CO	5,413	2,707	2
BAIRD'S AUTO REPAIR	5,370	2,685	1
FOX ROBERT W	5,332	2,666	1
ATLAS REFRIGERATION INC	5,325	2,663	1
DBA S S FARMS	5,309	2,655	1
Taylor, Dennis	5,233	2,617	1
Colspur Corp DBA Astoria Recycling	5,208	2,604	1
MJC ENTERPRISES	5,200	2,600	1
Eisiminger, Dale A.	6,500	2,600	1
Miller, Valentine	10,800	2,592	1
KINDLER BRUCE R	5,157	2,579	1
MCNIEL JESS JR & LORRAINE	5,150	2,575	1
KLAMATH TALLOW CO	5,094	2,547	1
The Heating Specialist, Inc.	5,791	2,547	3

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Applicant	Facility Cost	Certificate Value	No. of Certificates
R Plastics, Inc	5,016	2,508	1
ITA SERVICES	5,000	2,500	1
Greg's Auto Service	4,990	2,495	2
GEBHARDT EDWIN W & FRANKLIN H	24,750	2,475	1
DAIRY DE BONTE HOE	4,900	2,450	1
KISTNER & WEBER	4,856	2,428	1
CLEVELAND AUTO REPAIR INC	4,782	2,391	1
GC CO INC	4,734	2,367	1
CASCADE FOREST PRODUCTS INC	4,650	2,325	1
SCOTT FARMS	4,611	2,306	1
EARNEST EDWARD W	4,500	2,250	1
Hwy 99 Tire & Automotive Inc.	4,497	2,249	1
FISHER'S ARCO	4,295	2,148	1
FORD'S CHEVROLET	4,252	2,126	1
JOHNSON CREEK TEXACO	4,250	2,125	1
SERVICE STATION	4,167	2,084	2
LANDL SAWYER PAINTING & SANDBLASTING INC	4,158	2,079	1
PRO AUTOMOTIVE	4,104	2,052	1
Robert Stafford, Inc.	4,100	2,050	1
BIELENBERG DAVID J	6,800	2,040	1
Rohner Farms	7,550	2,039	1
MOORES BRAE MAILEN	4,049	2,025	1
Hofer, Duane R., Jr.	4,000	2,000	1
AJ'S TRUCK & AUTO SHOP	3,995	1,998	1
CERTIFIED AUTOMOTIVE	4,680	1,989	1
NINE T NINE TOWING INC	3,949	1,975	1
AUTO DOCTOR	4,624	1,965	1
SEASIDE AUTO BODY	3,904	1,952	1
Weldon's Enterprises, Inc.	3,900	1,950	1
JOHN'S FRAME SHOP	3,851	1,926	1
HARVEY & PRICE CO	3,844	1,922	2
CHARLES	3,824	1,912	1
KOBLES AUTOMOTIVE SERVICE	3,800	1,900	1
RUSH AUTOMOTIVE	3,795	1,898	1
Scott's, Inc./dba: Hilltop Shell	3,795	1,898	1
SHEPPARD MOTORS INC	3,789	1,895	1
Fink Sanitary Service, Inc.	3,780	1,890	1
PREWITT'S QUALITY BODY & PAINT	5,150	1,877	2
ALL AROUND AUTOMOTIVE	4,450	1,869	1
BORDEN CHEMICAL CO	3,733	1,867	1
DAVID DOERFLER	3,726	1,863	1
EASTGATE AUTO BODY INC	3,669	1,835	1
Chembond, Corp.	3,637	1,819	1
A & M BODY & FENDER SERVICE	3,599	1,800	1
SMALL WORLD AUTO CENTER INC	3,585	1,793	2
EAST AMAZON AUTO	4,250	1,785	1
LARIZA ORCHARDS INC	17,845	1,785	1
ING	3,500	1,750	1
STEPHENS GERALD S MERRILEE	17,500	1,750	1
Bielenberg, David J.	3,500	1,750	1

**Certificates Issued by Applicant
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Applicant	Facility Cost	Certificate Value	No. of Certificates
Double J Farms	4,199	1,743	1
RIVER RD	3,450	1,725	1
HALLS' AUTOMOTIVE	3,450	1,725	1
FRONT STREET AUTOMOTIVE	3,445	1,723	1
QUALITY VOLVO SERVICE	4,150	1,722	1
MCKENZIE TIRE INC	3,429	1,715	1
B & F Drycleaners, Inc.	3,425	1,713	1
PRO AUTOTECH INC	3,400	1,700	1
HAWTHORNE AUTO CLINIC INC	3,395	1,698	1
BAUER ENTERPRISES INC	3,372	1,686	1
CASCADE CHEVRON	4,048	1,680	1
ARTISAN AUTOMOTIVE INC	3,355	1,678	1
MEIER & FRANK	3,348	1,674	1
POWERHOUSE ENGINES	3,347	1,674	1
STAR BODY WORKS	3,300	1,650	1
DELON MOTOR CO	3,295	1,648	1
METRO TIRE & AUTO REPAIR	3,295	1,648	1
BRIAN DAVID STANDFORD	3,295	1,648	1
HOLMES E R	3,292	1,646	1
HAYDEN SAAB SERVICE	3,996	1,638	1
MEL'S BO INC	3,995	1,638	1
PANKRATZ AUTO SERVICE	3,250	1,625	1
SCHOLLS FERRY CHEVRON	3,225	1,613	1
MERJER ORCHARD	16,000	1,600	1
EUROTECH	3,200	1,600	1
ALLEN'S AUTOMOTIVE & TOWING INC	3,196	1,598	1
BUG WORKS INC	3,157	1,579	1
Don Rhyne Painting Co.	3,129	1,565	1
BLOOMS AUTOMANIA	5,484	1,563	1
DAIRYFOLKS HOLSTEIN FARM	3,113	1,557	1
Larry Launder, Inc.	3,790	1,554	1
PRESTIGE AUTO REPAIR	3,105	1,553	1
TNT REDDAWAY TRUCK LINE	3,095	1,548	1
ACP	3,095	1,548	1
CT AUTO REPAIR	3,095	1,548	1
RON BENNETT	3,095	1,548	1
PRECISION MOTOR CAR LTD	3,095	1,548	1
BUD'S REPAIR SERVICE	3,095	1,548	1
Towler Refrigeration	3,044	1,522	1
GRESHAM CHEVRON	3,000	1,500	1
OLD TOWN CHEVRON	3,000	1,500	1
BI-MART CORP INC	3,000	1,500	1
MARION AG SERVICE INC	3,000	1,500	1
SANDY AUTO BODY INC	3,000	1,500	1
SCOTT'S INC	3,000	1,500	1
DUFRESNE'S AUTO SERVICE INC	3,000	1,500	1
STEVE'S AUTOMOTIVE	3,000	1,500	1
TALLMAN ORCHARDS	15,000	1,500	1
LADDS AUTOMOTIVE REPAIR	3,000	1,500	1
ROBERSON SHELL	3,000	1,500	1
ACTION AUTO & RADIATOR	3,000	1,500	1

**Certificates Issued by Applicant
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Applicant	Facility Cost	Certificate Value	No. of Certificates
INC	3,000	1,500	1
BROOKINGS UNION 76	2,995	1,498	1
MIKE O'HARA	2,995	1,498	1
CLEMENS CHEVRON	2,995	1,498	1
CITY AUTOMOTIVE	2,995	1,498	1
APPLE CITY AUTO BODY SHOP	2,995	1,498	1
K-FALLS AUTO SERVICE	2,995	1,498	1
AUTOMOTIVE INC	2,995	1,498	1
COURTSEY AUTOMOTIVE INC	2,994	1,497	1
RIVERSIDE JEEP EAGLE	3,696	1,497	1
JANTZEN BEACH CHEVRON	2,981	1,491	1
LEE WIENKE	2,972	1,486	1
KLAMATH AUTO WRECKERS INC	2,945	1,473	1
BEWLEY MECHANICAL SYSTEMS INC	3,601	1,458	1
CENTRAL AUTO SERVICE INC	3,600	1,458	1
FABRICATING	2,900	1,450	1
VERGER CHRY-PLYM-DODGE INC	3,607	1,443	1
MICHAEL H & SHERRIE L BUCKRIDGE	2,869	1,435	1
PETER'S AUTO WORKS INC	2,861	1,431	1
LUKAS AUTO PAINTING & REPAIR	2,861	1,431	1
Ashenber, R.S.	2,850	1,425	1
BUCK MEDICAL SERVICES	2,850	1,425	1
APPLEGATE AUTOMOTIVE	2,850	1,425	1
CHAMBERS PLUMBING & HEATING INC	2,849	1,425	1
JOHN'S AUTOMOTIVE SERVICE	3,525	1,410	1
COMFORT CONTROL INC	3,521	1,408	1
KENNETH W DARROW	2,805	1,403	1
LUCAS MACK SALES & SERVICE INC	2,804	1,402	1
AL'S HEATING, A/C & SPAS	3,505	1,402	1
AL'S AUTOMOTIVE SERVICE CENTER	2,804	1,402	1
INC	2,800	1,400	1
TOOL BOX	2,795	1,398	1
D & W AUTOMOTIVE	2,795	1,398	1
CAROL BEVINS AUTOMOTIVE	2,785	1,393	1
PIERCE JR ROY	13,880	1,388	1
ENGINES	3,468	1,387	1
NU WAY BODY & FENDER WORKS	2,755	1,378	1
FLY BY NIGHT REFRIGERATION	2,750	1,375	1
HONKE HEATING & AC	2,750	1,375	1
ORIENT AUTO SERVICE INC	2,750	1,375	1
AALTONEN & JAMES, Inc.	2,745	1,373	1
PROFESSIONAL DRIVERS & DISPATCH	4,195	1,363	1
BROAD-MILL CO	2,706	1,353	1
MOUNTAIN TECH	2,700	1,350	1
SARGENT AUTOMOTIVE	2,699	1,350	1
The Gold Wrench	2,695	1,348	1
DAILEY'S TIRE & WHEEL	2,695	1,348	1
CORNELIUS AUTO REPAIR SERVICE INC	3,400	1,343	1
B & E IMPORTS DBA GRESHAM HONDA	3,400	1,343	1
SHELDON'S TEXACO & MUFFLER SHOP	3,400	1,343	1
The Master Wrench, Inc.	3,400	1,343	1

