

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 09/29/2000**



**State of Oregon
Department of
Environmental
Quality**

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AGENDA

ENVIRONMENTAL QUALITY COMMISSION MEETING

September 28-29, 2000
Sleep Inn and Suites
Umpqua Room
2855 NW Edenbower Blvd
Roseburg, 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.

Thursday, September 28, 2000

During the afternoon, the Commission will tour multiple sites in the Roseburg area

6:30 - 8:30 p.m. Dinner with local officials

Friday, September 29, 2000

Beginning at 8:30 a.m.

- A. Approval of Minutes**
- B. Consideration of Request for Preliminary Certification on Tax Credit No. 5009:**
Portland General Electric Company's Independent Spent Fuel Storage Installation
at the Trojan Nuclear Power Plant site in Rainier
- C. Consideration of Tax Credit Requests**
- D. Informational Item:** Update from the Department's Chemical Demilitarization
Program

E. Informational Item: Update on the May Incident at the Tooele Chemical Agent Disposal Facility (TOCDF) at Tooele, Utah

F. †Rule Adoption: Public Participation in Permit Process Rules

G. †Rule Adoption: Klamath Falls Carbon Monoxide (CO) Maintenance Plan

H. †Rule Adoption: On-Board Diagnostic (OBDII) Vehicle Emission Test Method

I. Action Item: Possible Commission action on the Petition filed by NEDC et al. for reconsideration of the civil penalty assessed by the Department against Smurfit News Print Corp.

1:00 p.m.: There will be Public Comment on Agenda Item J Only

J. Action Item: Standards, Criteria, Policy Directives and Hiring Procedures to be Used in Hiring the Director of the Department of Environmental Quality

K. Action Item: Appointment of an Interim Director

L. Commissioners' Reports

M. Director's Report

- Update on the Blue Heron Permit
- Update on the Wah Chang - Albany (Oremet) Permit

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

The Commission has set aside November 30-December 1, 2000, for their next meeting. It will be held in Portland, Oregon at DEQ Headquarters. The Commission will also have a planning meeting on November 29, 2000 at the Heathman Hotel in Portland, Oregon.

Copies of staff reports for individual agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 503-229-5301, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

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

September 12, 2000

Environmental Quality Commission Tour September 28, 2000

- 11:30 Arrive at Sleep Inn Motel – Roseburg

- 11:45 Leave in van from motel parking lot

- Box lunch provided

- Drive to and tour the Formosa Mine Prospect area

DEQ and BLM have been working together over the last two years to address an acid mine drainage problem from the abandoned Formosa Mine site near Riddle. Over eighteen miles of once prime salmon habitat have been significantly impacted from acid mine drainage (which contains high levels of toxic metals) flowing into the headwaters of Middle Creek and South Fork Middle Creek. DEQ is in the process of designing and constructing an interim removal action to divert the acid mine drainage into a series of passive treatment steps to remove the majority of the metals. The acid mine drainage from two mine adits will be combined and routed to a limestone channel to adjust the pH and drop out metals. The acid mine drainage will then be piped 0.5 miles downslope to a series of anaerobic treatment ponds for further treatment before being discharged back into Middle Creek. DEQ anticipates construction to begin on September 25th.

- Drive to and tour the “Calapooya Project” area

DEQ created a multi-program project team to address water quality concerns and reduce toxics and wastes within the two watersheds. Strong emphasis was placed on using a community-based, collaborative approach. Some of the highlights from the project include providing innovative technical assistance to cities, businesses and local groups, minimizing impacts from past cinnabar (mercury ore) mining, and eliminating or redirecting discharges away from the creeks.

- 5:30 Arrive back at Sleep Inn Motel – Roseburg. End of tour.

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Eighty-Fourth Meeting

**May 17-18, 2000
Regular Meeting**

The regular meeting of the Environmental Quality Commission (EQC) was held on May 17 and 18, 2000, at the Department of Environmental Quality (DEQ) headquarters, 811 SW Sixth, Portland, Oregon. The following Environmental Quality Commission members were present:

Melinda Eden, Chair
Deirdre Malarkey, Member
Tony Van Vliet, Member
Mark Reeve, Member

Also present were Larry Knudsen and Larry Edelman, Assistant Attorneys General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality; 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 at 8:00 a.m., May 17, 2000 to consult with legal counsel concerning the Commission's legal rights and duties with regard to potential litigation relating to tax credit applications Nos. 4570 and 4800.

Chair Eden called the meeting to order at 8:55 a.m. on Thursday, May 17.

A. Approval of Minutes

Commissioner Van Vliet made a motion to approve the minutes of the March 31, 2000, EQC meeting as written. It was seconded by Chair Eden and carried with four "yes" votes.

B. Approval of Tax Credit for Portland General Electric Company's Independent Spent Fuel Storage Installation at the Trojan Nuclear Power Plant Site in Rainier

This agenda item was postponed until the September 28-29, 2000 Commission meeting.

C. Action Item: Consideration of Tax Credit Requests

Approvals

The following applications were removed from the list recommended for approval.

Jim Aden of Willamette Industries requested application 4979 be removed from the agenda to allow the applicant an opportunity to respond to the findings contained within the applicable tax credit review report. Application 4979 was scheduled before the Commission on November 18, 1999 and on February 10, 2000.

The Director's recommendation to approve the Mitsubishi Silicon America applications 5049, 5100, 5101, 5102, 5103, 5104 and 5105 specifically rely upon the definition of "substantial completion." The Department recommended the applications be removed from the agenda until clear guidance was brought back before the Commission.

Tom McCue requested removal of Wacker Sitrionic Corporation's application 5140, presented for certification of its wastewater treatment system agenda. The applicant is reviewing the disallowed costs and the cost savings associated with the installing of a treatment system.

Gary Fish of Deschutes Brewery, Inc. requested removal of application 5159 for certification of its wastewater treatment from the agenda. Since the time of the original application, Mr. Fish has identified additional information that challenges the original assumptions the applicant had made.

Tom Wood, counsel for Smurfit Newsprint Corporation, asked that application 5236 be removed from the agenda. They will submit additional information regarding those portions of the claimed facility the Department identified as not being submitted within the timing requirements of ORS 468.165 (6).

Ms Vandehey noted the addendum to agenda item C and two corrected review reports for the record.

On the review of Oregon Steel Mill's application 5262, the Department had subtracted \$582,577 as an unsubstantiated amount. All claimed costs have been substantiated; therefore, the Director's recommendation for the certified facility cost increased from \$1,806,533 to \$2,389,110.

Denton Plastics, Inc. leases some of their equipment from Neo Leasing, Inc. However, the equipment represented in application 5311 is owned by Denton Plastics. Therefore, the certificate should be issued to Denton Plastics, Inc. as shown on the review report in the addendum. The applicant name and the business description are the only items that have changed on the review report.

Commissioner Van Vliet expressed his division of interest, stating he had a conflict of interest on applications 5298, 5300, 5301, 5302, and 5304 (Willamette Industries and Hewlett Packard).

The policy implications of the approval of Willamette Industries' application 4989 for all material recovery facilities was discussed. It would set a precedence for including crucial raw materials as a valid expenditure in the return on invest (ROI) calculation for a material recovery facility. There had not been a previous consideration of this type for a material recovery process. The additional resin is required to bind the sanderdust; and without the additional resin the sanderdust would not be able to be utilized and would be solid waste that would be stockpiled, burned, or sent to a landfill. This issue has not come up in relation to material recovery but had come up with the other types of tax credits and it is not allowed. The material recovery part of the statute and rule clearly states any "material recovery process" is a valid method for accomplishing the pollution control.

Staff explained the difference from the previous ones. A crucial raw material had not been claimed before – a material that is required to be utilized in the process. It would be a raw material they would not use otherwise, and they would only be using it to utilize the waste material. Commissioner Reeve paraphrased stating, they use the resin together with the sanderdust and they actually make a useful product, they make a profit on it, and the Department is discerning the cost of the procedure. Ongoing material costs are generally not considered but the cutoff is at the pollution control equipment. The consideration does not extend to any materials they need to produce their product. In this case, the resin is required in the material recovery process.

Chair Eden asked for clarification regarding the two sentences on page 2 of the Staff Report where "The applicant limited its consideration of income to material recovery components not the entire production process," and the next sentence indicates "the increase in resin is necessary in order to produce particle board." Is it all part of production and are there any rules or guidelines to give the Commission some help in determining what would be a crucial raw material? When staff indicated there were no guidelines, Chair Eden asked if the Commission would be better off if some were developed; otherwise they would be in the situation of making these determinations on a case by case basis in terms of what is crucial and what is not. Counsel added, it is necessary and appropriate for the Commission to interpret legislative and rule based concepts on a case-by-case basis as the applications came to the Commission. The EQC could consider adopting interpretive rules; however, they normally would not apply to these applications. Staff stated the word "crucial" was not in the rule and the Department used it as a distinction from all materials used in the production process. Counsel suggested pulling the application from the agenda and the Department or counsel could give the Commission either a written or a staff discussion of that item taken out of the context of a particular application. Chair Eden said she would appreciate discussion from scientists or industry people on the particleboard process and perhaps other processes

to help the Commission determine if they are valid expenditures.

Commissioner Reeve stated he has struggled with ROI for as long as he has been reviewing tax credits. If the EQC really delves into ROI issues, of which this is a subset, there seems to be more questions than answers. He would rather adhere to a more clear-cut alternatives analysis and would like a workshop on this subject. Counsel agreed it would be valuable to the new Commissioners to provide at least a brief history of ROI. Ms. Vandehey said she would set up a workshop later in the year. She requested the Commission remove application 4989 from the agenda.

Commissioner Reeve would like guidance to a consistent approach to how cost savings are applied as noted in applications 5140 and 5223, Oregon Steel Mills, Deschutes Brewery. They all appeared to be wastewater treatment systems. Staff will provide the Commission with guidance on how the reviewers approach cost savings.

Commissioner Reeve made a motion to approve the applications as set forth in the revised summary recommendation with the removal of application 4989 and setting aside until a later date applications 5298, 5300, 5301, 5302, and 5304. Ms. Vandehey asked Commissioner Reeve to include Mitsubishi Silicon America's applications. Commissioner Reeve amended his motion. Commissioner Van Vliet seconded the motion and it passed with four "yes" votes.

A motion was made by Commissioner Reeve to approve applications 5298, 5300, 5301, 5302, and 5304. Commissioner Malarkey seconded the motion and the motion passed with three "yes" votes. Commissioner Van Vliet abstained due to conflict of interest.

App.No.	Media	Applicant	Commission Action			Value
			Removed From Agenda	Certified Cost	Percent Allocable	
Approvals – Attachment B						
4867	Water	PGE		\$37,382	100%	\$18,691
4979	Air	Willamette Industries, Inc.	X			
4989	SW	Willamette Industries, Inc.	X			
5049	Air	Mitsubishi Silicon America	X			
5100	Water	Mitsubishi Silicon America	X			
5101	Air	Mitsubishi Silicon America	X			
5102	Air	Mitsubishi Silicon America	X			
5103	Air	Mitsubishi Silicon America	X			
5104	Air	Mitsubishi Silicon America	X			
5105	Air	Mitsubishi Silicon America	X			
5140	Water	Wacker Siltronic Corp.	X			
5158	Water	Balzer Pacific Equipment Co.		\$93,023	100%	\$46,512
5159	Water	Deschutes Brewery	X			
5161	Air	AGPR, Inc.		\$275,003	100%	\$137,502
5210	Air	Barenburg USA, Inc.		\$93,376	100%	\$46,688
5223	Water	Cascade General, Inc.		\$1,996,920	100%	\$998,460
5236	Air	Smurfit Newsprint Corp.	X			
5242	Water	Carson Oil Company		\$138,278	100%	\$69,139
5262	Water	Oregon Steel Mills, Inc.		\$2,389,110	100%	\$1,194,555
5270	Water	PGE		\$146,409	100%	\$73,205
5278	Water	PGE		\$14,099	100%	\$7,050
5280	Air	Forrest Products Company		\$19,604	100%	\$9,802
5284	Plastics	Denton Plastics, Inc.		\$22,619	100%	\$11,310
5285	Water	Elf Atochem North America		\$948,062	100%	\$474,031
5289	Water	Portland General Electric		\$220,632	100%	\$110,316
5298	Water	Willamette Industries, Inc.		\$29,166	100%	\$14,583
5300	Water	Willamette Industries, Inc.		\$100,280	100%	\$50,140
5301	Water	Willamette Industries, Inc.		\$169,065	100%	\$84,533
5302	Air	Willamette Industries, Inc.		\$116,162	100%	\$58,081