**Certificates Issued by Applicant
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Applicant	Facility Cost	Certificate Value	No. of Certificates
University Honda	3,400	1,343	1
MIKE STRASSEL MOBILE REPAIR	2,680	1,340	1
GARY SMERDON AUTOMOTIVE	2,656	1,328	1
S & R AUTO REPAIR	2,650	1,325	1
AMERICAN HEATING INC	3,350	1,323	1
ERICKSON AUTOMOTIVE	3,338	1,319	1
OJA ROBERT E	2,631	1,316	1
E & E BODY SHOP	3,300	1,304	1
CROWN AUTOCRAFT	3,300	1,304	1
C & E CURTIS ENTERPRISES INC	2,600	1,300	1
ELLIOTT'S AUTO SERVICE INC	2,599	1,300	1
Top Flight Automotive	2,595	1,298	1
SCHWEIZER DAIRY	2,557	1,279	1
CENTER INC	2,543	1,272	1
RAY'S AUTO REPAIR	2,500	1,250	1
DECKER'S RADIATOR	2,500	1,250	1
Doug Cousins Auto Repair	2,500	1,250	1
J & R AUTOMOTIVE SERVICES INC	3,200	1,248	1
RAY'S SPEEDO & ELECTRIC	2,495	1,248	1
FULLER'S AUTOMOTIVE	2,495	1,248	1
The Autosmith	2,495	1,248	1
AUTO	3,185	1,242	1
MJ GOSS MOTOR CO	3,185	1,242	1
Shellman, Terry	3,185	1,242	1
RON TONKIN CHEVROLET CO	3,185	1,242	1
MECHTRONICS	3,185	1,242	1
CEDAR MILL TEXACO	3,185	1,242	1
DBA AUTO TECH	2,599	1,235	1
1 CENT PROFIT SALES	3,160	1,232	1
Kuschnick Brothers Farms	2,417	1,209	1
Miller, Martin A.	2,416	1,208	1
NORM'S AUTO REPAIR	2,400	1,200	1
METRO METRIC AUTOMOTIVE SERVICE	2,399	1,200	1
FOSTER AUTO PARTS INC	2,398	1,199	1
LARRY HENDERSON'S CHEVRON	2,395	1,198	1
Elliott's Auto Service, Inc.	2,390	1,195	2
R & R AUTOMOTIVE INC	3,100	1,194	1
SERV INC	3,000	1,155	1
DON RASMUSSEN CO	2,995	1,153	1
OAK PARK AUTOMOTIVE INC	2,306	1,153	1
LANGDON IMPLEMENT CO/LANGDON & SONS INC	2,306	1,153	1
Z'S CAR CARE INC	2,300	1,150	1
BRAKES PLUS	2,295	1,148	1
JESSE'S AUTO SERVICE	2,295	1,148	1
CARTER'S SERVICE STATOONS INC	2,294	1,147	1
OAK VALLEY AUTO SALES & LEASING	2,289	1,145	1
WILLIAMS' BAKERY	2,285	1,143	1
NORTH EUGENE AUTOMOTIVE	2,268	1,134	1
PAL BRO INC	2,257	1,129	1
TUTTLE'S QUALITY AUTO	2,250	1,125	1

**Certificates Issued by Applicant
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Applicant	Facility Cost	Certificate Value	No. of Certificates
BEALE AUTOMOTIVE REPAIR	2,250	1,125	1
CONE'S AUTOMOTIVE	2,242	1,121	1
Midtown Gas	2,242	1,121	1
SISKIYOU IMPORT SERVICES INC	2,227	1,114	1
Welch, Virgil/dba:Virgil Welch Chevron	2,205	1,103	1
TED'S COLLISION REPAIR INC	2,200	1,100	1
AUTO BODY CLINIC	2,200	1,100	1
DON DOERR	2,200	1,100	1
SHARP AUTOBODY & PAINT WORKS INC	2,200	1,100	1
BABBITT ENTERPRISES INC	2,200	1,100	1
OLD FASHION BODY WORKS	2,200	1,100	1
JEFFERSON AUTOMOTIVE INC	2,200	1,100	1
B & Z AUTO BODY	2,200	1,100	1
PERFORMANCE AUTO	2,200	1,100	1
CHUCK'S BODY & FENDER	2,200	1,100	1
MCMINNVILLE AUTO BODY INC	2,195	1,098	1
INNOVATION AUTO	2,190	1,095	1
OLDS INC	2,180	1,090	1
JIM DORAN CHEVROLET-OLDS INC	2,180	1,090	1
ROE MOTORS INC	2,180	1,090	1
Aire-Flo Heating & Air Conditioning, Inc.	2,178	1,089	2
JON TOGSTAD	2,150	1,075	1
GIL'S TRUCK REPAIR INC	2,145	1,073	1
Seiler & Smith, Inc.	2,100	1,050	1
EARL'S AUTOMOTIVE	2,100	1,050	1
TROUTDALE INC	2,063	1,032	1
GFK ASSOCIATES INC	2,241	1,031	1
C & W AUTO BODY INC	2,050	1,025	1
VERGER CHRY PLYM DODGE INC	2,022	1,011	1
PROUDFOOT RANCHES INC	2,013	1,007	1
SHROPE'S CHEVRON INC	2,003	1,002	1
CW STUCK	2,003	1,002	1
Alpine Disposal & Recycling	2,000	1,000	1
CLYDE'S AUTOMOTIVE	2,000	1,000	1
BRAD'S BODY & FENDER SERVICE INC	2,000	1,000	1
M & W AUTOMOTIVE	1,999	1,000	1
Z West, Inc.	1,995	998	1
KRONKE'S PORTLAND STAR	1,995	998	1
Sam Trakul Investments, Inc.	1,994	997	1
RICHARDS FOOD CENTERS INC	1,990	995	1
REX W HUNT	1,985	993	1
BILL OLINGER LINCOLN MERCURY INC	1,980	990	1
LANDMARK FORD INC	1,980	990	1
KENT ERIC JACOBSON	1,975	988	1
J M BERNARDS GARAGE	1,950	975	1
SMALL WOWRLD AUTO CENTER INC	1,944	972	1
INC	2,025	972	1
PORTLAND SERVICE STATION SUPPLY	1,926	963	1
MARSHALL'S AUTOMOTIVE	1,900	950	1
DARRIS TIRE & AUTOMOTIVE SERVICE	1,900	950	1
TROUTMAN ENTERPRISES INC	1,897	949	1

**Certificates Issued by Applicant
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Applicant	Facility Cost	Certificate Value	No. of Certificates
Templeton Enterprises, Inc	1,895	948	1
U PULL IT TIGARD INC	1,863	932	1
Woodstock Texaco, Inc.	1,862	931	1
METROFUELING, INC	1,852	926	1
MIKES EXXON PRODUCTS INC	1,850	925	1
COASTAL REFRIGERATION CENTER	1,846	923	1
CENTER	1,803	902	1
RON TONKIN GRAN TURISMO	1,790	895	1
DON RASUMSSON CO	1,786	893	1
INC	1,785	893	1
HILLTOP CHEVRON INC	1,785	893	1
HILLSBORO AUTO WRECKING	1,750	875	1
SCOTTIES AUTO BODY REPAIR	1,750	875	1
ENERGY SYSTEMS NW	1,655	828	1
GARAG	1,655	828	1
BEAVERTON AUTO REBUILDERS INC	1,637	819	1
WESTERMAN HEAT & COOL	1,623	812	1
JBR ENTERPRISES INC	1,595	798	1
CASCADE TRACTOR CO	1,501	751	1
AMERICAN AUTO RECYCLING INC	1,500	750	1
SIBERTS AUTO BODY	1,450	725	1
U-PULL-IT LTD	1,430	715	1
MERRITT #2	1,389	695	1
MERRITT #1	1,389	695	1
ARROW TRANSPORTATION CO	1,354	677	1
LOREE VERN	1,344	672	1
INC	2,000	650	1
OBIE'S IMPORT REPAIR INC	1,995	648	1
Sibert Auto Body,	1,995	648	1
Beaverton Auto Rebuilders, Inc.	1,295	648	1
EDCO SHEET METAL INC	1,275	638	1
ABC Recycling of S. Oregon	2,685	631	1
GOE DONALD L	4,000	400	1
IRINGA BROTHERS INC	672	336	1
BOUNDS REX	634	317	1
HILLSBORO LANDFILL INC	0	0	1
MICHAEL LANDOLT DAIRY			1

**Certificate Value
Issued by Location of the Facility
1968 through 1998**

Location of Facility	Certificate	
	Value	No. Issued
ADAMS	\$ 3,654	1
ALBANY	\$ 22,430,945	253
ALOHA	\$ 4,365,092	19
AMITY	\$ 130,147	9
ARLINGTON	\$ 13,946,207	14
ASHLAND	\$ 224,639	14
ASTORIA	\$ 415,138	16
ATHENA	\$ 13,524	1
AUMSVILLE	\$ 242,727	5
AURORA	\$ 1,003,606	10
BAKER CITY	\$ 2,637,827	12
BANDON	\$ 43,543	2
Banks	\$ 72,014	4
BEAVER	\$ 10,213	1
Beavercreek	\$ 37,353	1
BEAVERTON	\$ 6,204,487	89
BEND	\$ 4,097,031	62
Biggs Junction	\$ 39,372	1
BLACHLY	\$ 5,815	1
BLY	\$ 53,748	1
BOARDMAN	\$ 53,506,990	35
BONANZA	\$ 993	1
BORING	\$ 46,482	3
BROOKINGS	\$ 371,524	6
BROOKS	\$ 20,049,532	9
BROWNSVILLE	\$ 786,012	17
BURNS	\$ 25,149	2
BUTON	\$ 18,425	1
CAMP SHERMAN	\$ 7,389	1
CANBY	\$ 2,641,998	13
CANNON BEACH	\$ 25,989	1
CANYON CITY	\$ 50,497	3
CANYONVILLE	\$ 23,484	2
CARLTON	\$ 44,374	3
CARVER	\$ 83,798	1
CASCADE LOCKS	\$ 10,076	1
CAVE JUNCTION	\$ 330,675	2
CENTRAL POINT	\$ 882,990	29
CHARLESTON	\$ 28,658	1
CHEMULT	\$ 51,715	2
CHILOQUIN	\$ 37,887	2
CLACKAMAS	\$ 1,420,576	22
CLATSKANIE	\$ 11,192,662	28
COBURG	\$ 2,827,386	6
COLTON	\$ 4,992	1

**Certificate Value
Issued by Location of the Facility
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Location of Facility	Certificate	
	Value	No. Issued
COOS BAY	\$ 633,187	29
COQUILLE	\$ 659,537	12
CORNELIUS	\$ 127,416	5
Corvallis	\$ 1,766,061	68
COTTAGE GROVE	\$ 1,171,483	30
CRESWELL	\$ 425,666	5
CULP CREEK	\$ 471,582	5
CULVER	\$ 1,522	1
CURTIN	\$ 4,156	1
DAIRY	\$ 5,178	1
DALLAS	\$ 1,943,507	27
DAYTON	\$ 339,741	5
DILLARD	\$ 5,236,393	18
DIXONVILLE	\$ 1,017,928	2
DONALD	\$ 131,803	1
DRAIN	\$ 539,709	9
DUNDEE	\$ 28,233	1
DURKEE	\$ 5,109,988	5
EAGLE CREEK	\$ 136,563	3
ELGIN	\$ 994,175	12
EMPIRE	\$ 4,150	1
Enterprise	\$ 69,068	1
ESTACADA	\$ 397,622	15
Eugene	\$ 14,048,650	118
FAIRVIEW	\$ 66,017	2
FALLS CITY	\$ 3,608	1
FLORENCE	\$ 49,947	4
FOREST GROVE	\$ 2,140,560	22
FOSTER	\$ 70,522	1
GALES CREEK	\$ 14,015	1
GARDINER	\$ 13,864,445	46
GARIBALDI	\$ 5,787	2
GASTON	\$ 52,310	2
GEARHART	\$ 24,734	1
GERVAIS	\$ 136,330	7
GLADSTONE	\$ 42,211	7
GLENDALE	\$ 116,261	3
GLIDE	\$ 29,253	2
GOLD BEACH	\$ 644,050	7
Gold Hill	\$ 24,930	1
GOSHEN	\$ 62,773	2
GOVERNMENT CAMP	\$ 51,539	1
GRAND RONDE	\$ 67,911	4
GRANTS PASS	\$ 1,365,795	40
Grass Valley	\$ 31,061	1

**Certificate Value
Issued by Location of the Facility
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Location of Facility	Certificate	
	Value	No. Issued
GRESHAM	\$ 3,790,542	35
HALSEY	\$ 14,384,768	34
HARBOR	\$ 30,811	1
HARLAN	\$ 11,890	1
HARRISBURG	\$ 1,223,539	44
HELIX	\$ 30,461	1
HEPPNER	\$ 436,445	2
Hermiston	\$ 3,053,557	17
HILLSBORO	\$ 4,681,842	34
HINES	\$ 729,503	3
HOOD RIVER	\$ 1,649,693	66
HUBBARD	\$ 91,235	4
HUNTINGTON	\$ 361,587	2
IDANHA	\$ 684,896	7
IDLEYLD PARK	\$ 58,403	2
IMBLER	\$ 8,725	2
INDEPENDENCE	\$ 240,817	11
IONE	\$ 1,007	1
ISLAND CITY	\$ 419,304	6
JEFFERSON	\$ 100,044	7
JOHN DAY	\$ 92,308	3
Johnson City	\$ 35,903	1
Jordan Valley	\$ 9,241	1
JOSEPH	\$ 62,584	3
JUNCTION CITY	\$ 1,217,762	25
KEIZER	\$ 85,694	4
KENO	\$ 21,542	1
KING CITY	\$ 948	1
KLAMATH FALLS	\$ 4,045,596	59
KNAPPA	\$ 36,711	1
LA GRANDE	\$ 978,670	18
LAKE GROVE	\$ 33,419	1
LAKE OSWEGO	\$ 601,451	30
LAKESIDE	\$ 395,114	3
LAKEVIEW	\$ 291,439	5
LANGLOIS	\$ 10,568	1
LEBANON	\$ 4,864,123	36
LIBERAL	\$ 61,854	2
LINCOLN CITY	\$ 113,945	5
LONG CREEK	\$ 1,226,911	1
LYONS	\$ 289,300	4
MADRAS	\$ 231,056	14
MALHEUR	\$ 78,128	1
MANZANITA	\$ 36,884	1
MAPLETON	\$ 182,913	4

**Certificate Value
Issued by Location of the Facility
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Location of Facility	Certificate	
	Value	No. Issued
MARION	\$ 3,486	1
MAUPIN	\$ 9,487	2
MCMINNVILLE	\$ 1,594,053	29
MEDFORD	\$ 12,710,128	111
Mehama	\$ 31,744	1
MERLIN	\$ 51,389	1
MILL CITY	\$ 57,589	6
MILLERSBURG	\$ 1,955,528	20
MILTON-FREEWATER	\$ 16,549	2
MILWAUKIE	\$ 2,143,421	36
MINAM	\$ 7,040	1
MOLALLA	\$ 1,118,764	10
Monmouth	\$ 172,821	7
MONROE	\$ 288,293	3
Mosler	\$ 31,289	1
MT ANGEL	\$ 153,639	9
MT VERNON	\$ 14,300	1
MULINO	\$ 100,931	2
MYRTLE CREEK	\$ 72,021	3
MYRTLE POINT	\$ 8,027	1
NEHALEM	\$ 20,018	1
NEWBERG	\$ 29,406,421	24
NEWPORT	\$ 308,631	10
NONE	\$ 5,327	1
NORTH BEND	\$ 6,988,218	51
NORTH PLAINS	\$ 152,062	3
NYSSA	\$ 1,362,647	11
OAKLAND	\$ 5,902	1
OAKRIDGE	\$ 34,739	2
ODELL	\$ 8,053	2
OGDEN	\$ 356,805	1
ONTARIO	\$ 6,458,508	11
OREGON CITY	\$ 7,547,583	44
Pacific City	\$ 24,074	1
PAISLEY	\$ 20,063	1
PARKDALE	\$ 59,817	7
PENDLETON	\$ 639,010	15
PHILOMATH	\$ 523,942	12
PHOENIX	\$ 48,783	6
PILOT ROCK	\$ 1,220	1
PISTOL RIVER	\$ 5,043	1
PLAINVIEW	\$ 59,075	2
PLEASANT HILL	\$ 6,150	2
Portland	\$ 36,616,031	583
PRAIRIE CITY	\$ 26,084	2

Certificate Value
Issued by Location of the Facility
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Location of Facility	Certificate	
	Value	No. Issued
PRINEVILLE	\$ 921,508	18
PROSPECT	\$ 8,941	2
RAINIER	\$ 21,710,602	9
REDMOND	\$ 2,205,868	13
REEDSPORT	\$ 38,561	2
RICKREALL	\$ 89,199	3
RIDDLE	\$ 2,892,869	17
ROGUE RIVER	\$ 533,627	3
ROSEBURG	\$ 2,063,263	31
RURAL ROUTE	\$ 382,125	7
SAGINAW	\$ 1,103,335	3
SALEM	\$ 8,753,024	145
SANDY	\$ 158,954	9
SCAPPOOSE	\$ 245,400	5
SCIO	\$ 40,080	4
SCOTTS MILLS	\$ 7,749	1
SEASIDE	\$ 35,773	4
SHEDD	\$ 1,021,642	31
SHELBURN	\$ 27,655	2
SHERIDAN	\$ 586,580	7
SHERWOOD	\$ 146,851	9
SILVERTON	\$ 740,508	29
SISTERS	\$ 78,252	2
SPRINGFIELD	\$ 28,673,735	126
ST. HELENS	\$ 42,169,189	36
ST. PAUL	\$ 1,114,001	35
STANFIELD	\$ 104,898	2
STAYTON	\$ 718,231	12
SUBLIMITY	\$ 13,142	3
SUMNER	\$ 12,576	2
SUTHERLIN	\$ 611,634	5
SWEET HOME	\$ 879,788	15
TALENT	\$ 83,370	4
Tangent	\$ 970,479	32
TERREBONNE	\$ 16,371	1
THE DALLES	\$ 7,890,329	20
THREE LYNX	\$ 104,145	2
TIGARD	\$ 782,407	33
TILLAMOOK	\$ 5,091,503	47
TOLEDO	\$ 50,995,610	41
Trail	\$ 19,713	1
TRENT	\$ 50,050	1
TRI CITY	\$ 36,819	1
TROUTDALE	\$ 17,136,307	25
TUALATIN	\$ 833,329	29