5303	Air	The Ridge Company		\$107,099	100%	\$53,550
5304	Air	Hewlett-Packard Company		\$4,476,238	100%	\$2,238,119
5311	Plastics	Denton Plastics, Inc.		\$18,000	100%	\$9,000
5321	Plastics	Neo Leasing, LLC		\$4,995	100%	\$2,498
5326	Air	Eagle Foundry Company		\$232,902	100%	\$116,451
5327	Air	Smith Seed Services		\$133,047	100%	\$66,524
5335	Water	PGE		\$31,323	100%	\$15,662
5336	Water	PGE		\$49,090	100%	\$24,545
5348	USTs	WSCO Petroleum Corp.		\$138,618	88%	\$60,992
5350	USTs	Deschutes Valley Equipment		\$11,834	100%	\$5,917
5355	SW	Dunn & Leblanc, Inc.		\$6,750	100%	\$3,375
5356	USTs	Roland J. Schmidt		\$30,040	100%	\$15,020
5360	SW	Capitol Recycling & Disposal		\$156,043	100%	\$78,021
5362	SW	Environmental Waste Systems		\$32,350	100%	\$16,175
5364	SW	Environmental Waste Systems		\$23,000	100%	\$11,500
5366	Perc	Philip B. Park		\$68,800	100%	\$34,400
5367	USTs	PMD Fuel, LLC		\$129,128	91%	\$58,753
5368	SW	Pacific Sanitation, Inc.		\$29,772	100%	\$14,886
5369	Air	Tokai Carbon USA, Inc.		\$57,938	100%	\$28,969
5370	SW	United Disposal Service, Inc.		\$4,250	100%	\$2,125
5371	SW	United Disposal Service, Inc.		\$4,570	100%	\$2,285
5372	SW	Albany-Lebanon Sanitation		\$10,242	100%	\$5,121
5374	USTs	Blue Dog Farms		\$96,297	90%	\$43,334
5375	Water	Bruce Pac		\$111,329	100%	\$55,665
5376	SW	United Disposal Service, Inc.		\$46,603	100%	\$23,301
5377	SW	United Disposal Service, Inc.		\$18,220	100%	\$9,110
5378	Water	Willamette Egg Farms LLC		\$189,732	100%	\$94,866
5380	Air	PED Manufacturing, Ltd.		\$27,272	100%	\$13,636
5381	SW	KE Enterprises, Inc.		\$286,543	100%	\$143,272
5382	SW	KE Enterprises, Inc.		\$211,440	100%	\$105,720
5383	SW	KE Enterprises, Inc.		\$35,000	100%	\$17,500
5385	SW	Pacific Sanitation Inc.		\$33,244	100%	\$16,622
5396	Plastics	Denton Plastic, Inc.		\$14,050	100%	\$7,025
5398	Plastics	Neo Leasing, LLC		\$87,751	100%	\$43,876
5403	SW	Environmental Waste Systems		\$5,947	100%	\$2,973
5404	SW	Environmental Waste System		\$45,504	100%	\$22,752

Denials

The following applications were removed from the list recommended for denial.

Jim Aden of Willamette Industries requested applications 5167 and 5299 be removed from the agenda in order to allow the applicant an opportunity to respond to the findings contained within the applicable tax credit review reports. Application 5167 was previously scheduled before the Commission on November 18, 1999. This is the first time on the agenda for application number 5299.

Andy Nichols of Wah Chang requested applications 5276 and 5286 be removed from the agenda. They would like to present additional materials to further justify their applications.

Only one denial remained on the agenda, application 5232 – Fujitsu Micro Electronics, Inc. Commissioner Reeve moved the Commission deny application 5232. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

Denials – Attachment C

5167	Air	Willamette Industries, Inc.	X			
5232	Noise	Fujitsu Microelectronics Inc.		\$809,813	100%	\$404,907
5276	Water	Teledyne Industries, Inc.	X			
5286	Water	Teledyne Industries, Inc.	X			
5299	Water	Willamette Industries, Inc.	X			

Rejections

Mr. Tom McCue of Wacker Sitronic Corporation requested application 5141 for certification of their scrubbers be removed from the agenda. The applicant is reviewing the disallowed ducting amounts and the date the scrubbers were actually complete and placed into operation. This application was originally on the summary of applications listed for approval. Commission Reeve noted the reason for the rejection of application 5141 was "untimely submittal" yet the Department seemed to go ahead and look for the eligible costs. He asked if that was an unusual procedure. Staff stated it is not always evident in the beginning of a review if an application is submitted in a timely manner. If that analysis has been made then it is included in the Review Report.

Rejection – Attachment D

5141	Air	Wacker Siltronic Corp.	X			
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Transfers

Weyerhaeuser Company requested certificate 2385 be transferred to Sierra Pine. A motion was made by Commissioner Van Vliet to transfer the certificate. Commissioner Malarkey seconded the motion and it carried with four "yes" votes.

Willamette Industries' application 4570 was to be scheduled for this agenda item. At the applicant's request, it was removed from the agenda and scheduled for the July EQC meeting.

D. Rule Adoption: Lane Regional Air Pollution Authority (LRAPA) Open Burning Rule Amendments and State Implementation Plan (SIP) Revision

Andy Ginsburg, Air Quality Administrator, and Laurey Cook, SIP Coordinator, presented this item. The presentation included a brief summary of the LRAPA's rule amendments and the procedure for revising the SIP. The SIP is revised through amending the Department's general rule OAR 340-200-0040. LRAPA exists under statutory authority.

Prior to the adoption of the rule amendments, the Department reviewed the rules for stringency and found the rules were at least as stringent as the Department's rules. LRAPA adopted the open burning rules as a revision to the State Implementation Plan. LRAPA's open burning rule amendments include a change in the fee structure from a flat fee to a volume based fee of \$4 a cubic yard, with a \$50 minimum. The fee will assist in covering LRAPA's cost to run the open burning program and provide an incentive to seek alternatives to burning. LRAPA also added a flat fee of \$100 for burning vegetation in wetlands and expanded its open burning boundary to include all of Fire District 1. Additionally, LRAPA updated its definition of the Eugene-Springfield Urban Growth Boundary.

Commissioner Reeve made a motion to approve the rule adoption amending LRAPA's open burning rules as a revision to the SIP. It was seconded by Commissioner Malarkey and carried with four "yes" votes. The rule amendments will be submitted to the Environmental Protection Agency (EPA) for approval into the SIP.

E. Rule Adoption: Title V Permitting Program Consumer Price Index (CPI) Fee Increase

Andy Ginsburg and Scott Manzano, lead rule writer, presented this item. The proposed rule would increase Title V fees by the 1999 consumer price index (CPI) of 2.27 % to fund increased Title V program costs due to salary increases and inflation. The Department did not receive any public comment. The lack of comment was most likely because the Department took advantage of several opportunities to inform fee payer representatives and sources of the proposal during the course of the rulemaking.

In response to questions from the Commission, staff explained the CPI used in the proposal was and has always been the national CPI, not the Oregon CPI. The national CPI was slightly lower than the Oregon CPI for this year's proposal. The Department recently completed a workload analysis which supports the CPI increase, and was used to determine resource need for the program. In the event such an analysis indicated additional Title V staff was needed, a statutory change would be required to establish a new base fee.

A motion was made by Commissioner Reeve to adopt the rules and amend the SIP. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

G. Informational Item: Report to the EQC Regarding Hazardous Waste-Derived Fertilizer and Related Issues

Mary Wahl, Waste Prevention and Management (WPM) Administrator; Anne Price, Hazardous Waste Program and Planning Manager; and Gary Calaba, WPM staff, presented this item. The metal concentration limits EQC set last year for K061 hazardous waste derived fertilizer became effective on March 31, 2000. The Oregon Department of Agriculture (ODA) will ask registrants whether their zinc fertilizer is waste derived; if so, the registrant will be advised there are metal limits for their fertilizer. Other fertilizer issues remain, and DEQ is participating with ODA to set limits for non-nutritive in non-waste derived fertilizers. In addition, EPA is developing standards for K061 fertilizer, and DEQ will have to evaluate its standards in the future to ensure they are comparable to EPA's standards.

Commissioners asked whether metals are tied up in an organic soil. Staff responded that that appears to be the case, although scientists do not always agree on such matters. The Commission requested a persistent bioaccumulative toxins (PBT) briefing in the fall.

F. Rule Adoption: Solid Waste Rule Amendments to Waste Planning and Recycling Grants OAR 340-083-0010 to 340-083-0100

Mary Wahl; Chris Taylor, Solid Waste Manager; and Jacquie Moon, Project Coordinator, presented this item. Each person in Oregon generates 7.2 pounds of solid waste each day. The Department collects a \$1.25 per ton fee on waste disposed at disposal sites. A portion of the fees funds the Solid Waste Planning and Recycling Grants. The Department has offered nine grants rounds, each adhering to the original program objectives, which were to help financially needy local governments located far from markets for recyclable material with recycling opportunities. Solid waste planning grants have been given to most counties, and the original objectives have largely been accomplished.

The solid waste grant program has been a "stand alone" program, and the Department would like to bring it in line with other solid waste programs, and use it as a tool to implement solid waste policies. DEQ would like to use grants as the direct way to provide financing to local governments focusing on waste prevention. It is a relatively small program with approximately \$250,000 available annually for grants. Since the first grant round in 1991, 105 grants totaling approximately \$2,000,000 have been awarded. The median grant award is \$15,000. The range is \$1,134 - \$80,000. This rule proposal would amend the grant rules to change the selection criteria, making them broader than before, and adding a provision for focused grants, which would allow the solid waste program to give priority funding to defined types of projects intended to achieve specific environmental objectives. The changes to the grant rules will allow the Department the flexibility to be creative, and ultimately impact waste generation and waste recovery in a positive manner.

Commissioner Van Vliet asked how the grants were distributed between categories over the life of the program. Staff answered that for small local governments, 25% of the grant funds went to projects to develop or enhance recycling depots, 44% to projects to prepare solid waste management plans, and 31% to projects for general recycling and education activities.

Commissioner Reeve asked if the solid waste program had evaluated the grants in terms of what types were successful and what types were not successful. Staff indicated this had been done on two occasions, once in 1996, and again in 1999. The regional technical assistant staff are available to work with local governments to guide them towards effective grant proposals. The Department could provide information to local governments before they prepared a grant.

A motion was made by Commissioner Van Vliet to adopt these rules. Commissioner Malarkey seconded the motion and it carried with four "yes" votes. The Commission requested an informational item in the fall on the 2000 recovery rate report.

M. Director's Report

DEQ, the Governor's office and the City of Portland have been meeting to reach agreement on a Combined Sewer Overflow (CSO) strategy. The strategy being discussed is to allow the City to reduce the size of the "big pipes" structural facilities. Cost savings from that could be used on in-flow controls and to meet the 2011 performance and control program deadline.

Presentations on initial results of the cleanup program customer survey were made to the Environmental Cleanup Advisory Committee (ECAC) and Voluntary Cleanup Program Focus Group in April with the final

survey report due May 15, 2000. ECAC will meet in June to recommend potential program improvements.

EPA is proposing to place a 6-mile stretch of the Willamette River between Sauvie Island and Swan Island, referred to as Portland Harbor, on the National Priority List, commonly known as Superfund. On April 5, EPA Region 10 Administrator Chuck Clarke sent a letter to Governor Kitzhaber requesting his concurrence with EPA's decision to list the site. Efforts to receive an EPA deferral for a Portland Harbor clean up under state authority could not go forward without signed tolling agreements between the Natural Resource Trustees and the Potentially Responsible Parties. The parties were unable to reach an agreement by the end of March. DEQ and EPA will jointly plan the next cleanup steps.

At the April 18 meeting of the State Land Board the responsible party's on-site representative, Bill Milwee, advised state officials the conditions at the wreck site of the New Carissa make further work too dangerous and too difficult to continue. State Lands Director Paul Cleary reminded the Responsible Party (RP) that the State's full and complete removal demand continued in effect. The Governor advised the RP that if they cannot remove the wreck the state will require a \$25 million commitment in lieu of removal. The state would initiate legal action if necessary.

Governor Kitzhaber will sign an order on May 17 directing the Department of Administrative Services (DAS) and other specific state agencies to adopt sustainability practices for internal operations. The order also directs DAS to develop and assist other state agencies in efficiently achieving sustainable internal operations. DEQ is already working to identify opportunities and to facilitate actions to achieve sustainability in internal operations.

The Commission requested a briefing on Environmental Cleanup Division (ECD) survey results report at a future meeting.

Larry Knudsen, Department of Justice, commented on the following court cases that were mentioned in the Director's report.

Pennington v. DEQ: Oregonians in Action (OIA) appealed DEQ's issuance of a Clean Water Act (CWA) Section 401 certificate for the Day Road Prison near Wilsonville. The certificate was issued as part of an application to the US Army Corps of Engineers for a CWA Section 404 permit to fill of approximately 1.5 acres of wetland. OIA asserts the certificate is inadequate because it does not include conditions requiring the Department of Corrections to comply with statewide land use goals and act local land use regulations. DEQ believes it did comply with relevant land use provisions when issuing the certificate.

Snake River Decision: On March 31, 1999, a consortium of environmental and fishery groups filed a suit against the US Army Corps of Engineers in federal district court. The suit alleged violations of the State of Washington's temperature and total dissolved gas water quality standards in relation to operation of the four lower Snake River hydroelectric dams. In a ruling released in March, Judge Helen Frye ruled that the federal government is not exempt from complying with the provisions of the Clean Water Act, and citizen groups have the right to pursue legal avenues to have standards enforced. In ruling, Judge Frye acknowledged evidence of damage to the Snake River, but gave both sides 90 days to gather evidence from the administrative record to demonstrate whether or not dams were the cause of the violations.