**Certificate Value
Issued by Location of the Facility
1968 through 1998**

Location of Facility	Certificate	
	Value	No. Issued
TUMALO	\$ 10,171	1
TURNER	\$ 119,942	3
UKIAH	\$ 974	1
UMATILLA	\$ 6,333	1
UNION	\$ 46,207	2
VALE	\$ 554,815	2
VALSETZ	\$ 71,726	2
VAUGHN	\$ 75,221	3
VENETA	\$ 133,649	2
VERNONIA	\$ 45,212	2
WALDPORT	\$ 695	1
WALKER	\$ 45,099	1
WALPORT	\$ 21,892	1
WARRENTON	\$ 452,144	5
WAUNA	\$ 4,166,724	2
WEST LINN	\$ 4,194,181	29
Westport	\$ 33,243	1
WHITE CITY	\$ 6,096,271	36
WILLAMINA	\$ 1,167,259	13
WILSONVILLE	\$ 423,064	12
WINCHESTER	\$ 28,024	2
Winston	\$ 75,610	1
Woodburn	\$ 1,719,028	92
YACHATS	\$ 78,686	3
YAMHILL	\$ 67,461	3
YONCALLA	\$ 61,279	1

1. The certificate value is determined by: facility cost X the percentage of the facility cost allocable to pollution control X 50%.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 8, 1999

To: Environmental Quality Commission
From: Langdon Marsh, Director *Langdon Marsh*
Subject: Agenda Item G, June 25, 1999 EQC Meeting, Green Permit Program

Statement of Purpose

The Department has developed proposed new rules to establish a program for issuing Green Permits. The draft rules are currently undergoing public review and comment. The purpose of this informational item is to provide the Commission with background information on this new program prior to considering the Department's recommendations for rule adoption. The targeted meeting date for consideration of this rulemaking proposal is August 13, 1999.

Background

The 1997 Oregon Legislature created Green Permits to encourage regulated facilities to achieve environmental results that are significantly better than otherwise provided by law. The legislation, House Bill 3457, encourages the Environmental Quality Commission (EQC) to use innovative environmental approaches or strategies to accomplish these goals. The EQC may create multiple classes or categories of Green Permits, and may establish by rule specific criteria and procedures for application, review and public participation.

The proposed Green Permits rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. Green Permits of either type may waive or modify existing permits or regulatory requirements. The proposed rules require participating facilities to report on environmental performance, and discuss performance with interested stakeholders. The proposed rules also include procedures for issuing, modifying, renewing and terminating the Green Permits.

Authority of the Commission with Respect to the Issue

The Commission has the statutory authority to address this issue under ORS 468.020. These rules implement ORS 468.501 through 468.521.

Intended Future Actions

A more detailed summary of the proposed Green Permits program and the Environmental Management Systems Incentives Project is attached. After the Commission adopts rules, the

Department will have the authority to issue Green Permits. DEQ's authority to issue Green Permits will expire on December 31, 1999, unless extended by the 1999 Oregon Legislature.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, provide advice and guidance to the Department as appropriate, and consider this information when considering proposed rules.

Attachments


"Green Permits and the Environmental Management Systems Incentives Project", June 1999 Update, prepared by the Oregon Department of Environmental Quality.

Reference Documents (available upon request)

- "Recognizing Environmentally Proactive Sources—Feasibility Assessment of a "Green Permits" Program," prepared by Ross and Associates for DEQ, July, 31, 1995.
- House Bill 3457, 1997 Oregon Legislature, codified under ORS 468.501 through 468.521
- "Environmental Management Systems Incentives Project" Final Report, prepared by Ross and Associates for DEQ, January 30, 1998
- "EMS Green Permits Program Guide," Review Draft for Program Development, prepared by Rifer Environmental for DEQ, February 12, 1999
- Draft "Stakeholder Guidelines," prepared by Cogan Owens Cogan for DEQ, January 7, 1999

Approved:

Section:



Division:

Office of the Director

Report Prepared By: Marianne Fitzgerald

Phone: (503) 229-5946

Date Prepared: June 8, 1999

Green Permits and the Environmental Management Systems Incentives Project

June 1999 Update
Oregon Department of Environmental Quality

Background

The 1997 Oregon Legislature created Green Permits to encourage regulated facilities to achieve environmental results that are significantly better than otherwise provided by law. The legislation, House Bill 3457, encourages the Environmental Quality Commission (EQC) to use innovative environmental approaches or strategies to accomplish these goals. The EQC may create multiple classes or categories of Green Permits, and may establish by rule specific criteria and procedures for application, review and public participation.

DEQ is exploring one approach that it believes will achieve the environmental results envisioned in the Green Permits legislation. This approach is based on the use of environmental management systems (EMSs) such as ISO 14001, and a "tiered", or multi-level system in which greater demonstrated environmental performance is acknowledged with increasing regulatory flexibility or "benefits". DEQ is currently pilot testing this approach (dubbed the Environmental Management Systems Incentives Project, or EMSIP) with the assistance of four Oregon facilities.

Why is Oregon developing the Green Permits program and EMSIP?

Many factors have contributed to regulatory innovation efforts in Oregon. Among them is a growing recognition by government, industry and environmental groups that:

- the existing regulatory system often does not encourage or reward environmental stewardship;
- many environmental issues can not or will not be adequately addressed by solely regulatory means;
- voluntary, market-driven, outcome-based approaches can be effective in accomplishing desired environmental results; and
- many companies have the knowledge and resources to significantly reduce environmental impacts.

What are the key principles behind the Green Permits program and EMSIP?

This project was initiated after studying a variety of regulatory reform projects from around the U.S. and overseas. It is based on the following key principles:

- *Compliance with environmental standards is the baseline.* Environmental performance is expected that exceeds minimum compliance requirements.
- *Significant and measurable environmental performance goals will be established.* Accomplishments by facilities should result in real and quantifiable gains. In addition to outstanding performance in emission or waste reduction, the project may recognize gains in areas not traditionally covered by regulatory permits, such as riparian habitat protection.

- *Meaningful stakeholder involvement is expected.* In addition to superior environmental performance, participating facilities are expected to demonstrate efforts to inform and involve concerned members of the community regarding environmental issues.
- *The system will balance simplicity and certainty with flexibility and innovation.* Green Permits is designed to provide clear principles and expectations of performance to ensure consistent and predictable results. At the same time, it will be adaptable to unique or new strategies for environmental management.

The benefits to the facilities include regulatory incentives, a partnership approach to environmental management, and public recognition for environmental performance. The benefits to the public include better information about a facility's environmental issues and performance, and opportunities to constructively discuss the facility's performance. The program overall will address a wider range of environmental impacts than those currently regulated under Oregon laws, and will result in a cleaner environment.

What is the status of the Green Permits rules?

An advisory committee was formed in October 1998 to advise DEQ and the Environmental Quality Commission on the development of rules under Oregon's "Green Permits" statute (ORS 468.501 *et seq.*). These rules will allow DEQ and the Lane Regional Air Pollution Authority to issue Green Permits to facilities meeting specific criteria. The Green Permits Advisory Committee, chaired by Professor William Funk of the Northwestern School of Law at Lewis & Clark College, consists of twenty-four representatives from industry, stakeholders, and government agencies.

The advisory committee reviewed the initial experiences of the EMSIP pilot facilities in developing proposed rules. The committee recommended two types of Green Permits:

- "Custom Waiver Permit" that allows limited waivers of environmental laws if the waiver is needed to achieve the superior environmental results; and
- "Green Environmental Management System Permit," or "GEMS Permit" that also allows waivers of environmental requirements, but requires the use of a formal environmental management system to achieve results. GEMS Permits may be issued in three performance categories, ranging from entry level to advanced. This would allow a wide range of facilities to participate in the program. The requirements that must be met for approval of a GEMS Participant Permit, a GEMS Achiever Permit, and a GEMS Leader Permit are summarized in the attached matrix. The benefits associated with each type of permit are also summarized.

Both the Custom Waiver Permits and the GEMS Permits will require participating facilities to report on environmental performance, and to discuss performance with interested stakeholders on a regular basis. The proposed rules also include procedures for issuing, modifying, renewing and terminating the Green Permits.

The draft Green Permit rules are currently available for public review and comment, and a public rulemaking hearing is scheduled for June 15, 1999. Depending on comments received, the DEQ

may recommend adoption of final rules at the Environmental Quality Commission's August 13, 1999 meeting.

DEQ is also developing a memorandum of agreement on regulatory innovation with the U.S. Environmental Protection Agency (EPA), Region 10. The agreement will outline the principles used in development of Oregon's Green Permits, and will clarify EPA and DEQ roles and expectations for each other with regards to the Green Permits. In some instances, EPA approval may be required to implement the incentives.

What is the status of Oregon's EMSIP Pilot Projects?