Garcia River Law Suit: The United States District Court for the Northern District of California decision in the *Prosolino et al v. EPA*, referred to as the Garcia River Case, affirmed that EPA has the authority to issue Total Maximum Daily Loads (TMDLs) for nonpoint source listed waterbodies. The court also clarified that implementation of load allocations for nonpoint sources are the responsibility of the state.

Hawes v. State of Oregon: Ranchers Daryl and Barbara Hawes, the Baker County Farm Bureau and The Baker County Livestock Association filed suit against the Department, EQC and Oregon Department of Agriculture. The suit seeks to invalidate the Memorandum of Agreement between DEQ and EPA relating to the development and implementation of Total Maximum Daily Loads (TMDLs). It also seeks a court order declaring that EPA and DEQ have no authority under the federal Clean Water Act to establish TMDLs for water bodies that violate water quality standards because of pollution caused solely by nonpoint sources such as farming, grazing and logging.

Northwest Environmental Defense Center and Churchill v. Carol Browner: The Sierra Club joined Jack Churchill in requesting the court enter an order and decree that finds EPA in violation of a 1987 consent decree requiring EPA to ensure that Oregon completes a certain number of TMDLs. They also requested

the court to issue an order compelling EPA to issue TMDLs for Oregon's identified polluted waters in six months. At a May 2nd hearing, Judge Hogan delayed any decision pending the outcome of settlement negotiations involving parties in the cases of Northwest Environmental Advocates, et.al. v. Browner, and NEDC and Churchill v. Thomas. Both cases are related to completing TMDLs for Oregon's listed waterbodies. Settlement discussions are ongoing.

Public Comment: Charles Logue and Tom VanderPlaat from the Unified Sewerage Agency commented on the extension of the Tualatin River Basin TMDL Compliance Order.

L. Commissioners' Reports

Commissioner Malarkey reported on the environmental concerns she observed on vacation. Commissioner Reeve is now the Co-chair of the Oregon Water Enhancement Board (OWEB). Chair Eden participated in the emergency response exercise at the Umatilla Chemical Depot.

The meeting was recessed for the day at 12:05 p.m. so the Commission could tour multiple sites in North and Northeast Portland and along the Columbia Slough.

The meeting resumed at 8:00 a.m. on Thursday, May 18.

H. Informational Item: Total Maximum Daily Loads (TMDLs)--A Status Report

Dick Pedersen, Manager Watershed Management Section, provided the Commission with an update and status of Oregon's TMDL Program. The schedule for completing TMDLs in Oregon is partially based on consistency with the Oregon Plan and partially on agreements revolving around lawsuits regarding TMDLs in Oregon. Oregon's TMDL schedule is aggressive. DEQ is directed to complete TMDLs for all 91 sub-basins in a systematic fashion by the end of 2007. DEQ agreed to the schedule and the TMDL methodology in a Memorandum of Agreement signed with EPA in February of this year. DEQ's approach to completing TMDLs is to include water quality management plans that will identify the management implementation measures addressing TMDL load and wasteload allocations. Using place based basin coordinators, DEQ is actively working in approximately 25 of the 91 sub-basins. During the last legislative session, DEQ was directed to complete 9 of the 12 Willamette Basin sub-basins on a shortened schedule. These sub-basins are to be completed by the end of 2003 rather than the original 2005 to 2007 timeframe. DEQ was authorized to hire staff to complete this task. DEQ just recently completed and EPA approved the Upper Grande Ronde sub-basin TMDL. This is one of the first sub-basin level TMDLs dealing with all parameters and all land management units. It will pave the way for other similar sub-basin TMDLs. Our plans are to complete TMDLs for the Tualatin, Wilson-Trask-Nestucca, Williamson, Sprague, and Upper Klamath Lake and have them available for public review and comment this calendar year.

I. Action Item: Extension of the Tualatin River Basin TMDL Compliance Order

Andy Schaedel, Water Quality Manager, and Rob Burkhart, Tualatin Basin Coordinator, presented this item. After explaining the reasons for the extension of the Tualatin River basin TMDL compliance order, staff opened the discussion for questions from the Commission.

In answer to a question concerning new data about phosphorous, staff responded that the lower river is currently achieving the pH standard during good flow conditions. Phosphorus concentrations are lower but still above the TMDLs. Recent data gathered by U.S. Geological Survey and the Oregon Graduate Center is showing that concentrations in deeper groundwater is higher than expected. The Department is proposing to adjust the phosphorus TMDLs upward to background levels. A temperature TMDL is also being developed.

Although it will be a tight time frame to complete the TMDLs, given the complexity of TMDLs for the basin, it is doable within the seven month timeline. The Tualatin TMDL is behind schedule, for the commitment given EPA (which was 1999), but is not considered late until one year after the due date shown. The extension does not include any tasks that were to be completed earlier. The tasks to be completed under the extension are all ongoing tasks. The Department will come back to the EQC to address compliance elements once the TMDLs are finalized.

Chair Eden indicated this order has been extended several times and asked that this be the final request for an extension. Commissioner Reeve made a motion to approve the extension. Commissioner Malarkey seconded the motion and it carried with four "yes" votes.

J. Informational Item: DEQ Budget Update

Andy Ginsburg, Air Quality Administrator, and Mike Llewelyn, Water Quality Administrator, updated the Commission on the proposed packages they will be presenting from their respective sections in DEQ's budget proposal to the legislature.

K. Action Item: Permit Revocation Request Related to the Umatilla Chemical Agent Disposal Facility (UMCDF)

(A videotape and written transcript of Agenda Item K are available upon request from DEQ's Hermiston office.)

Wayne C. Thomas, DEQ's Chemical Demilitarization Program Administrator, and Larry Edelman, Assistant Attorney General, provided the Commission with a background on the UMCDF Permit Revocation Request made by G.A.S.P., et al. ("Petitioners"). The Department received a letter in December, 1998 from the Petitioners that was not, at the time, interpreted by the Department as a request for revocation of the UMCDF Hazardous Waste Storage and Treatment Permit ("HW Permit," ORQ 000 009 431). During a hearing before the Multnomah County Circuit in June, 1999 the Department agreed to treat the December, 1998 letter as a request for revocation and proceed accordingly.

Mr. Edelman provided the Commission with a discussion of the legal nature of today's proceeding and emphasized this was not a request for "reconsideration," but a request for "revocation." He explained the distinction between the two and discussed the specific criteria that must be met in order for the Commission to make a decision to revoke or to modify the UMCDF HW Permit, as laid out in a memorandum to the Commission dated August 4, 1999 (Attachment C of the Staff Report). Mr. Edelman also discussed the Commission's and the Permittee's options concerning contested case proceedings in the event the Commission decided to revoke or modify the HW Permit. Mr. Edelman pointed out that the Commission has broad discretion in applying the criteria.

The Petitioners, represented by Karyn Jones, President of G.A.S.P., and Richard Condit, Counsel for the Petitioners (participating by telephone), then provided oral testimony. Mr. Condit provided information to the Commission about an incident involving the confirmed release of chemical agent on May 8 from the stack of the Tooele, Utah Chemical Agent Disposal Facility (TOCDF). Mr. Condit pointed out the release as confirmation of what the Petitioners have maintained: "Smokestack technology of this nature is bound to have releases of the chemicals or materials being burned as well as the other byproducts of such burning, such as dioxin, PCBs, heavy metals and a host of other nasty compounds." He also discussed the "Dioxin Reassessment" being prepared by EPA and the latest draft of the Dioxin Reassessment "confirms that the current body burden of dioxin in the general population are at or near levels that could cause some adverse effects." The Petitioners believe the UMCDF will contaminate the agricultural lands around the Depot and put sensitive human populations at risk.

Representatives of the Permittees then testified before the Commission. Present on behalf of the Permittees were Lieutenant Colonel (LTC) Timothy Connelly, Judge Advocate General; Stephen DePew, interim UMCDF Project Manager for the Army's Program Manager for Chemical Stockpile Disposal; Loren Sharp, UMCDF Project Manager for Raytheon Demilitarization Company; and LTC Thomas Woloszyn, Commander of the Umatilla Chemical Depot. LTC Connelly stated the Army agreed with the legal analysis presented by the Oregon Attorney General's office, and the Army "generally concurred" with the Department's Staff Report. LTC Connelly said the Army was still reviewing the Petitioners' comments (which were received on May 17), and Attachment X to the Staff Report. Attachment X included a copy of the "Facility Start-up Checklist" that was prepared by the Department, but the narrative discussing Attachment X was inadvertently left out of the Staff Report. A correction to Page 57 the Staff Report was distributed just prior to the beginning of this meeting.

Mr. DePew reiterated the Army's commitment to its "foremost goal"—the "safe and environmentally sound operation" of UMCDF. Mr. Sharp discussed the procedures Raytheon has put in place in response to recommendations from various agencies to preclude further problems in responding to incidents at the construction site similar to the worker exposure incident that occurred in September, 1999. Mr. Sharp told the Commission Raytheon has now installed a public address system in the Munitions Demilitarization Building, acquired additional cell phones and pagers, identified and established additional evacuation routes, increased training sessions for workers, conducted emergency drills, and entered into agreements with various on-and off-post medical resources.

LTC Woloszyn also discussed the improvements that have been put in place at the Depot in the aftermath of the September incident. The Memorandums of Agreement have been put in place, communication systems have been improved, a public awareness program has been initiated, and numerous drills and exercises have been conducted. In response to a question from Commissioner Van Vliet, Mr. Sharp explained that the purchase of Raytheon by Morrison-Knudsen would not be finalized until about mid-June.

Commissioner Reeve requested the Permittees and the Department provide the Commission, the public, and the Petitioners with a full report on the May 8 chemical agent release at the Tooele facility. Commissioner Eden emphasized the need for the Commission to get all available information about the May 8 Tooele incident, and also requested additional information be provided about the EPA's Dioxin Reassessment as soon as it was available.

Wayne C. Thomas, accompanied by Sue Oliver, Senior Hazardous Waste Specialist with the Department's Chemical Demilitarization Program, then presented the staff report. Mr. Thomas explained how the staff report was organized and the methodology used by the Department in reviewing all of the information. The Department examined all of the legal documents submitted during proceedings from G.A.S.P., et al. v. EQC, et al., public comments received during two public comment periods, and Department records. Each document was then reviewed more closely and assessed whether or not it supported the Petitioners' argument on any given issue.

Ms. Oliver then presented the Department's staff report by reviewing each section.

Pollution Abatement System Carbon Filter System (PFS): Many of the issues related to the PFS had already been reviewed by the Commission and discussed at previous meetings. In November, 1999 the Commission concurred with the Department's recommendation that the PFS be retained in the UMCDF design. The Department's review in this staff report was limited mainly to a document submitted by the Oregon Clearinghouse for Pollution Reduction, which was responding to documents related to the November, 1999 proceeding. The Department concluded the comments did not provide a basis for revisiting the decision made by the Commission last November.

Dioxin Issues: The Department reviewed approximately 33 documents related to dioxin, health effects of dioxin, and emissions of dioxin and dioxin-like compounds from incinerators. Most of the issues being brought forth by the Petitioners had been previously considered by the Department and the Commission, and had also been argued extensively during legal proceedings in Utah. Commissioner Reeve had several questions related to the distinctions between EPA's Human Health Risk Assessment Protocol and the Dioxin Reassessment, and how the Department would use that information. Ms. Oliver explained that EPA's Dioxin Reassessment has not been released yet; but the Department will use the most recent guidance available when the UMCDF Post Trial Burn Health Risk Assessment is conducted. The Department concluded the information did not provide a basis for unilateral modification or revocation of the UMCDF HW Permit.

Acute Toxicity/Chronic Health Effects of Low Level Exposures To Chemical Warfare Agents: The Department reviewed approximately 30 documents related to the effects of low level exposures to chemical agent, including numerous documents related to the Gulf War Syndrome. The Department does not believe there will be any health effects from the operation of UMCDF, an opinion also held by both the National Research Council and the Centers for Disease Control. No health effects have been observed at any of the workers at the Johnston Atoll facility, which has been in operation for over 10 years. The Department knows the toxicity of chemical warfare agents is being reviewed and will continue to monitor advances in research for potential applications at UMCDF. The Department concluded there was no basis for unilateral modification or revocation of the UMCDF HW Permit.

Human Health Risk Assessments: Approximately 20 documents related to Human Health Risk Assessments were reviewed by the Department. The vast majority of the information submitted related to risk assessments that had been previously reviewed and discussed by the Commission. The risk assessment guidance is always changing, and the Department will use the most current information available when the next UMCDF risk assessment is conducted. The Department concluded the results of the 1996 Risk Assessment are still valid, and the information provided did not provide a basis for unilateral modification or revocation.