After a formal recruitment and selection process, DEQ began working with four pilot facilities in May 1998 to test the EMSIP framework under real world conditions. These four facilities are:

<u>Company</u>	<u>Location</u>	<u>Sector/products</u>
Louisiana-Pacific	Hines	Engineered wood products
LSI Logic	Gresham	Semiconductor manufacturing
Oki Semiconductor Manufacturing	Tualatin	Semiconductor assembly and testing
PacifiCorp	Medford	Electric Utility Service Operations

One of the pilot facilities, Oki Semiconductor Manufacturing, closed its Tualatin facility on September 30, 1998 because of changing market conditions. They are still considered a pilot due to their contribution to evaluating the effectiveness of environmental management systems in improving environmental performance. However, they will not be pursuing a Green Permit.

In order to test the effectiveness of the EMSIP framework, the pilot facilities have agreed to:

- Develop and implement an environmental management system, including analyzing environmental impacts and setting objectives and targets for reduced environmental impact;
- Develop an environmental report for public distribution;
- Facilitate meaningful dialogue with stakeholders regarding environmental performance;
- Submit data to the national database for evaluating the effectiveness of environmental management systems (see national project description below); and
- Propose incentives or other benefits that DEQ could offer to recognize superior environmental performance.

DEQ's regional staff have formed teams to work with the facilities on this project. Team activities include the following:

- Provide technical assistance in EMS development, stakeholder involvement, and other elements of the EMSIP framework;
- Develop meaningful recognition opportunities;
- Develop a system to verify the performance of the facilities, which efficiently validates the credibility of the facility accomplishments;
- Investigate the feasibility of implementing the proposed incentives and the appropriate mechanisms for approval; and
- Implement incentives.

National ISO 14001 Pilot Project

Through the EMSIP pilot project, Oregon is participating in a national effort to collect data regarding the effectiveness of environmental management systems. Although each state's project is different, participants will be collecting data using consistent protocol to allow systematic evaluation of results from a larger database than would otherwise be possible. The EPA is coordinating and helping to fund this effort. For more information on the project, contact the Environmental Law Institute or visit their website at www.eli.org/isopilots.htm.

Oki Semiconductor

Although Oki Semiconductor has officially closed, they completed the national EMS data protocols. DEQ staff were able to review their ISO-certified environmental management system while it was operating. Attached is a sample of the environmental and economic data collected for calendar year 1997, the year Oki received ISO 14001 certification.

LSI Logic

LSI Logic, a new facility that was designed to minimize environmental impacts, completed their baseline data protocols based on their first few months of production. LSI has implemented an ISO-comparable EMS, and has requested a wide range of incentives that would provide a tailored regulatory relationship for their facility. DEQ is proposing to phase in implementation depending on LSI's demonstrated performance at production capacity and the potential technical complexity of implementing the requests.

Louisiana Pacific

Louisiana Pacific continues to implement their ISO-comparable EMS and they are completing the baseline data protocols. The incentives they have requested include permitting flexibility in their air contaminant discharge permit to accommodate rapid changes in production, as well as streamlined regulatory interactions and building a partnership with DEQ through the EMSIP Team.

PacifiCorp

PacifiCorp is developing their EMS and anticipates meeting the requirements for Tier I this fall and Tier II in the spring of 2000. They have completed their baseline data protocols. PacifiCorp has few regulatory interactions with DEQ, so the proposed incentives focus on building a partnership approach to environmental management with both DEQ and EPA. They have also requested modified procedures for reporting spills.

What have we learned from the EMSIP pilots?

The EMSIP pilot workplans initially described a certain set of procedures that would have led to eventual issuance of the Green Permit. As the pilot project progressed, some of these procedures changed. For example, it was anticipated that the DEQ and the facilities would develop a project agreement that describes the specific facility commitments and program expectations. In the proposed procedures for GEMS permits, the application form and acceptance letter would take the place of the agreement. The pilot facilities are now focusing their efforts on meeting the draft rule requirements for a GEMS permit.

It is too early to report quantitative benefits from the pilot project. One qualitative benefit is the experience gained regarding procedures and worksheets, which will help DEQ implement the program more efficiently after the rules are adopted. The pilot facilities that do not have certified environmental management systems have stated that they are developing more structured systems as a result of participation in the program. The pilots have also mentioned positive results from the development of good working relationships with the EMSIP team. All of the facilities have improved their environmental performance through implementation of their EMS. These data are being quantified in the data protocols.

When can facilities apply for a Green Permit?

DEQ will have the authority to issue Green Permits after the Environmental Quality Commission adopts rules, currently expected in August 1999. DEQ staff are developing application forms, an implementation guide, and worksheets for permit approval. The Green Permit will contain the legal mechanism for providing the waivers or incentives requested by the facility.

EMSIP pilot facilities are expected to be issued the first Green Permits. DEQ's authority to issue Green Permits will expire on December 31, 2000, unless extended by the 1999 Oregon Legislature.

Additional Information

If you have any questions about the EMSIP pilots or the Green Permits program development (including the advisory committee, draft rules and draft implementation guides), please contact Marianne Fitzgerald at (503) 229-5946 or email at fitzgerald.marianne@deq.state.or.us.

If you have any questions about regulatory innovation or incentive-based environmental management, please contact Paul Burnet at (503) 229-5776, or email at burnet.paul@deq.state.or.us.

Either can be reached at Oregon DEQ, 811 S.W. Sixth Avenue, Portland, OR 97204. The fax number is (503) 229-5850.

**Oki Semiconductor Environmental Accomplishments 1997
(After ISO 14001 Implementation)**

The following is a list of Oki Semiconductor's accomplishments relating to the environment and sustainability. Amounts are annual use/savings.

1.	Reduction of the usage of hazardous materials			
	• Aluminum sulfate reduced by	21,000 lbs	100%	\$2,000
	• Calcium hydroxide reduced by	11,000 lbs	98%	\$1,400
	(Added PAC to treatment process)	575 lbs	1.8%	(\$607)
	• LN2 usage reduced by	32,825 gals	22%	\$5,051
2.	Reduction of the generation of hazardous wastes			
	• Overall reduction from 1996 – 1997	57,417 lbs		\$54,427
	(Lead filter cake waste reduced by 60%, or \$40,670)			
	• Implementation expenses			\$2,000
	• Analysis cost			\$6,000
3.	Reduction of non-hazardous solid waste generated			
	• Garbage reduced	151 cu.yd.	36%	\$1,179
4.	Reuse, Reclaim and Recycling			
	• Recycled/reused/sold	42,101 lbs		\$3,500
5.	Reduction of the use of natural resources			
	• Water usage reduced in process	3,200,000 gals		\$5,000
	• Water usage reduced in irrigation	398,000 gals	10.5%	\$612
6.	Permit Modifications			
	• Wastewater permit mod reduced requirement	2 analyses/mo	67%	\$3,840
7.	Insurance Premium Savings			
	• OSM received a \$3,874 premium reduction on the worker's compensation premium for policy year '97/'98. The reduction was received in May '98.			
8.	Savings tracked for 1997			
	\$74,276.00	Gross Tracked Savings		
	-16,682.61	Paid to UL for Audits and Reimbursable Expenses		
	-21,840.00	Paid to Temporary Manpower		
	<u>\$35,753.39</u>	Gross Savings for 1997		

**Oregon Department of Environmental Quality
GEMS Permits, Proposed Criteria for Permit Approval**

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Environmental Management System Characteristics	Implemented a basic, robust EMS that is driven by environmental impacts, helps integrate environmental and business functions, provides a mechanism for evaluating continual improvement, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and hierarchy in setting objectives and targets and developing the environmental management program; and committed to continual improvement.	Implemented, and will maintain and improve a robust EMS that is certified as meeting the ISO 14001 standard, or meets the purpose or intent of each of the ISO 14001 clauses, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and hierarchy in setting objectives and targets and developing the environmental management program; and committed to continual improvement.	
Scope of Targeted Environmental Impacts	Evaluated environmental impacts and set objectives and targets that will improve environmental performance in management and reduction of regulated pollutants.	Evaluated environmental impacts and set objectives and targets that will achieve superior environmental performance for those site-based aspects that have significant impacts, taking into consideration both regulated and unregulated environmental pollutants and other environmental impacts.	Evaluated environmental impacts and set objectives and targets that will meet the expectations for a GEMS Achiever Permit and demonstrates industry leadership in applying sustainable development principles to the environmental life cycle aspects of its activities, products and services. This could include leadership through relevant supplier and customer chains, including use and disposal of products.
Baseline Performance Reporting	Submitted a baseline performance report that summarizes: -Environmental policies affecting the facility's operations; -Environmental information regarding significant environmental impacts; and -The environmental program that will achieve the results described above.	Submitted a baseline environmental performance report that summarizes: -Environmental policies affecting the facility operations; -Environmental information regarding significant environmental impacts, including those appropriate to the scope of the targeted impacts; and -Performance measures and performance achievements, including a description of the environmental program that will achieve the results described above.	
Annual Performance Reporting	Developed a plan for an annual update of the performance report that includes an update of the information above, and: -Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed; -EMS deficiencies, and how addressed; -Compliance issues, and how addressed; and -Stakeholder involvement activities and input received from stakeholders.	Developed a plan for an annual update of the performance report that updates the information above, and includes: -Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed; -EMS deficiencies, and how addressed; -Compliance issues, and how addressed; -Stakeholder involvement activities, and input received from stakeholders and how addressed; and -Revised objectives and targets for targeted impacts.	
Performance Measures	Established performance measures that will be used to explain environmental information in context with past performance and future improvements.		
Performance Achievements (past)	Not required	Demonstrated that the facility has reduced overall environmental impacts in the three-year period prior to applying to the GEMS permit tier, or, for new facilities, demonstrated by methods used to minimize environmental impacts in the design of the facility.	
Performance Achievements (future)	Developed an environmental program that will achieve environmental results that are significantly better than otherwise required by law, demonstrated by projected reductions in environmental impacts that are appropriate to the scope of the targeted environmental impacts and evidence that the reductions will be achieved.		