Incineration Vs. Alternative Technologies: The Department reviewed approximately 21 documents related to the availability of alternatives to incineration for destruction of the chemical weapons stockpile at the

Umatilla Chemical Depot. The Department does not believe there is an alternative "ready to go" to replace incineration and concluded there was not a basis for unilateral modification or revocation.

Risk of Storage vs. Risk of Incineration: The results of the "Quantitative Risk Assessment" (QRA) conducted by the Army to assess the risks of catastrophic events at the Umatilla Chemical Depot were discussed. The Petitioners had argued that the Department and the Commission "improperly relied upon" the QRA in concluding that the risk of storage far outweighed the risk of incineration. A "Phase 2" QRA is being conducted that will include more site-specific information. Ms. Oliver also discussed the difficulties of "re-configuring" the munitions as a means of reducing risk. The Department concluded the risk of storage outweighs the risk of incineration, and the information provided did not provide a basis for unilateral modification or revocation.

The Commission asked several questions about the M-55 rockets and the processing difficulties that are being encountered at the Tooele facility. Ms. Oliver explained that rocket processing at Tooele has been slowed because the facility is unable to drain the rockets due to gelled or crystallized agent. To stay within the permitted agent feed rate to the Deactivation Furnace the Tooele facility must dramatically lower the rocket feed rate when the rockets cannot be fully drained of chemical agent. The Umatilla facility will be able to use the experience gained at Tooele to devise a methodology for handling rockets with gelled or crystallized agent.

Performance Of The Tooele Chemical Agent Disposal Facility (TOCDF): The Department reviewed the information submitted by the Petitioners and other commenters related to the performance of TOCDF. The Department reviewed numerous transcripts of depositions and testimony during various legal proceedings in Utah, both with the federal court and the Utah Solid and Hazardous Waste Board. Also reviewed were recent "whistleblower" allegations, issues related to cracking in the concrete, failure of the Agent quantification System, numerous incident reports involving agent releases and/or worker exposures, and reports by various agencies on TOCDF's safety and environmental performance. The Commissioners asked several questions related to the PCB trial burn at TOCDF. The Department concluded the operational history of Tooele does not provide a basis for unilateral modification or revocation of the Umatilla permit. The Department will continue to monitor what happens there and apply any lessons learned that we can to this facility.

Treatment of Secondary Wastes: Most of the documents the Department reviewed on the secondary waste issue were related to the dunnage incinerator and the brine reduction area, and whether the Army intended to operate these two units at Umatilla. The Commission has been actively involved with the issues surrounding the treatment and disposal of secondary wastes at Umatilla, and the Department is participating in an "Integrated Process Team" formed by the Army to address secondary waste at Umatilla. The Department concluded that the information related to the treatment of secondary waste did not provide a basis for unilateral modification or revocation of the Umatilla permit. The Commission asked several questions related to whether there was progress being made and when the dunnage incinerator permit modification request was anticipated.

Emergency Preparedness and the September, 1999 Industrial Exposure Incident At UMCDF: The Department reviewed the testimony of the Petitioners given before the Commission in November, which focused on the September, 1999 exposure incident at UMCDF. Although this incident did not involve chemical agents, the Department concurred with the Petitioners that there were significant failures on the part of Permittees in responding to the incident, but did not agree that the incident provided a basis for unilateral modification or revocation of the HW Permit.

The Department also reviewed a "Dispersion Modeling" report submitted by the Oregon Clearinghouse for Pollution Reduction, but concluded that the model was suited more for emergency response planning than for the kind of modeling the Department requires for assessment of health and ecological risks. The Commission had several questions related to the different types of models used for emergency planning purposes. Mr. Thomas explained the use of the "D2PC" model that the Army currently uses for modeling catastrophic releases.

The Department shares the public's concern about the secondary waste issues and the response by the Permittees to the September incident at UMCDF. The Department strives to be responsive to public comments, and the UMCDF HW Permit contains numerous permit conditions that were put in place in direct response to public concerns. The Department has developed a checklist of items the Permittees will need to complete prior to facility start-up, and the Department has every intention of engaging the public in that process.

Ms. Jones and Mr. Condit then reiterated their concerns about the need to consider alternative technologies and the potential impacts on the agribusiness in Umatilla and Morrow counties. Mr. Condit discussed the potential health effects of low level agent exposures and encouraged the Commission and the Department to further consider that an incinerator cannot destroy 100% of the waste feed. Mr. Condit also urged the Commission to consider again the non-cancer health effects of dioxin exposure, and reiterated that TOCDF has had numerous alarms and agent releases. Mr. Condit reviewed the progress of the alternative technology development and emphasized the Army's baseline incineration technology, as evidenced by all the problems encountered at both Tooele and Johnston Atoll, does not seem very "mature" either.

LTC Connelly then spoke briefly to the Commission to clarify several points that were raised during the presentation of the staff report and the statement by Mr. Condit. LTC Connelly stated the Army is continuing to gather information about the May 8, 2000 stack release at TOCDF and it may be a better or worse incident than the Commission has read in the press. LTC Connelly also stated the EQC should consider the decisions reached by other jurisdictions, but must reach it's own independent judgement for the issue before the Commission. Mr. Steve DePew and Mr. Drew Lyle responded to questions from Commissioners Van Vliet and Reeve concerning M-55 rocket agent jelling and the procedures for DAAMs sampling.

The Commission began a discussion about the record and whether a briefing paper received from the Petitioners two days before the May 18, 2000 meeting should be made part of the record. Legal Counsel advised the Commission that they had three options: allow the material into the record; do not make the material part of the record, or open the record for another comment period. Following discussion the Commission unanimously agreed to make the material part of the record. No motion was introduced and a vote was not taken.

The Commission then considered how to proceed with the request for revocation or modification of the permit. Chair Eden presented three options; vote on the motion, deliberate and hold over on a vote to the next meeting; or deliberate and have each Commissioner express an opinion on which way they would vote. The third option was selected in order to allow Commissioners additional time to consider the voluminous amount of information and for Commissioner Bennett to be present at the July meeting when a vote may be taken.

Each Commissioner, in ascending order of seniority, expressed their opinion on how they would vote. The four Commissioners present unanimously opined that the record does not support revocation or modification of the permit and the decision issued in February 1997 remains valid. Commissioner Malarkey stated she had reviewed all the materials and concluded the record did not support revocation or modification. Commissioner Reeve stated his support for the permit decision should not be interpreted as a decision to allow the facility to start burning. He went on to say that the decision to start the facility will need further review and analysis using the Department's Checklist. Commissioner Van Vliet expressed a concern about the risk assessment and the need to be vigilant in addressing the public concerns and fears about dioxin. Chair Eden warned the Army that alternate technologies are being developed and delays in the Umatilla project could cause a problem for the Army if the alternate technologies became available. Chair Eden also expressed a concern about the dunnage incinerator and the secondary waste issue. In summation, Chair Eden concluded the record does not support a motion for revocation or modification of the permit. Department staff and counsel were directed by the Commission to prepare a draft order for the July meeting.

Public Comment on Agenda Item K: There was no public comment on this agenda item.

There being no further business, the meeting was adjourned at 3:55 p.m.

Minutes are not final until approved by the EQC

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

**July 13-14, 2000
Regular Meeting**

On July 13, 2000, the Environmental Quality Commission (EQC) traveled to Tillamook, Oregon to view several sites in the Tillamook Basin. In the evening the Commission had dinner with local officials at the Cedar Bay Restaurant. The regular meeting of the EQC was held on July 14, 2000, at the Department of Forestry Building, 4907 E Third Street, Tillamook, Oregon. The following Environmental Quality Commission members were present:

Melinda Eden, Chair
Harvey Bennett, Member
Tony Van Vliet, Member
Mark Reeve, Member
Deirdre Malarkey, Member

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

Note: The Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

Chair Eden called the meeting to order at 8:35 a.m. on Friday, July 14.

I. Action Item: Permit Revocation Request Related to the Umatilla Chemical Agent Disposal Facility (UMCDF)

The Permit Revocation Request related to the Umatilla Chemical Agent Disposal Facility (UMCDF) was discussed by the Commission on May 18, 2000. The Department recommended the Request for Revocation be denied. Because of the absence of Commissioner Bennett, the action on this item was delayed until this meeting. Wayne C. Thomas, Chemical Demilitarization Program Manager, and Larry Edelman, Assistant Attorney General, Department of Justice, presented the Draft "Order Denying Request for Permit Revocation" to the Commission. There was a brief discussion and confirmation that Commissioner Bennett had reviewed the material from the May 18 meeting (including a complete videotape) and was prepared to participate in the vote. Commissioner Van Vliet made a motion to deny the Request for Revocation. The motion was seconded by Commissioner Malarkey and it carried with five "yes" votes.

J. Informational Item: Update on the May Incident at the Chemical Depot at Tooele, Utah

Wayne C. Thomas, Chemical Demilitarization Program Manager, made an introductory statement and described the incident reports the Department had reviewed and sent to the Commission. Sue Oliver, Senior Hazardous Waste Specialist, briefed the Commission on an incident that occurred May 8-9, 2000 at the Tooele Chemical Agent Disposal Facility (TOCDF) in Utah.

At approximately 4:00 p.m. on May 8, 2000 a gate in a feed chute from an Explosive Containment Room (ECR) to the Deactivation Furnace System jammed and halted munitions processing at TOCDF. By approximately 8:00 p.m. a crew in protective clothing had entered the highly contaminated (GB nerve agent) ECR and freed the gate. The operators on duty that evening were not able to bring the furnace back to normal operating conditions and through a series of errors, oversights, and miscommunication, the evening culminated in two detectable releases of chemical agent vapor from the stack of the facility (one at approximately 11:30 p.m. and another about half past midnight). There are numerous ongoing investigations into the incident.

The Department did not consider the event a failure of the baseline incineration technology, but a failure in management, procedures, and training. DEQ is concerned about the apparent failure of the Army's "Programmatic Lessons Learned" Program; the high rate of "false positives" from the chemical agent alarms that led the TOCDF operators to discount the monitor alarms (even in the face of confirming evidence that the alarm was valid); the lack of program integration in the Army's chemical demilitarization program; and the failure to notify the off-post emergency response community until four hours after the first release.

The Department has written a letter to Mr. James Bacon, the U.S. Army Program Manager for Chemical Demilitarization, and requested a response by September 11, 2000. The primary question posed to Mr. Bacon was "Who is responsible for the integration of all operations at Demilitarization facilities and what assurances do the citizens of Oregon have that the lessons learned from this event and any previous events will be applied to Umatilla?" Mr. Bacon was also asked to explain how the various recommendations in the reports would be implemented at Umatilla.

The Commission directed the Department to return to the September Commission meeting to report on the Army's response to the letter and to update the Commission concerning ongoing investigations of the incident.

A. Rule Adoption: Rule Revisions Regarding Contested Case Hearings and Public Records

Susan Greco, Rules Coordinator, presented the proposed rule changes to the Commission. The rules effect four different areas of the Department's rules. First it adopts permanently temporary changes made in February. Included in the temporary changes was the adoption of the most recent changes to the Attorney General's Model Rules and the Attorney General's Hearing Panel rules. Under the Hearing Panel Rules, the Department has no discretion to change these rules except where the Rules specifically allow those changes. The Department has, in five instances, adopted its own rules or limited the availability of procedures under the Hearing Panel Rules. These include defining the methods of service of documents as being either mail or personal delivery; defining what needs to be included in an answer; not allowing special procedures such as immediate review and motions for ruling of legal issues; limiting public attendance at contested case hearings, and providing the procedures for review by the Environmental Quality Commission. This rulemaking also makes one minor housekeeping change to Division 012. Also it makes various housekeeping changes to the public record rules of the Department. Among these changes includes an increase in the amount the Department will charge for hourly staff time - from \$18.00 to \$30.00 and \$26.00 to \$40.00. This increase reflects the increase in costs since the rules were adopted in 1994.

A motion was made by Commissioner Malarkey to adopt the rule amendments contained in Attachment A of the staff report. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

H. Consideration of Tax Credits

Maggie Vandehey, Tax Credit Coordinator; Helen Lottridge, Management Services Division Administrator; and Michael Huston, Assistant Attorney General (by phone); presented Tax Credit Application 4570 (Willamette Industries). A transcript of the discussion of this tax credit is attached. Commissioner Van Vliet abstained from discussion of this tax credit due to a conflict of interest.

A motion was made by Commissioner Bennett to deny the tax credit. It was seconded by Commissioner Malarkey and carried with four "yes" votes. Commissioner Van Vliet abstained.

Ms. Vandehey presented nine additional tax credits and noted no outstanding issued.

pp.No.	Media	Applicant	Commission Action			Value
			Removed From Agenda	Certified Cost	Percent Allocable	
Approvals – Attachment B						
5330	USTs	Guernsey Development, Inc.		\$134,312	92%	\$61,784
5363	Solid	United Disposal Service, Inc.	X			
5365	USTs	S.M.B. Property Holdings, LLC		\$125,652	86%	\$54,030
5401	USTs	Ivy's Tumalo Store		\$148,426	93%	\$69,018
5405	Air	Blount, Inc.		\$44,925	100%	\$22,463
5407	Perc	Arena Corporation dba Westlake		\$25,530	100%	\$12,765
5410	USTs	Everett E. Miles		\$148,426	93%	\$69,018
5411	Water	Package Containers, Inc.		\$47,270	100%	\$23,635
5412	USTs	Cain Petroleum, Inc.		\$242,209	100%	\$121,105

APPROVALS

Commissioner Bennett asked for clarification on the claimed facility on application 5363. He noted the Facility Identification only listed collection containers but a truck was discussed in the report. Ms. Vandehey said the truck serviced the containers. She did not know if the inclusion of the truck was correct and asked that the application be removed from the agenda for the reviewer to clarify the description of the facility.

Commissioner Malarkey moved for the approval of the above tax credit applications minus application 5363. Commissioner Van Vliet seconded the motion. The vote carried with five "yes" votes.

TRANSFER

Miller's Sanitary Service, Inc. requested the transfer of Certificate 4063 issued on December 11, 1998 be transferred from Miller's Sanitary Service, Inc. to USA Waste of Oregon, Inc.

Commissioner Bennett moved approval of the transfer. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

Ms. Vandehey, as directed by the Commission, included a draft discussion topic on Deadline for Filing. She said she would be publishing the document, posting it on the website and providing it to Associated Oregon Industries for inclusion in a letter to their members. Chair Eden asked about the status of a premier. Ms. Vandehey noted the draft topic on Deadline for Filing as being part of that premier. Chair Eden indicated she was not hoping for separate documents but an abbreviated and comprehensive pamphlet or booklet. A Commission document rather than an applicant document would be a great service to the Commission.

Public Comment: There was no public comment.

B. Rule Adoption: Adoption of Federal Hazardous Waste Regulations Effective Through April 12, 2000

Mary Wahl, Waste Prevention and Management (WPM) Division Administrator, Anne Price, Hazardous Waste Policy and Program Development Manager, and Gary Calaba, WPM staff, presented this item. These federal rules regulate hazardous waste combustors; facilitate hazardous waste cleanups; clarify or technically change existing universal waste rules, organic air emission standards and land disposal restrictions; and allow metal bearing sludge to be accumulated for recycling.

Because of a comment received, the proposed changes to the toxics use reporting schedule were withdrawn, but would be reconsidered should opportunities for streamlining the toxic use reduction reporting schedule arise. All other comments dealt with the decision not to adopt the federal rule, excluding dredged materials from the definition of hazardous waste. The decision was based on the

desire to maintain flexibility to apply the regulations, if needed; and the Department is still evaluating the best way to holistically manage hazardous dredged materials, and eliminating the application of the hazardous waste regulations to dredged materials would be premature.

Commissioners requested clarification on how Washington state's implementation of the dredged materials exclusion will affect Oregon; and why EPA was excluding from hazardous waste regulation landfill leachate containing hazardous petroleum refining wastes. Washington state's adoption of EPA's dredged materials exclusion from the definition of hazardous waste should not affect Oregon, but that DEQ will talk to Washington state to determine exactly how they are implementing the exclusion. Concerning the [temporary] exclusion from the definition of hazardous waste landfill leachate derived from previously disposed petroleum refining wastes that are now defined as "hazardous waste," it was explained that such wastes may still be characteristically hazardous. The exclusion is only for leachate being managed under the Clean Water Act, and after February 13, 2001, the federal program no longer will allow the leachate to be placed on the land or managed in surface impoundments.

Commissioner Bennett moved the adoption of rules. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

C. Rule Adoption: Amend Environmental Cleanup Rules Regarding "Hot Spots" and Use of Excavation and Off-site Disposal as Remedy

Paul Slyman, Environmental Cleanup Division Administrator, and Brooks Koenig, Senior Policy Analyst, presented this agenda item. The rule amendments were required by a rule change to ORS 465.315 (HB 3616 signed into law as Chapter 740). The rules went through numerous drafts and were reviewed and approved by the Environmental Cleanup Advisory Committee in March, 2000. There were no public comments received, and no one attended the public hearing.

Commissioner Malarkey expressed some concern about the threat to water resources if the rule amendments were adopted. It was explained that these rules applied to soil hot spots and if contamination reached water resources and adversely affected the beneficial use, the existing rules preferring treatment of water hot spots would still be in place.

When asked about the "higher cost threshold," staff explained there was no formula for determining the higher cost threshold. All remedies go through a number of balancing factors (effectiveness, reliability, implementability, implementation risk, and cost reasonableness) so one compares remedies against other remedies. With the new rules, excavation and off-site disposal is no longer at a disadvantage when cost is compared to treatment, but does have an advantage when compared to engineering or institutional controls.

Commissioner Bennett moved that the Commission adopt the amended rules as presented in Agenda Item C. The motion was seconded by Commissioner Malarkey and carried with five "yes" votes.

D. Rule Adoption: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPS)

Jerry Ebersole, Air Quality (AQ) Program Development Section, provided a summary of the proposed rulemaking. This rulemaking updates Oregon rules to adopt revisions to NESHAPs that are already in Oregon rules, and to adopt 18 new NESHAPs. This rulemaking did not require an advisory committee since it is a straight adoption by reference. These standards apply to sources whether the EQC adopts them or not. Adoption simple transfers implementation from EPA to DEQ.

One of the new NESHAPs, for Hazardous Waste Combustors, will apply to the Umatilla Chemical Agent Disposal Facility (UMCDCF). This NESHAP is somewhat unique since it has cross media implications - the NESHAP overlaps with Umatilla's Resource Conservation and Recovery Act (RCRA) requirements. The Department's Eastern Region AQ and RCRA staff have been meeting regularly over the past year to coordinate the NESHAP and RCRA permitting issues as they relate to the Depot. Umatilla will not have to change the control equipment or physical design of the plan to comply. The remaining new NESHAPs will affect only 2 sources; Ash Grove Cement, and Simpson Timber.



A motion was made by Commissioner Van Vliet to approve the rules as presented in the staff report. The motion was seconded by Commissioner Malarkey and carried with five "yes" votes.

E. Rule Adoption: Low Income Waiver from Enhanced Emission Test

Ted Kotsakis, Manager of the Vehicle Inspection Program, and Jerry Coffey, Environmental Engineer, presented this item. This rule adoption makes permanent the low-income waiver program. The old rule expired in February, 2000 and in February, 2000 the Commission granted an emergency extension for six months. The impact of the low-income waiver on emissions reduction is negligible. The new rule differs from the old rule in that the new rule allows a customer to get the waiver more than one time, and the new rule requires proof of ownership and income. Commissioner Reeve asked if once the vehicle was waived from the enhanced test was it always waived from the enhanced test. Staff indicated the waiver was for the registration period only. Commissioner Bennett had two comments. The first was a question about the language that the Vehicle Inspection Program **may** revoke a waiver if the information provided was fraudulent. He wanted to know if it should not be **will** revoke. The second comment was over the language in the waiver rule, which states that "if the Department approves the waiver, the owner must pass the basic motor vehicle emissions test." He asked if it was the owner or the vehicle that was to be tested. Legal council stated that the customer may not know that the information they provide is fraudulent, therefore, we need to use the word **may**. Council also stated that the language of the rule could be changed to read "...the owner's vehicle must pass".

Commissioner Van Vliet moved the adoption of the rule with the one correction. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

F. Rule Adoption: Revisions to On-site Innovative Technology Rules

Ed Woods, On-site Manager, Larry Edelman and Larry Knudsen, Assistant Attorneys General, all addressed the EQC regarding this agenda item.

On the Department's recommendation, a motion was made by Commissioner Bennett for the EQC to reopen the public comment period until July 31, 2000 because comments received after the public comment period revealed potential weaknesses in the modifications made in response to comments. The additional comment period will allow additional comment on the specific changes recommended. Commissioner Reeve seconded the motion and it passed with five "yes" votes. A follow-up phone meeting of the EQC will be needed prior to August 27, 2000 when the temporary rule expires.

G. Informational Item: Public Participation Procedures for Permit Decisions

Susan Greco, Rules Coordinator, presented an information item on some upcoming rule changes. In 1998 the Department created an internal work group to address concerns regarding the Department's process of public participation in permitting decisions. The work group developed a system of categories that provide increased public participation depending on the anticipated level of public concern, potential environmental harm and legal requirements. The Department will be presenting the rule changes to the Commission at its September meeting for adoption.

In addition to the discussion of the category process, the Commission was also informed of various other projects the Department is undertaking to improve its public participation process for permits. Included in these are the revising of the Public Notice and Involvement Guide, creating of templates for public notices, a pamphlet for the public on effective public comments and more information on our processes on the webpage.

K. Commissioners' Reports

Commissioner Malarkey reported on attending the Educational Committee of the Oregon Water Enhancement Board (OWEB) and showed the Commission the newly published Water Restoration Initiative (WRI) report. The Department will see that all Commissioners receive a copy of this report.

Chair Eden indicated her husband was on the SB1010 Committee and then reported on the last meeting of the Executive Review Panel regarding the Umatilla Chemical Depot.

L. Director's Report

The Environmental Protection Agency (EPA) will propose to place a 6-mile stretch of the Willamette River between Sauvie Island and Swan Island, referred to as Portland Harbor, on the National Priority List, commonly known as Superfund. EPA received Governor Kitzhaber's concurrence letter this month and the proposed listing is expected to appear in the July 27 Federal Register. The letter included a statement of principles outlining how EPA and DEQ will cooperate in managing the cleanup jointly. The Governor's letter and press release, and the statement of principles are attached.

Ranchers Daryl and Barbara Hawes, the Baker County Farm Bureau and the Baker County Livestock Association filed suit against the Department, EQC and Oregon Department of Agriculture for asserting authority over waterbodies listed as impaired for non-point sources of pollution. The plaintiffs are also requesting the court issue a decree restraining and enjoining the defendants from imposing and implementing TMDLs and derivative plans on streams and segments of streams that are water quality limited solely due to non-point sources of pollution such as farming, grazing and logging. The judge issued an order denying the Hawes' motion to remand this case back to Baker County Circuit Court.

The Sierra Club joined Jack Churchill in requesting the court enter an order and decree that finds EPA in violation of a 1987 consent decree requiring EPA to ensure that Oregon complete a certain number of TMDLs. They also requested the court to issue an order compelling EPA to issue TMDLs for Oregon's identified polluted waters within six months. The parties in a related case, NWEA v. Browner, have reached an agreement that is generally consistent with Oregon's schedule for completing TMDLs. A proposed consent order has been submitted to Judge Michael Hogan. Oral arguments in the Churchill case occurred on July 5 before Judge Hogan.

On May 3, 2000, the EPA approved the Upper Grande Ronde Subbasin TMDL. This TMDL as approved includes 73 streams and stream segments in the Upper Grande Ronde listed as water quality impaired for temperature, nutrients, dissolved oxygen, pH, aquatic weeds and algae, and sedimentation. In addition, the Grande Ronde Water Quality Committee adopted the Upper Grande Ronde River Subbasin Water Quality Management Plan as the strategy for reducing water pollution to the level of the TMDL.

Much concern remains over EPA's intent to promulgate the proposed national TMDL regulations. Congress attached a rider to an emergency-spending bill that the Clinton Administration very much wants to sign. The rider prohibits the spending of any money to implement the new TMDL regulations until the 2002 federal fiscal year. It is reported that the President has asked EPA to have the rules ready for adoption prior to the July 13 bill signing deadline. If the rules are implemented before that, the rider would not apply.

The State of Oregon continues to support the heart of the regulations that were the result of a multi-year stakeholders group's work. Regardless of the outcome, DEQ will continue to proceed with completing TMDLs that include Water Quality Management Plans.

There being no further business, the meeting was adjourned at 2:55 p.m.

AGENDA ITEM H

Consideration of Tax Credit Request for

Application Number 4570

July 14, 2000

* * * *

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AGENDA ITEM H
Consideration of Tax Credit Request for
Application Number 4570
July 14, 2000

CHAIRMAN EDEN: Calling for the Willamette item, which is part of Agenda Item H. But we're going to do this first before we do the rest.

The way I thought we would proceed on this would be to have the Staff make its presentation and then ask the Willamette representatives to come to the table to make whatever presentation you would like to within a reasonable time limit. We do have your stack of information here that was provided to everyone, and then any discussion.

So do we have Mr. Huston on the phone?

MS. VANDEHEY: No, he is not on the phone yet. They're still trying to get him through, so if we could wait a minute -- either that, or I can go ahead.

CHAIRMAN EDEN: Well, how long do you think it would take us to do the rest of the tax credits?

MS. VANDEHEY: The rest of the tax credits? They're very straightforward. They're very few. They're underground storage tanks, along with --

CHAIRMAN EDEN: Well, why don't we go ahead and do that, with my apologies.

MS. LOTTRIDGE: He's dialing in now. Michael is dialing in now.

CHAIRMAN EDEN: Oh, well, let's take 30 seconds. If we

don't have him in 30 seconds, we'll have to get some work done.

MS. VANDEHEY: Okay. Before us we have -- Michael? I'm putting you on hold. I'm putting you on the speakerphone now. Okay, thank you. Michael?