**Oregon Department of Environmental Quality
GEMS Permits, Proposed Criteria for Permit Approval (continued)**

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Stakeholder Involvement	Developed a plan for stakeholder involvement that provides information to the public regarding environmental performance on at least an annual basis, and includes a mechanism for receiving and responding to comments.	Developed a program for stakeholder involvement appropriate to the scope of the EMS and site-based impacts; and has implemented and continues to implement activities that provide for two-way dialogue regarding environmental performance and a mechanism for receiving, considering and responding to comments received. The facility shall: -Encourage public inquiries and comments regarding the facility's environmental performance; -Provide mechanisms to discuss the environmental policy, annual performance report, environmental aspects and impacts, and establishment of objectives and targets; and -Consider results of stakeholder involvement in decisionmaking, and respond to comments received. The main difference between the Achiever and Leader permit requirements is in the scope of the audience targeted for outreach.	

GEMS Permits, Proposed Incentives or Benefits

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Incentives	All GEMS Permittees would be eligible for the following GEMS permit incentives: <ul style="list-style-type: none"> • A single point of contact (team leader) for agency assistance on environmental issues; • Technical assistance on EMS development, compliance assistance and stakeholder involvement activities; • Modified enforcement response procedures in which compliance issues that are self-reported or discovered during inspections are corrected in a way that focuses on improvements to the environmental management system. 		
Recognition	Limited public recognition as a participant in the GEMS program.	Public recognition as a GEMS Achiever, such as recognition at conferences or a Director's Award	Public recognition as a GEMS Leader, such as recognition at conferences or a Governor's Award, plus additional publicity.
Regulatory Waivers	Not eligible	Streamlined permitting, regulatory flexibility, or other waivers or benefits that are tailored to the facility's needs. Increasing levels of performance would receive increasing regulatory benefits.	Tier II incentives, and if appropriate, benefits that tailor the environmental regulatory interactions to a group of facilities, such as multiple corporate facilities within the state, or multiple facilities working together in a supplier-customer relationship.

Department of Environmental Quality Memorandum

DATE: June 25, 1999

TO: Environmental Quality Commission

FROM: Langdon Marsh

RE: Director's Report

NEW CARISSA STERN REMOVAL: After the Coast Guard completed its oil removal activity on the stern section of the New Carissa, the RP awarded a wreck removal contract to Donjon/Devine in May. Work is underway, and the salvage crew has finished removing the deckhouse. Nearly 250 tons of steel has been removed. Divers are now surveying the engine room, and will attempt to repair it to re-float the stern. Heavy cutting and lifting operations are scheduled to begin when support vessels arrive in Coos Bay in early July. The Joint Venture has applied for a dredge permit from the Corps of Engineers and DSL to allow the work required for refloating. DEQ is coordinating with state and federal agencies to facilitate timely processing of the application, while ensuring environmental protection. Because of a small good weather window, work must be completed before October.

MEDFORD AIR QUALITY: During the summer of 1998, the Medford-Ashland area experienced five days of ozone exceedance under the EPA's newly adopted standard (0.08 ppm for an 8-hour average). In an effort to avoid a future non-attainment classification for ozone (a 3-year average of the fourth-highest daily 8-hour average), the Medford area is implementing a Clean Air Action Day (CAAD) strategy patterned on the Portland program.

AIR QUALITY PERMIT PROGRAM STREAMLINING: A major milestone was achieved in mid June when AQ released new permit templates for Air Contaminant Discharge Permits (ACDP) and received EPA approval of new formats for the Title V permits. These new templates and formats will streamline permit development and improve statewide consistency. Additional templates are under development for specific industry categories. A second milestone, which is before the Commission today, is a rulemaking proposal to reorganize and renumber all of AQ's rules. The renumbering will lay the foundation for a number of additional rulemaking proposals of the coming year to clarify and streamline AQ rules that apply to point sources.

EPA ACKNOWLEDGES DEQ SRF PROGRAM: EPA recently conducted a performance review of the State Revolving Fund Program administered by the Water Quality Program. The SRF Program provides low interest loans to

communities for water pollution control projects. EPA stated "We wish to compliment you and your staff on your work over the last year. The annual review confirmed our long-held view that the Oregon Clean Water State Revolving Fund program is well managed and forward looking".

PORTLAND HARBOR SEDIMENTS MANAGEMENT: Final management plan will be available end of June. EPA Regional Decision Team meeting is scheduled for June 29. First phase of implementation, slated to begin in July, will include development of remedial investigation work plan, additional site discovery work to identify responsible parties, and continued public involvement. Discussions continue with natural resource trustees and tribal governments about their involvement and participation during implementation.

U.S.EPA AND PERFORMANCE RESULTS AT RCRA FACILITIES – The U.S. EPA is soon to make an announcement about highlighting the corrective action performance at facilities that are considered a high priority under the Government Performance Results Act (GPRA). These high priority facilities, of which there are 11 in Oregon, will be followed to assess their achievement of two environmental indicators (controlling groundwater releases and controlling human exposures) by the year 2005.

SNAKE RIVER TMDLs: On June 16, 1999, Joni Hammond, Lynne Kennedy and Dick Nichols met with the Idaho Division of Environmental Quality and Idaho Power Company representatives to discuss the TMDLs for portions of the Snake River. Idaho Power owns three hydro-electric units on the Middle Snake River the borders Oregon and Idaho: Brownlee, Oxbow, and Hells Canyon Dams. These dams will need to renew their Federal Energy Regulatory Commission (FERC) licenses in 2005. All three projects may be contributing to water quality problems that have been identified on Oregon and Idaho's 303d lists. Before FERC can issue their license, both DEQs must certify the projects as not violating water quality standards (Section 401 of CWA). The ability to provide such a certification will be greatly enhanced if Idaho and Oregon can establish TMDLs for the river prior to the need for certification. As a result of the meeting, it appears that Idaho Power will support funding for Oregon DEQ to participate in a joint TMDL for the Snake River with the State of Idaho.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 25, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Comments on Tualatin Management Agency Testimony at May 7, 1999 EQC Meeting

At the EQC meeting on Friday May 7, 1999, several Designated Management Agencies (DMAs) gave public testimony. These include representatives from the Unified Sewerage Agency (USA), Clackamas Co., Multnomah Co. and West Linn. The following is offered to give you Departmental perspective on some of the statements - especially those made by Clackamas, Multnomah and West Linn which may have been misleading on discussions that the Department has had with them in the past.

USA testimony was mainly a summary of the work that they are doing and the two challenges identified relate to: difficulties in putting numeric Waste Load Allocations (WLA) in storm water permits (something that DEQ has not done); and the need to revisit phosphorus Load Allocations (LA's) due to higher values found in tributaries. Generally, the Department has no problem with these statements - they are indeed challenges that the Department will be addressing over the next year or two.

Clackamas, Multnomah and West Linn testimony focused on two issues that need to be clarified:

Comment: Clackamas and Multnomah Co. indicated that DEQ was ignoring the Tualatin Basin Technical Advisory Committee (TBTAC) recommendations and the various studies done in the Tualatin which indicated that higher phosphorus levels coming from groundwater were above the concentration established for the tributaries. Specifically, the TBTAC recommendation was *"The total phosphorus TMDLs, that are established for the tributaries, should be set relative to baseflow total phosphorus concentrations on a tributary by tributary basis."*

Response: What we believe these DMAs were reacting to was a "Working Draft Tualatin TMDL Update Overview" that was presented to them for the phosphorus TMDL in early May. This draft was presented in flow chart form. They either misread or did not remember what was discussed. DEQ identified that we were working to reallocate tributary loadings to better reflect "background" and factoring in temperature and mainstem flow in the current modification of the TMDL. This would likely raise the concentration allowed in the more urbanized tributaries (Fanno, Rock and Dairy) but would likely reduce others loads (perhaps point source and water from Hagg Lake and the Upper Tualatin). Staff is currently drafting the concept on how best to handle the tributary loads.

Where the DMAs may be confused was that we indicated we were not considering changing the 0.07 mg/l P TMDL for the lower mainstem at this time. That was, in part, established to address nutrient/algal concerns related to Dissolved Oxygen and pH standard exceedances which, in recent years, are not occurring as often. However, the action level for chlorophyll a has not been met. As identified by rule, we can modify this action level by doing work similar to a use attainability analysis. DEQ feels that it is premature to do this as we would need data that would related to aesthetics (how green should the river be) and water contact recreation (how transparent for safety) which is not available. We indicated we would revisit this in subsequent TMDL updates (next 5-year cycle).



Bottom line is that these two counties were erroneously reacting to what they believed was a DEQ position based on a draft-working document. We are using the TBTAC recommendations and various data collected on the Tualatin. Also, our process, as laid out on the recent schedule, would have Initial Draft TMDLs or TMDL summaries available for public review by July and Final Draft TMDLs for formal public comment by the end of December.

Comment: Clackamas, Multnomah and West Linn expressed concern that we were requiring them to quantify phosphorus reduction due to practices that were unquantifiable (such as education, storm water stenciling) and thereby wasting their time.

Response: The Department has asked DMAs try to better quantify the results of their implementation for practices for which results can be quantified. The February reports listed out the BMPs that were being implemented but gave no estimates of the overall load reductions that one might expect by doing such a program. At the last DMA meeting, we went through a methodology that was developed by and used by several of their consultants in earlier reports (including USA's February 1999 and several 1990 reports) for estimating load reductions. We indicated there would be many assumptions that would need to be stated and many practices such as education, stenciling, septic inspections, sewer extensions, erosion control, etc. would be difficult to quantify but may be useful in discussing the effectiveness of programs.