MR. HUSTON: Yeah.

MS. VANDEHEY: Okay. We're going to do the other tax credits right now.

CHAIRMAN EDEN: Actually, no, we're not.

MS. VANDEHEY: Oh, no, we're not.

CHAIRMAN EDEN: As long we've got him on the phone, let's go ahead and do them now.

MS. VANDEHEY: Okay, we're not.

CHAIRMAN EDEN: We were waiting for you.

MR. HUSTON: Waiting for me?

CHAIRMAN EDEN: Yes. Can you --

MR. HUSTON: Well, Madam Chair.

CHAIRMAN EDEN: Can you hear us pretty well?

MR. HUSTON: If it's a little louder -- I can hear you. I hear Maggie real well.

MS. VANDEHEY: Thank you. Good morning, Madam Chair, Commissioners. To my left is Helen Lottridge, the Management Services Division Administrator. To my right is Michael Huston, Counsel, and today we're bringing before you

Willamette Industries Application Number 4570. It's presented in Agenda Item H. It's an addendum. And for your clarification, Application 4570 is a Pollution Control Facility Tax Credit Application.

This application has been part of EQC agenda, five times over the past four years. It was removed from consideration on four of those occasions. On December 20th, 1999, Willamette Industries did take the opportunity to present testimony before the Commission. The minutes to that meeting are provided in the Addendum at the back. Miller Nash's attorneys -- or Miller Nash, attorneys for Willamette Industries, also provided evidence with their letter to the Commission dated June 23rd, 2000, and it's in the black binder.

For these reasons, I'll be brief rather than comprehensive in my presentation of the application.

The claimed facility is East Multnomah Recycling. Willamette Industries is the owner of the claimed facility. East Multnomah Recycling was designed and built by Willamette for the purpose of leasing to its tenant, Far West Fibers. East Multnomah Recycling is very valuable in Oregon because of the amount of solid waste that it processes, about 400,000 tons of solid waste, such as corrugated cardboard, newspaper, mixed wastepaper, and high-grade office paper. This was from quotes from Jim Aden

of Willamette Industries for the years between 1994 and 1999.

Also, it processes about -- processes about 10 percent of all waste recycling in the Portland metropolitan area. As far as eligibility, the claimed facility includes land, a building, machinery, and equipment as allowed by law. The sole purpose of the eligible components is to prevent control, reduce -- or reduce a substantial quantity of solid waste. And for the final eligibility criteria, the pollution control is accomplished by a material recovery process.

This next part is particularly difficult, especially considering the important reduction in the amount of solid waste and that a \$2.8 million certified facility cost is at stake. It's difficult and it's unfortunate, that the only outstanding issues of this facility is when was construction substantially completed for pollution control purposes.

The Miller Nash submittal dated June 23rd in the black binder, 2000, did not provide evidence to change the Director's Recommendation. The pollution control facility tax credit law regarding when an application must be filed has two parts; the "do not file before" part and the "do not file after" part.

In the "do not file before" part, the law provides

that a pollution control facility tax credit application cannot be filed before construction is substantially completed, and it cannot be filed before the facility is placed in service. The Department considers that the application submittal met the first filing part of the filing requirement. The facility was not filed before construction was completed, and it was not filed before the facility was placed in service.

In the "do not file after" part, the law provides that the application must be filed within two years after construction of the facility is substantially completed.

On page 3 of the addendum there's a chronology of the relevant milestones as they relate to Application 4570. To recap, December 22nd, 1995 is the date that the application was submitted. Backtracking two years, construction of the facility had to have been completed on or after December 22nd, 1993, to be within the filing period and to be considered timely filed.

Staff interpretation of the "do not file after" part of the filing requirement concludes that the application was not submitted within the required filing period. Staff considered the facility began operating on September 27th, 1993. Willamette Industries was the owner of the claimed facility on that date. In the period between September 27th, 1993 and the key date of December 22nd, 1993,

over 12,200 tons of recyclable material were processed at East Multnomah Recycling.

In the absence of previous examples or a different direction from the Commission, the Director's Recommendation on the Review Report for the application, Application Number 4570, is to reject the application for untimely submittal.

CHAIRMAN EDEN: Does that conclude your --

MS. VANDEHEY: Yes, it does.

CHAIRMAN EDEN: Mr. Huston, do you have anything to add to that?

MR. HUSTON: Well, Madam Chair, I was ordered to spend five minutes or less. Let's kind of summarize the legal advice that we've offered in the case. Does that sound okay?

CHAIRMAN EDEN: That sounds appropriate.

MR. HUSTON: Okay. I'm going to spend, let's see, 47 seconds on a little background on the tax credit statutes and then speak to "substantially completed" standard, and then I just -- one new legal issue that's probably raised by the company's most recent submission. That would be the black book there.

Madam Chair, (inaudible) secret that the Environmental Quality Commission had, for a long time, (inaudible) imposed by the tax credit statutes, and I think the reason for that may be in part that this is not -- this

is not a delegated statute. This is (inaudible). It's not (inaudible) an instance in which the legislature has looked to this agency to establish a policy, but rather in this case, the legislature has exercised its prerogative to set the policy themselves and then assigned a different role to the Environmental Quality Commission, and that is basically one of interpreting their policy and fact finding. So it's the narrow -- narrower role that we think the Commission is obligated to play in this case.

On the issue of "substantially completed," the interpretation of that, the application of the facts here does seem to me that our office and the company has basically agreed, at least on the legal text here.

The Commission has very smartly taken the statute and offered to interpret it and provide more specific guidance to applicants, and so we have a fairly strict corporate statute which says that applications have to be filed within two years, and then a fairly strict court administrative rule interpreting that, and that rule says that you have to question when all the elements of the facility which are essential to perform its pollution control purposes of solid management or recovery in this instance and applying the facts, determine when that time period began to run -- and Maggie presented you with the department's view of that which we (inaudible) very easily,

legally defensible.

If I recall, that same test is set out in the most recent letter under the Miller Nash letterhead, so we have an agreement to that point. I think, though, part company, both the Department and our office, part company, is that the company argues that the Commission should give great weight, if not determinative weight, to the date of the leasehold, and it's our respectful judgement to give it absolute weight would certainly probably not be legally permissible, that you would establish a policy that the legislature opted not to establish.

Given a leasehold consideration is perfectly appropriate, weighing it with the other evidence. All is perfectly acceptable but not determinative weight. Rather, you have to search for that question about when the elements were in place so that it was operating for its pollution control purpose. Maggie summarized the evidence on that, her chronology on page 4, properly giving you the facts that you need.

I would just like spend my remaining 94 seconds on the question of consistency and how the Commission handles the past precedent that this or other commissions have established.

I think -- I hope the Commission understands that what has happened here is that the company, exercising its

rights under the public records law, made a very demanding public record request to DEQ. It basically, as I understand it, required that staff check or at least consider virtually all the Agency's tax credit files.

As a result of that search, the company found the -- I think at least most, if not all, the documents that are in the black book there, and so I think the Commission needs to ask itself what weight are those decisions entitled to, how do you manage to those, to what extent are you obligated to follow those.

The company does not (inaudible), that I saw, the legal test that applies here. Under the Administrative Procedures Act, which sets the Court review standards for all agency decisions, the test is as follows, Madam Chair. The Court will reject the Agency decision only if it is (inaudible) inconsistent with an official agency position or agency practice, only if the inconsistency is not explained by the agency. But that's one of three elements there. We have to have an officially stated agency position or agency practice.

Secondly, there has to be an actual inconsistency; first to say that you don't necessarily have to explain the differences between apples and oranges, but they have to be somewhat close to each other on the facts.

And then third, even if those two elements do

exist, the Agency Commission is entitled to deviate from that prior policy and practice by explaining the reason for doing so. What are the reasons for doing so? Well, perhaps the most obvious is the prior decisions were wrong, legally wrong or wrong or bad as a matter of policy. Those are perfectly acceptable reasons to deviate.

It certainly -- the courts have been smart enough not to require that an agency keep making the -- making the same mistakes, or that they keep perpetuating that decision is based on all the information.

If we look at the materials in the black binder, then we can certainly -- time won't permit much discussion of those and we can do so on a question-by-question basis if that's the Commission's desire, but, virtually, I think Ms. Vandehey and I felt that virtually all the decisions were either not official agency practices or not factually inconsistent. I think the one -- the reasons for that are I think that most of the tax credits -- and you can look at them, the Miller Nash letter dated June 23rd. They summarized the information here.

If you look at it, I think tax credits, at least eight, nine, ten, perhaps seven. I'm unsure about six, but Maggie informs me that all those reports have not yet been acted upon by the Commission, and I believe that they pulled from agendas, in part because it was understood that this

policy decision or interpretation was at issue here.

The Number 2, the Fujitsu, and it's maybe -- it's factually different, in the sense that both the leaseholds and the completion fell within the deadline, so it doesn't seem to be comparable. And Maggie and I were -- thought perhaps that the first tax credit report, a 1993 decision by the Commission, is perhaps an inconsistency in the fact that the Commission were to accept the Department's position, again, it's that 1993, it's a while back, and the Commission is certainly entitled to have refined its thinking and its skill in applying the legal test in this case. That is one case, though, I think in which it appears that maybe the leasehold had a significant effect on the outcome.

That's it, Madam Chair. I welcome questions. Thank you very much for letting me attend by phone. I had great hand gestures. I hope you noted that.

CHAIRMAN EDEN: Thank you very much.

COMMISSIONER MALARKEY: What did he say?

CHAIRMAN EDEN: He had great hand gestures. He hopes that we noticed them. Yeah, duly noted.

If you have nothing else at this time, Ms. Vandehey, then let's ask Willamette Industries representatives to come to the table and make their 10-minute presentation.

And if you could -- Well, introduce yourself for

the record. Then I'll ask my questions.

MR. BLY: For the record, I'm Rece Bly with the Miller Nash firm, appearing on behalf of Willamette, and this is Jim Aden, who is also with Willamette, also appearing on their behalf.

CHAIRMAN EDEN: Welcome, and thank you for coming to Tillamook. Mr. Bly, could you specifically talk about the -- in your presentation at some point, the 1993 case that seems to be the one previous decision that might be inconsistent with what you're faced with now in terms of the Director's Recommendation?

MR. BLY: All right. Let me, first of all, echo what was said. This is a behemoth among recycled facilities. This thing -- This facility basically recycles a lot of the cardboard on the eastern -- in the eastern half of the Portland metropolitan area. It moves literally mountains of cardboard. It's a very large facility.

We were told before we left for this trip, that we should provide a five-minute presentation so I kind of geared it toward that, but I think there's plenty to talk about here.

About all we can do in the time allowed is point to some glaring issues in the hope that maybe some of the commissioners will agree with us, that there are some notable glaring issues and perhaps pursue some of those

issues which we think will bring about a proper result here.

The first glaring issue I want to point to is Mr. Bill Bree. Time and time and time again in the Department's files, Mr. Bree has made a very firm written record that he believes that East Multnomah Recycling should be certified. Mr. Bree is the person to whom this file was assigned, and he's the man who worked this file on behalf of the Department for a long time, and when he makes his record, which he's done many many times, it exceeds the materials that we've submitted to the Commission. He gives reasons, and he explains that the Department is deviating from its established practices. He asks questions like, "Why are we doing this on EMR? This isn't the way we do things."

Now, it seems to me that one of the best things that the Commission could do is right after we're done with our five or ten minutes, that the Commission would call Mr. Bree because he's the man that handled this file, and that the Commission would ask Mr. Bree, "Why do you feel so strongly about this, that you keep making a clear written record that this thing should be certified?"

Mr. Bree is really pretty amazing to look at his performance from the outside because I assume that this was not very popular among the Staff, for him to continue to make a clear record that this thing should be certified, but

he kept doing that, and I would describe it as courageous or, at the very least, the guy sure sticks to his guns on some things. So Mr. Bree should be consulted. That's the first issue.

The second issue is Staff's response to document requests. Mr. Huston just called our document requests very demanding. On other occasions Staff has called it abusive, bad faith, that we had -- alleged that we had ill motives. Let me tell you just a bit about the document request because my question is what is there to hide. Willamette submitted its first extremely abbreviated -- I want to stress that, extremely abbreviated document request on January 27 of 2000. Three and one half months later, the documents had not been produced. We submitted a lawful public records request, and three and a half months later the documents weren't produced, still hadn't been produced.

On May 16, we received written notice from Staff that there absolutely would not be a settlement. You will recall that both Willamette and senior Staff had supported a settlement, but we were given written word on May 16, that there absolutely, positively would be no settlement, and we were given a demand that in no -- that in 19 days Willamette make its final submittal of written materials. That's on May 16. Two days later -- and that came as a surprise to us. Two days later we delivered a supplemental request for

documents. Why?

Well, we had one or two of the documents that Mr. Bree had offered. It was very clear that Mr. Bree was acting and speaking based on what the command of material in the Department's files. We suspected correctly, that there was probably a treasure trove of material in the Department's files that supported Willamette's position. In other words, the best source for information starting to support Willamette's position is the Department's own files. So we asked for those files not in bad faith, but so that we could prove that we were right about this and the facility should be certified.

Now, what happened after that is our request for documents. Supplemental request was May 18. The bulk of the production -- not all of it because parts of it were still coming in afterwards, but the bulk of the Department's production was June 12. We then spent 80 hours -- because we kept track of the time -- 80 hours reading, digesting, understanding, and researching based on the treasure trove of material that was delivered to us.

And on June 23 -- so this is 11 days later -- we submitted -- and I could say it's a pretty good piece of work because I didn't write it. We submitted a pretty good piece of work. It's a 12-page summary of everything we found, and a product of our research, and we backed it up

with this binder that's been referred to.

You know, if there's a bad faith request for documents, what people do is when they get the documents they chuck them in the corner and they forget them and they have a good belly laugh, and that's the end of it because they abuse the other party. That's not what went on here. We needed the documents. We got them, we used them, we wrote a good product, and we hope the commissioners have all had time to read our submittal.

So the second point was the response to the document request and the issue of what is there to hide.

The third issue is the failure on Staff's part to address anything in our 12-page submittal and our supporting authority. When Staff came out with their July 6th rejection letter, the rejection notice, or report, this report purports to list out what it is that Willamette has submitted. It does that on page 3. It lists exactly what Willamette has submitted. It says that -- I'm on page 3 of this -- of this July 6 rejection report. And it lists our submittals as December 8, '99, December 10, '99, and January 6th, '99, with the cost documentation, and then in the text at the very bottom of page 3, it again says what Willamette has submitted.

It doesn't even refer -- It's not even mentioned, our 12-page submittal and the one inch of authority, and,

perhaps more importantly, this rejection letter, or report, does not address any of the arguments or authority in our materials. It sure looks like -- and we don't know this, but it sure has the appearance that the report was written before our materials were submitted, in which case, if that's the way it was going to be, we should simply have been told that you are not going to be allowed to submit anything more, and if you do, it won't be considered.

The fourth glaring issue is what we call Staff's attempt to run away from the Department's own precedent, practices, and procedures. Mr. Bree does an excellent job of highlighting this time and time again in the file. Now, during Mr. Huston's presentation, I think what I heard is a suggestion that -- or almost a grudging acknowledgement yet that, yes, there is established precedent practice and procedure which is evidenced by the Department's own file, and if you are going to reject EMR, even though it is what it is -- I mean, it is a facility that should have been built to recycle mountains of solid waste.

If not withstanding your existing precedent you're going to reject that, I think the Counsel I heard describe this morning, or the message was, "Well, you might need to adjust in some of your existing policy or precedent. You might want to try and distinguish it or jettison it," and my question is why. Mr. Bree is right.

If you follow established practice and procedures, you're not going to be straining to reject certification of EMR. You're going to certify a worthy facility.

Now, in response to your request, Chair Eden, we received nothing, not one scrap of paper, not one word by phone call, nothing in response to our submittal; nothing from Staff, nothing from Mr. Huston. And it's worse than that because when we sent this material, which is a product of 80 hours of hard work, to Staff, we sent an email at the same time and we said, "Do you want us to send it to the Commission members? Please advise." There was never any response to that email.

But we didn't stop with that. We sent our submittal also to Mr. Huston, and Carrie Kuerschner of my office called Mr. Huston, and Mr. Huston gave us a timely response because our question to Mr. Huston was, "Do you need more information? Would you like to discuss? Do you see any issues that need to be hashed out?" And Mr. Huston -- this was on the 30th -- called back and left us a message that he hadn't had a chance to look at the material yet, and we've never received any further response from the Staff or legal counsel about any interest in discussing anything in our submittal; nothing.

So until I showed up here this morning, I had no idea that Mr. Huston would take the position that maybe

you'll have to get around or repeal or somehow deal with the '93 decision that perhaps suggests that you should certify. I'm coming here unarmed because this is the first I've ever heard of it. So I don't know why he's picking out that one decision.

I will share -- I want to share one other thing before I hush up. What I want to share is a policy statement that came out in November, that set forth the Agency's policies on interpreting some of the issues that are germane here, and, specifically, I'm referring to a November 1999 interpretation document that Staff promulgated. And it wasn't a document that was proposing a change in policy, it was an articulation of the existing policy.

And what this staff document said is, "ORS 468.165 appears to separate the terms 'substantially completed' and 'placed in service.' The OAR definition of 'substantially completed' and the IRS definition of 'placed in service' have the same meaning, closed quote. That's from the Department's own November '99 interpretation document. That's extremely important because if this is true, and we take it to be true and Mr. Marsh apparently takes it to be true, because at the top of page 9 of our submittal to the Commission Mr. Marsh seconds this. He says, "The written interpretation has been relied upon by the Department to

establish the date of substantial completion," referring to this November '99 document.

What does this mean? I mean, what's the significance of this? Well, what it means to a lawyer, of course, is that you can now go to the IRS authority, and there's a substantial lobby of that, of course, and you can -- you can glean from it an understanding of whether this facility was substantially completed, because the Agency itself has gone on record as saying the IRS definition of "placement service" is equivalent to the agency definition of "substantially completed." That's exactly what we did in our submittal.

Now, in May we took this up because this document came to us late. Remember we filed our document request in January? We didn't find out about this official interpretation until May, and when we got it in our hands we thought it was potentially a very important document, which it is. We asked Staff and legal counsel about this. And, basically, our conclusion was this should be over. Based on the supporting IRS authority this whole thing should be disposed of, and the response was, "Gee, that wasn't an official statement," and, "Gee, well, that was discussed and, well, the EQC chose not to adopt that."

That's not what's significant here. This was Staff's statement of how it was interpreting the relevant

authority. This is how they were doing it, and we accept that. That's how they were doing it. And if we do the same thing here, then this facility should be certified.

Do you have anything, Jim?

MR. ADEN: No.

MR. BLY: Nothing further. Thank you.

CHAIRMAN EDEN: Thank you. Mr. Huston, do you have any response at this point?

MR. HUSTON: Well, probably -- probably one brief kind of factual note, Madam Chair. My understanding on the topic discussion document that Mr. Bly's referring to, he said it was an effort by Staff to provide some greater certainty to the determination of "substantial completion" in particular, and Staff very much wanted to have a bright line that they could use for these cases and so they talked about possibly using the IRS determination, and it was rejected.

The policy was considered. Maggie can tell you whether it actually proceeded to the Commissioner but it was basically rejected, and I think in part, based upon legal advice, that the desired policy here, that of using the IRS determination would probably conflict with the statute. So I don't think that an agency staff should be chastised or that they should be discouraged from examining, though, interpretational questions, and that's my understanding of that particular document.

Otherwise, I don't take issue with Mr. Bly's assessment of my comments. I do think -- My overall assessment is that the company found almost nothing of value in their public records request. To find perhaps one tax credit report in thousands that may be close to this one is certainly not overwhelming evidence.

Thank you, Madam Chair.

CHAIRMAN EDEN: Thank you, Mr. Huston. Does Staff have anything additional? Could we ask that you come back to the table?

Thank you very much, Mr. Bly and Mr. Aden.

MS. VANDEHEY: Madam Chair, I would like to know if you would ask Michael Huston to discuss the first records request made by Miller Nash, rather than me address that.

CHAIRMAN EDEN: The December one? The January one?

MS. VANDEHEY: Yes, the first records request.

MR. HUSTON: Are you nodding, Madam Chair? Do you want me to speak to that?

CHAIRMAN EDEN: I'm thinking. I think that I do.

MR. HUSTON: I think I can do so in two sentences.

CHAIRMAN EDEN: All right.

MR. HUSTON: I feel very, very sorry that there was a misunderstanding. Maggie and I both thought we heard and clearly understood that the company agreed to put that public record request on hold and entering a -- a three

months' settlement discussion. Anyway, I had very carefully advised my client, the Department Staff, not to mention those settlement discussions because we -- the company had requested that -- they put it on the record so I guess I'm free to just note that we did go into protractive settlement discussions to try to resolve this case. Those did not come to fruition.

And as soon as those were completed, Maggie started spending an enormous amount of her and other staff people's time in responding to a very big record.

Thank you.

CHAIRMAN EDEN: So the Department's position is that in fact the -- they thought there was an agreement that the public records request was put on hold until shortly after May 16th. Is that -- Is that your interpretation?

MR. HUSTON: Yes.

CHAIRMAN EDEN: And the bulk of the material was provided by June 12th.

MR. HUSTON: That's right, isn't it, Maggie? I think the response was on June 12th, right? That's the bulk of the material that --

CHAIRMAN EDEN: Yes, it was in June. That's what Mr. Bly said so --

Does Staff have anything additional?

MS. LOTTRIDGE: Yes. For the record, I'm Helen

Lottridge, Administrator of Management Services Division. I would like to just describe some Staff responsibility issues that might help to clarify roles within the Department. There were several references made to Mr. Bree being the man to whom the file is assigned. And, in fact, Mr. Bree carried a large part of the responsibility for reviewing this tax credit and many others. His particular part of the responsibility is primarily to review and often inspect the facility to determine whether it meets the definition of a pollution control facility.

And then, of course, we have many discussions among Staff representing possible points of view and different facts related to the matter so, yes, we do discuss these tax credits within the agency and different possibilities and ways of thinking about them.

And so if Mr. Bree wishes to venture and give facts or viewpoints on anything other than the basic responsibility of meeting the definition of a pollution control facility, we would certainly welcome that and discuss it among Staff. It is, however, Ms. Vandehey's ultimate responsibility to decide such issues as timely submission of the application.

I might just mention that in a memo that Mr. Bree wrote on August 23rd of 1996, he does make two observations about the facility, answering two questions here. Is the

facility eligible, based on sole principal purpose test? Yes. And I think that Ms Vandehey referred to the other earlier. I don't really think there's any disagreement on that question.

And the second question Mr. Bree poses in this memorandum is, is the facility eligible, based on meeting the filing deadline. No, is his answer. In the first paragraph he says, "I'm proposing that the Department reject Willamette Industries' tax credit application, based upon the discussion below about submission during the two-year period."

If you would like to have copies of that, we're very happy to provide it to you.

So that pretty much will help to clarify and delineate the responsibilities of Staff. And then --

COMMISSIONER REEVE: Excuse me.

MS. LOTTRIDGE: Yes, sure.

COMMISSIONER REEVE: Can you just -- What were you reading from?

MS. LOTTRIDGE: I was reading from a memorandum that Mr. Bree wrote on August 23rd, 1996 -- Maggie, do you want to go into --

MS. VANDEHEY: Yeah.

MS. LOTTRIDGE: This was following one of his earlier reviews of the application, I think.

MS. VANDEHEY: Normally, in the reviews that I looked at, what happens in the review process, the Department is in a process of discovery. And we move along and perform the review and when we come to a stopping point, we then stop going any further until we -- and we don't -- we don't explore until we resolve those issues.

That was the case with this application. Mr. Bree came to the point of filing the timely submittal, and he did not go farther in the review. He -- Every application review begins its life as an approval. And throughout this, all of the drafts still had approval pending resolution of the submittal issue.

I have several documents written by Bill Bree; one June 12th, 1996, and in that letter --

(There was a pause in the proceedings.)

MS. VANDEHEY: In that letter he's asking for additional information, additional information for issues that need to be clarified before he can complete his review. This is about the time that he sent his FAX to Mr. Jim Aden with a copy of the Review Report, and the Review Report actually had "Approve" on the top. However, the date of substantial completion had not been resolved.

In this letter he says a facility is considered to be substantially complete when it's capable of performing its purpose. He goes on to talk about the dates, and then

he also talks about types of documents that the Department may review to verify when the plant facility was in operation, and he says including information on when the equipment was being operated, when the facilities -- utilities were fully utilized, what related equipment was being operated on the site prior to that date, what material was being received, processed, and sold on the site prior to that date, and what startup date is used on the local permits and licenses.

That paragraph is part of our discovery process. There is -- With this term there is no magic bright line date that we can point to and still stay within the meaning of the legislative intent.

(Side B)

MS. VANDEHEY: I've also included the August 23rd, 1996 memo from Mr. Bree to Mr. Charles Bianchi, and in that he clearly states, "I am proposing that the Department reject Willamette Industries' Tax Credit Application 4570."

Also, Madam Chair, I would like to apologize for the lateness of this black book. I did not receive the email that Mr. Bly is talking about.

CHAIRMAN EDEN: Well, I received the book on Monday afternoon, the 10th. Did everybody else get it then or before?

COMMISSIONER BENNETT: I was on the road, so,

obviously, it's sitting in my (inaudible).

CHAIRMAN EDEN: Oh, so you haven't seen it at all
Commissioner --

COMMISSIONER BENNETT: That is correct.

MS. VANDEHEY: And I also -- I received a copy. I have
a copy of it.

CHAIRMAN EDEN: Anything further from the Staff?

Questions or comments from the Commission?

And just for the record, Commissioner Van Vliet will not be
participating in either the discussion or any vote that
might occur on this issue because he has a stated conflict
of interest.