DEQ has consistently requested DMAs improve the quantification of their NPS control programs. It would be useful in justifying why they require certain practices (buffers, water quality facilities, etc.) or do certain practices (street sweeping, catch basin cleaning, etc.). What we are seeking is to improve our ability to quantify load reductions over time and to be able to quantify reductions not only in phosphorus but also in other parameters (solids, bacteria).

Approved _____
Approved with Corrections _____

Minutes are not final until approved by the EQC

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

**June 24-25, 1999
Tours and Regular Meeting**

On June 24, 1999, the Environmental Quality Commission traveled to Hermiston, Oregon. They toured McNary Dam and the Umatilla Chemical Depot before meeting with local officials. On June 25, 1999, the Commission met for their regular meeting at the Oxford Suites, 1050 N First Ave, Hermiston, Oregon. The following Environmental Quality Commission members were present:

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

Also present were Larry Knudsen, Larry Edelman and Steve Bushong, 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.

The Commission held an executive session to consult with legal counsel regarding G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159) before the regular meeting on June 25. Chair Whipple called the regular meeting to order at 8:40 a.m.

A. Approval of Minutes

A motion was made by Commissioner Reeve to approve the minutes as written. Commissioner Eden seconded the motion and it carried with four "yes" votes.

B. Informational Item: Update on the Umatilla Agent Disposal Facility

Wayne Thomas, Umatilla Chemical Agent Disposal Program Manager, briefed the commission on permit modifications received and approved to date for the Umatilla Chemical Agent Disposal Facility (UMCDF). Communications between DEQ and the Permittee were discussed, and Mr. Thomas outlined the many meetings that are required to achieve clear conversation.

The Hermiston DEQ office Outreach Program was described for the Commission. The new Umatilla website will be online by late August, the Public Involvement Plan was recently implemented, and the UMCDF Public Awareness Plan was approved by the Department. The latter plan will cover systemization activities beginning in October 1999.

The current program issues were discussed as follows.

- The Dunnage Incinerator(DUN): The DUN is on hold, alternatives are being reviewed, and the Army is expected to make a decision by August 1999. Any decision will likely result in a Class 3 modification requiring EQC approval.
- Carbon Filters: The NRC will release a report on carbon filters at the end of June or early July. A representative from NRC will attend the August 19, 1999 Citizens Advisory Commission meeting to brief them.
- Legal Proceedings: The Department will treat the petitioners' letter dated December 14, 1998, as effectively requesting reconsideration and/or revocation of the permits based on new evidence. The Department will decide by mid August 1999 whether or not to consider new evidence offered by the petitioners and (assuming that such evidence will be considered) will proceed to address petitioners request for reconsideration/revocation under established statutory and regulatory guidelines.
- Construction Schedule: The Army is currently reviewing a revised construction and systemization schedule and construction is approximately 50percent complete. Plant system testing is scheduled to begin in early October and the first tests will involve activation of the boilers which will produce visible emissions. Once the boilers are fired they will operate for the life of the project. Plant System Testing does not involve chemical agents or surrogate agents.
- Storage Permit Application: The Umatilla Chemical Depot (UCD) submitted a RCRA Part B Hazardous Waste Storage Permit Application in March 1999 and it is currently under review. An initial Notice of Deficiency was issued on May 24, 1999, and a response should be received by July 26, 1999. The Department is scheduling a public information meeting in August/September to provide information and listen to public concerns prior to developing a draft permit.

The following recommendations were made to the Commission on some of the program issues:

- The EQC request that the Army provide a briefing at the August Commission meeting on Dunnage Incinerator/Secondary Waste issues.
- A future presentation by NRC on the Carbon Filter Report be done.
- Schedule a Carbon Filter Work Session.
- The Department will provide results of the compilation and a review of exhibits from the legal proceedings.

C. Action Item: Appeal of Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129

The Department of Environmental Quality and Umatilla Refuse Group Cooperative were both appealing the Amended Hearing Order Assessing Civil Penalty dated October 26, 1998. In that order the Refuse Group was found to be in violation of ORS Chapter 459 for establishing an unpermitted solid waste disposal site and was held liable for a civil penalty in the amount of \$4,800.

The Department was represented by Larry Edelman, Department of Justice; and the Refuse Group was represented by Val Toronto and Vera Simonton. The Department argued that the hearing officer erred in finding that the Refuse Group was liable for only one violation. Instead, the Department believed that the Refuse Group had violated ORS Chapter 459 on at least three occasions for either establishing or maintaining an unpermitted disposal site. The Refuse Group argued that they had never intended to create a solid waste disposal site thus they had not violated any statute or rule.

The Commission affirmed the Order in its findings that the Refuse Group had created an illegal solid waste disposal site. The Commission held that while the Refuse Group may have believed they had not created a solid waste disposal site, that belief did not relieve them of their legal duties to either obtain a permit or to ensure that the waste brought to the site was proper.

The Commission also affirmed the Order in its determination of the penalty amount in regards to the cooperativeness and economic benefit calculations. The Commission held that once the Refuse Group

knew there was a violation, they cooperated in having the waste removed from the site and the cost of the removal negated any economic benefit the Refuse Group may have obtained.

The Commission modified the Order in regards to the number of violations. The hearing officer held that there was only one violation since the Refuse Group was only able to 'establish' a solid waste disposal site once. The Commission held that the number of violations should be three as recommended by the Department since the statute also makes the 'maintaining' of a solid waste disposal site without a permit a violation.

Finally, the Commission modified the Order for the R factor assessed in calculating the civil penalty. The R factor is based on the level of mens rea for each violation. The Commission held that the R factor for the first violation should be zero, the second violation should be two and the third violation should be six. The increase in the R factor reflects the fact that the Refuse Group, once it was given notice by the Department that there may be problems at the site, should have taken affirmative action to prevent further improper waste from being deposited at the site. The total penalty assessed by the Commission for the three violations was \$11,400.

Commissioner Eden made a motion to have the Commission's counsel, Larry Knudsen prepare an Order with the specifications for the Commission's review and adoption at the August Commission meeting in Klamath Falls. Commissioner McMahan seconded the motion and it carried with three "yes" votes. Commissioner Reeve voted no. While agreeing with the remainder of the Commission's findings, he did not agree with the R factor determination.

D. Temporary Rule Adoption: Designate Methane Generated from Solid Waste Landfills, in Certain Circumstances, as a Hazardous Substance, Pursuant to ORS 465.400

Paul Slyman, Manager of the Cleanup Program of Waste, Management and Cleanup, and Barrett MacDougall, Business Financial Officer, presented this agenda item. The Killingsworth Fast Disposal site is a 24 acre construction and demolition landfill in NE Portland. The presentation also included information about seeking a prospective purchaser, coordinating with Metro regarding a potential release from liability, designating methane a characteristic hazardous waste, and adopting methane as a hazardous substance for the purpose of accessing the Solid Waste Orphan Site Account. The rule is limited to methane from abandoned landfills when present at concentrations greater than 5percent by volume, when a potential exists for it to migrate into confined spaces, and poses a threat to human health or safety. Commissioners wanted to ensure the Solid Waste (SW) Orphan Site Account is used wisely, and reimbursed, if possible. They also wanted know why the original post closure financial responsibility wasn't greater, and what the CU program will do if the construction is not completed within 180 days of the temporary rule adoption. The CU program intends to discuss these, and other issues with the Cleanup Advisory Committee Chair as well as SW officials in the upcoming months.

A motion was made by Commissioner Reeve to adopt the temporary rule and the statement of need and justification as found in Attachment A and B. It was seconded by Commissioner Eden, and carried with four "yes" votes.

Public Comment:

Karyn Jones presented testimony regarding the Dunnage Incinerator. She requested that the information item regarding carbon filters be held in Hermiston or Portland rather than Klamath Falls so that more citizens from the area surrounding the Umatilla Chemical Depot could attend.

E. Rule Adoption: Title V Permitting Fees and Rule Housekeeping

Andy Ginsburg, Manager of Air Quality Development, and Scott Manzano, lead rule writer, presented this item. The rule would increase Title V fees by the 1998 CPI of 1.62 percent, assess fees to non-major sources subject to Title V permitting, and six solid waste landfills would be assessed fees under the

proposed change. The fee requirement is a federal law. The Department received only one public comment, which was from Northwest Pulp and Paper Association (NPPA), questioning the fee increase. NPPA and other fee payer representatives were contacted during rule development, and prior to the public comment period. The Department discussed the proposed permitting fees with the affected landfills during the rulemaking.

The Department's proposal to incorporate the General Air Contaminant Discharge Permit (ACDP) into the State Implementation Plan fulfills a federally required administrative action.

Commissioner Reeve moved the proposed rules for the fee increase, non-major source fee applicability, and the ACDP incorporation be approved. Commissioner McMahan seconded the motion and it carried with four "yes" votes.

F. Approval of Tax Credits

Maggie Vandehey, pollution tax credit coordinator, presented this item.

Staff and the Commission briefly discussed several applications where the facility cost was less than the cost claimed on the pollution control facility application. No applicant disputed the reduction in facility cost.

Application No. 4687 - Intel

Intel claimed a system that was not operational. They voluntarily removed the system from the application (\$2M). The facility cost was also reduced by the amount of the process ductwork and ineligible acid waste piping (\$356K).

Application No. 4806 – Willamette Industries

This application was brought before the Commission in 1998. At that time, the applicant wished to submit additional information that could change DEQ's determination that the cost of restrooms, a storage area, a mechanical shop, and a fire protection system did not qualify under the pollution control statute and rules. The applicant did not submit additional information.

Application No. 4903 – Willamette Industries

Staff reduced the facility cost by the amount of the pipe and conveyor system, and associated electrical because the components did not contribute to air pollution control.

Application No. 5053 – Wellons

The eligible facility cost was reduced by the amount of the opacity monitor, the conveyors and augers. Commissioner Reeve asked if the opacity monitor had a feedback loop to the ESP. Staff stated there was not a feedback loop; therefore, the monitor was not an eligible cost for an air pollution control facility.

Applications Nos. 5171 and 5172

Commissioner Reeve noted these applications were for similar systems yet one gets 100 percent and the other is 84 percent. He asked if the only difference is the \$50,000 cut off? Maggie Vandehey confirmed that both systems include corrosion protection; and the only reason for the different percentages was based upon the 1995 legislation that limited the factors to be considered for facilities with costs not to exceed \$50,000.

Applications Nos. 5201 and 5202

It was noted the same issues applied to these applications with the added factor that No. 5202 could have split into two applications in order to receive 100% of the facility cost allocable to pollution control. The equipment could have been submitted on two applications had they been purchased at different times and on different invoices.

Commissioner Reeve made a motion to approve the tax credit applications presented in Attachment B of Agenda Item F. Commissioner Eden seconded the motion and it carried with four "yes" votes.

The following applications presented for denial in Attachment C were removed from the agenda at the request of the applicants.

Application No. 4801 – Valmont Industries, Inc.

This application was removed pending additional information regarding the "hazardous material" versus "hazardous waste."

Application No. 4860 – Waste Control Systems, Inc.

This application was removed pending applicant's research of the tipping fees included in the return on investment calculation.

Application Nos. 4959 and 4965 – Tidewater Barge Lines, Inc.

Tidewater Barge Lines' attorney, David E. Filippi, provided supplemental evidence regarding the two barges on June 18, 1999. The applicant showed that improved safety of the vessel and crew, lower insurance costs, and the protection of petroleum products being carried were not motivating factors for the double hulling of two barges. Ms. Vandehey stated that the Department has no specific evidence to the contrary.

The Department initially recommended the denial of these applications because it was consistent with the Commission's denial of a previous tax credit (application nos. 4417 – 1995) claiming a double-hulled barge. Considering the supplemental evidence, staff would recommend approving these two facilities if the accounting review proved supportive. The applications could not be recommended for approval at this meeting since the independent accounting review had not been performed. However, given the historical denial of a similar facility and the fact the applicant could spend as much as \$5,000 for an accounting review for each application, staff asked if the Commission could provide reasonable guidance regarding the approval of these two applications. The applicant's attorney asked for a preliminary approval of the applications. Commissioner McMahan stated that she did not think staff should deviate from standard practices. Though preliminary approval was not provided, the Commission stated they would consider application Nos. 4959 and 4965 based upon staff's recommendation and upon the evidence provided.

Application No. 4980 – Willamette Industries

The applicant requested the denial of this application be postponed until the EQC meets in Portland since they wish to address the Commission.

Commission Action by Application Number

App. No.	Applicant	Certified Cost	Percent Allocable	Commission Action
4635	NPI, Inc. dba/Northwest Polymers	\$ 26,787	100%	Approve
4687	Intel Corporation	\$ 242,195	100%	Approve
4806	Willamette Industries, Inc.	\$ 156,122	100%	Approve
4863	NPI, Inc. dba/Northwest Polymers	\$ 1,343	100%	Approve
4903	Willamette Industries, Inc.	\$ 45,788	100%	Approve
5007	Widmire Brothers Brewing Company	\$ 81,767	100%	Approve
5053	Wellons, Inc.	\$ 65,583	100%	Approve
5063	WWDD Partnership	\$ 9,747	100%	Approve
5132	Portland General Electric Company	\$ 20,487	100%	Approve
5134	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve
5135	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve
5136	Willamette Industries, Inc.	\$ 62,966	100%	Approve

5143	Thomas & Son Beverage, Inc.	\$ 257,212	100%	Approve
5144	Sam Trakul Investments, Inc.	\$ 1,884	100%	Approve
5149	Dunn & Leblanc, Inc.	\$ 120,338	100%	Approve
5150	Dunn & Leblanc, Inc.	\$ 11,367	100%	Approve
5151	Dunn & Leblanc, Inc.	\$ 600	100%	Approve
5153	United Disposal Service, Inc.	\$ 47,016	100%	Approve
5155	United Disposal Service, Inc.	\$ 163,489	100%	Approve
5164	United Disposal Service, Inc.	\$ 9,010	100%	Approve
5166	Willamette Industries, Inc.	\$ 27,842	100%	Approve
5171	Johns Ranch, Inc.	\$ 30,340	100%	Approve
5172	Matthew L. Carlough	\$ 08,975	84%	Approve
5176	United Disposal Service, Inc.	\$ 142,089	100%	Approve
5180	United Disposal Service, Inc.	\$ 8,440	100%	Approve
5182	Capitol Recycling & Disposal, Inc.	\$ 5,032	100%	Approve
5183	Capitol Recycling & Disposal, Inc.	\$ 4,950	100%	Approve
5192	Dunn & Leblanc, Inc.	\$ 36,198	100%	Approve
5201	Timothy & Lori Van Leeuwen	\$ 34,558	100%	Approve
5202	KG Farms	\$ 94,000	56%	Approve
4801	Valmont Industries, Inc.	\$ 407,722	100%	Remove From Agenda
4860	Waste Control Systems, Inc.	\$3,091,970	0%	Remove From Agenda
4959	Tidewater Barge Lines, Inc.	\$ 775,000	100%	Remove From Agenda
4965	Tidewater Barge Lines, Inc.	\$ 775,000	100%	Remove From Agenda
4980	Willamette Industries, Inc.	\$ 18,041	100%	Remove From Agenda

G. Informational Item: Green Permits Program

An informational presentation on Green Permits was provided by Paul Burnet, Special Projects Manager, and Marianne Fitzgerald, Green Permits Coordinator. Additional comments were contributed by Ray Hendriks of Louisiana Pacific's Hines facility. Green Permits were explained as a voluntary, incentive-based approach to encouraging environmental results better than what is required by law. Key provisions of the program were explained. The Commission was advised that draft rules would be on the August agenda.

H. Commissioners' Reports

Melinda Eden gave a summation of a public meeting regarding the Umatilla Chemical Depot she attended in June.

I. Director's Report

After the Coast Guard completed its oil removal activity on the stern section of the New Carissa, a wreck removal contract was awarded to Donjon/Devine. Nearly 250 tons of steel have been removed. Divers will survey the engine room, and will attempt to repair it to re-float the stern. DEQ is coordinating with state and federal agencies to facilitate timely processing of the application, while ensuring environmental protection. Because of a small good weather window, work must be completed before October.

During the summer of 1998, the Medford-Ashland area experienced five days of ozone exceedance under the EPA's newly adopted standard (0.08 ppm for an 8-hour average). In an effort to avoid a future non-attainment classification for ozone (a 3-year average of the fourth-highest daily 8-hour average), the

Medford area is implementing a Clean Air Action Day (CAAD) strategy patterned on the Portland program.

In mid June AQ released new permit templates for Air Contaminant Discharge Permits (ACDP) and received EPA approval of new formats for the Title V permits. These new templates and formats will streamline permit development and improve statewide consistency. Additional templates are under development for specific industry categories.

EPA recently conducted a performance review of the State Revolving Fund Program administered by the Water Quality Program. The SRF Program provides low interest loans to communities for water pollution control projects. EPA stated "We wish to compliment you and your staff on your work over the last year. The annual review confirmed our long-held view that the Oregon Clean Water State Revolving Fund program is well managed and forward looking".

The final Portland Harbor Sediments Management Plan will be available at the end of June. The first phase of implementation, slated to begin in July, will include development of remedial investigation work plan, additional site discovery work to identify responsible parties, and continued public involvement. Discussions continue with natural resource trustees and tribal governments about their involvement and participation during implementation.

The US EPA is soon to make an announcement about highlighting the corrective action performance at facilities that are considered a high priority under the Government Performance Results Act (GPRA). These high priority facilities, of which there are eleven in Oregon, will be followed to assess their achievement of two environmental indicators (controlling groundwater releases and controlling human exposures) by the year 2005.

Joni Hammond, Lynne Kennedy and Dick Nichols met with the Idaho Division of Environmental Quality and Idaho Power Company representatives to discuss the TMDLs for portions of the Snake River. Idaho Power owns three hydro-electric units on the Middle Snake River: Brownlee, Oxbow, and Hells Canyon Dams. These dams will need to renew their Federal Energy Regulatory Commission (FERC) licenses in 2005. All three projects may be contributing to water quality problems that have been identified on Oregon and Idaho's 303d lists. Before FERC can issue their license, both Departments of Environmental Quality must certify the projects as not violating water quality standards (Section 401 of CWA). The ability to provide such a certification will be greatly enhanced if Idaho and Oregon can establish TMDLs for the river prior to the need for certification. As a result of the meeting, Idaho Power will support funding for Oregon DEQ to participate in a joint TMDL for the Snake River with the State of Idaho.

In light of Karyn Jones' request to have the work session on carbon filters be held closer to Hermiston, the Commission will set a special meeting in August for items involving the Umatilla Chemical Depot only.

There being no further business, the meeting was adjourned at 2:35 p.m.