Questions or comments?

Commissioner Reeve?

COMMISSIONER REEVE: Mr. Huston, could you fill us in a
little bit further on what the APA really means, how it's
been interpreted as far as precedent and practices because
my review of the -- of the materials in the submission from
Willamette Industries show review reports which certainly,
you know, make a statement that can be read, understood as
reports. But I don't know, frankly, out of the APA, whether
those reports would rise to the level of an accepted
position or a precedent that we either need to follow or
distinguish. So can you fill us in a little more on that?

MR. HUSTON: Madam Chair, members of the Commission,

could I have Commissioner Reeve simply say again what materials he's referring to? Was it an individual tax credit report or to Commissioner or --

COMMISSIONER REEVE: Yes.

MR. HUSTON: -- another document?

COMMISSIONER REEVE: Precisely what I'm saying is we received in the submission from Willamette Industries these tax credit reports. I'm at the black binder, and my question to you is how those reports relate to the issue of a position or a precedent under the EPA -- excuse me, the APA.

MR. HUSTON: Thank you. I would like to take a crack at this. I would certainly encourage Mr. Knudsen to add to it or contradict it. I think Larry's had an opportunity to read the Martini v. OSPC decision, which the Court has spoken to some of these issues.

This statutory test that -- Commissioner, is inconsistent with an officially stated agency position or agency practice. I think -- My recollection is that the Court has required a fairly -- at least a significant degree of formality to the agency decision, I think particularly to seeing a staff policy document that wasn't adopted. I don't think that represents an officially stated agency position. I think it represents a rejection of the position, perhaps.

What they're -- Let's do our best -- I'll try to

do my best to tell you whether I think Document 1, the Timber Products Company Tax Credit Report, what the status of that would be under the APA standard. I really doubt very much, Commissioner, that a Court would conclude that the paragraph in that document that addresses at least similar facts -- It doesn't accept much interpretive reasoning, that I recall. I doubt that a Court would conclude that that was in the category of an officially adopted position.

I do think, nonetheless, that Commissioner Knudsen or I might suggest to you that in the order in this case, that we nonetheless assume that it might be, and include some findings or reasonings that would tell the Court why the Commission prefers to go with the current interpretation, which reasons include that -- reasons which include the fact that the Agency has asked our office to examine the statute and the administrative rule on "substantial completion," and we would like to think that we're closer to being on the right track under the legislature guidance than we were before.

COMMISSIONER REEVE: Is there any evidence or document that you've run across, that during the Timber Products consideration there was discussion interpretation by the Commission or by Staff on this particular issue?

MR. HUSTON: During the consideration on the Timber

Products Company, that Tax Credit Report?

COMMISSIONER REEVE: Right.

MR. HUSTON: I personally have no recollection whatsoever of that tax credit, Commissioner Reeve. I may well -- I'm sure I was working with DEQ at that time. I probably served as the Commission's counsel at that time, but I don't -- but rarely would I have a recollection of that specific tax credit.

COMMISSIONER REEVE: Well, regardless of your personal recollection, would it be -- would documents relating to that be included within the document request that you responded to?

MR. HUSTON: Oh, I think most -- I'm sorry, Commissioner Reeve, if I didn't get the question right. I think the answer is most definitely yes. I think Maggie and I both were very clear that anything that would -- that would have been even remotely on this topic would have been provided to the company.

You know, contrary to Mr. Bly's suggestions that the Agency is hiding something, anything, I think the company, at least from my honest assessment of it, DEQ has been extremely careful in attempting to provide anything that might be related to this policy question. It's perfectly possible that they may have made a mistake, but there is certainly, to my knowledge, nothing being hidden.

It's all out there, for better or worse.

MS. VANDEHEY: Madam Chair?

CHAIRMAN EDEN: Would it be in the minutes?

MS. VANDEHEY: Madam Chair, may I offer --

CHAIRMAN EDEN: Ms. Vandehey.

MS. VANDEHEY: In the records request we copied all EQC agenda for the past ten years, provided them to Miller Nash, as they show in the binders, regarding tax credit. That includes that -- any summaries that were included in those binders, all review reports and all Director's letters that went before the Commission for the last ten years.

MR. KNUDSEN: Madam Chair, perhaps I can respond more to Commissioner Reeve's initial question. Most of the volume law in this issue -- and there isn't much, but most of it is developed in the context of either contested case decisions, where you have relatively formal findings and a discussion of the hearing officer or bodies decision, or in the case of more formal, but not rules, guidance, usually, internal management directives that have been adopted as formal guidance by an agency.

And so that's why it's a little bit difficult to apply it to this context where, typically, we just don't have that kind of detail in the tax credit decision, with the exception of a few cases like Tidewater or others where we've gone into detailed discussion and prepared elaborate

orders, we rely on just the report and the minutes for our final order, so that's the difficulty in applying the test to this case.

But that's also, I think, the reason for our advice that it's probably appropriate to go ahead and address this issue in any order you may, so that it would be clear if the case comes to judicial review.

CHAIRMAN EDEN: In case it comes to judicial review.

COMMISSIONER REEVE: Well, I think to be fair, frankly, to the public and that the applicant, to know what the rules are.

CHAIRMAN EDEN: Other questions or comments?

Commissioner Malarkey, what's your questions?

COMMISSIONER MALARKEY: I was referring to the earlier minutes --

MS. PURSER: You need to speak up.

COMMISSIONER MALARKEY: Oh. I'm not (inaudible).

CHAIRMAN EDEN: What's the pleasure of the Commission?

COMMISSIONER BENNETT: What we see is the motion in front of us, (inaudible).

CHAIRMAN EDEN: We don't have a motion in front of us as a motion. If there's --

COMMISSIONER BENNETT: That's the question, then.

CHAIRMAN EDEN: If there's going to be one, somebody needs to make one one way or the other, or if you want to

put it off in terms of thinking more about the argument about consistency, that's an option, as well. Maybe not.

Mr. Aden, would you like to comment on that?

MR. ADEN: If I could for just two minutes, that I was (inaudible) involved in 1996 and in 1994, actually, in this project, that I would say that I had been doing tax credits for 13 years before then. I had -- We, Willamette Industries, did this as a lease project, looked at the tax credit as part of the reason to do it.

Unfortunately, the operating people -- and the tax credit doesn't start until you get the thing certified, so I was pushing many, many years before we filed the danged thing to get it in. But I guess that, unfortunately, the guy that was retiring did this project, wasn't top on his priority list. He put it off.

But I guess that I believed when we filed it on December 22nd, that based upon everything I saw in all of my experience, as well, you know, I guess, of doing these, is that Willamette Industries, if you look at the application, the application of Willamette Industries, all of the return on investment is Willamette Industries. All of the additional questions are Willamette Industries integral to all of those questions are the lessor's questions. The lease was January 1st, that I believe and I still believe, that that was a date that we met. That was not a bad date,

and I know I wanted it the year before. I wanted it a long time before. But on December 22nd, I was relieved to have met that because I knew the date of January 1st, and I've been somewhat knowledgeable of our dealings with Far West Fibers, of the fact that they had to move when they had to move, that they moved a little early because of the problems with the former facility.

They had -- They did move in September, late September, that there's certain factors, and the dust filter was a thing that was part of the original design, part of the separately listed pieces of equipment, and it wasn't in service until 1994. And I guess that I felt that because of those things, that on December 22nd, we met the deadline. I didn't like it. I wished we would have done it a long way earlier. God, I wish now that we would have done it a lot earlier. But I guess I just wanted to make that clear, that when we filed it an experienced tax person felt that we met it, and, you know, right, wrong, or indifferent I just wanted to let you know that.

And I also say that I know that this has been a tremendous amount of Willamette's time, a tremendous amount of the Department's time. I'm sorry we didn't file it six months earlier, but I guess that's the facts.

Thank you.

CHAIRMAN EDEN: Thank you, Mr. Aden. We're still at

what's the pleasure of the Commission.

COMMISSIONER BENNETT: Well, aren't there several things that we could do, and what are those?

CHAIRMAN EDEN: Mr. Knudsen, would you like to lay this out for the Commission?

MR. KNUDSEN: Well, if you are inclined to agree with the Staff Report and the recommendations there, then a motion which is made to deny for those reasons.

If you are disinclined to follow the Staff Report, then I think you probably are going to have to make a call as to whether or not the basis for a different reason -- or a different decision is going to be the substantial completion, date of completion issue, and whether or not you are either going to agree that there should be -- at least they should control in this case, or you might take a position that the company is going to change that in the future, and why and what do you think was the past practice to rely on, at least, holds that's your determination.

Or, on the other hand, you might decide that you would be interested in this new -- what I'll characterize as a new argument, that the filter system or scales were integral to the materials recovery function and have the effect of (inaudible).

CHAIRMAN EDEN: That's not really a new argument. I mean, we've discussed that, I think.

MR. KNUDSEN: It came up later in the process.

CHAIRMAN EDEN: Yes.

MR. KNUDSEN: Don't mean to say that it's untimely or shouldn't be considered in this --

CHAIRMAN EDEN: We discussed it and considered it in our -- in the past.

There's a third option, is there not, of putting it off to more further -- more closely examine the consistency argument?

MR. KNUDSEN: Certainly you can make that decision. I'm a little concerned about that. In the past the company has been unhappy with doing that, and eventually they may decide to act on that unhappiness. So -- But it is an option. There's some risks, but it's an option.

CHAIRMAN EDEN: Does that answer your question, Commissioner Bennett?

COMMISSIONER BENNETT: Well, I was just waiting for sixth or seventh option.

CHAIRMAN EDEN: Commissioner Malarkey?

COMMISSIONER MALARKEY: Well, the thing that -- Madam Chair, is the fact that I've never seen this William Bree email. I may -- just because I was not on the Commission, and then --

CHAIRMAN EDEN: Which email are you referring to?

COMMISSIONER MALARKEY: I'm sorry, it was passed out

this morning from William Bree and Maggie Vandehey. And then I had known anything about the issue. Number 1 -- excuse me, the inconsistency issue, and that leaves me unable to make a firm vote.

CHAIRMAN EDEN: So what's the pleasure of the Commission?

COMMISSIONER BENNETT: Madam Chair, in the August 23rd, '96 email, it's not so much -- I'm looking under Number 2, "Is the facility eligible?" The note is there, and then the question is asked in the last sentence do we use September, do we use the start of -- start of operation, or the December date when they started the lease. And it looks like that was where the question was, if this was a "no" would that question following -- those questions follow.

So if you answer that question one day one way, the "no" stands. If you don't, then where are you from there? That decision appears, from the Staff's standpoint, to have been answered in support of the "no."

And the rest of it, then, becomes a question of is this one of those cases where somebody missed the date, and then that's the way it is.

So when I look at this, that's the pivot. And it's not so much whether I'm supporting the Staff in this case as I'm just reviewing what I've seen. I did not see (inaudible). But listening, it appears that the case is

being created, tried to produce an alternative to one of these dates, and it doesn't look like it to me.

So my motion would be to support the Staff.

CHAIRMAN EDEN: Are you making that motion?

MR. BENNETT: My motion would be, and, therefore, I'm making that.

CHAIRMAN EDEN: So let me make sure that I'm stating it correctly. Your motion is to accept the Staff Report and deny the tax credit application --

COMMISSIONER BENNETT: Correct.

CHAIRMAN EDEN: -- 4570.

COMMISSIONER BENNETT: Correct.

CHAIRMAN EDEN: Is there a second?

COMMISSIONER MALARKEY: I second.

CHAIRMAN EDEN: Any other questions or comments, any discussion?

Commissioner Reeve.

COMMISSIONER REEVE: Well, I think it's fair to make a comment applicable -- because this has been a long process and it's been a lot of time -- both the Commission and the Department, and certainly Willamette, I know, who have put a lot of effort in this, and I think they're entitled to some additional perspective on it, though I don't think, ultimately, they'll like probably what they're about to hear from, at least from me, and that is I think Mr. Bree, to the

extent he supported this application, was largely making legal interpretation, and while I respect his right to make one, I think the Commission has to make its own legal interpretation of what the statute and rules mean on substantial completion.

I think Mr. Bree does -- Mr. Bree's comments highlight the issue of the lease and whether "placed in service" is indeed the same thing as "substantial completion." I think, legally -- it's my interpretation, I think, perhaps the interpretation of the Commission, is that those are different terms, and that the extent those terms have been completed, that was a mistake. And if we've made that mistake in the past, I don't think it's our responsibility to continue to make that mistake if we feel strongly -- and I do feel strongly -- that it doesn't jive with the way the statute is actually written.

I think the statute does have those two terms separate. I think the first part of that phrase in the statute which says -- lays out the criteria before that must be -- before an application can be submitted is different from the two-year deadline. I think it's unfortunate if the Department's prior interpretations and discussions with Staff have not clearly made that distinction.

I think they were wrong if they didn't do that, and to the extent that lulled people like Mr. Aden into

reliance, I think that's a mistake and one that, frankly, the Department should apologize about, but it is not something that I can rely on in good conscience and say, well, because the Department did not make that distinction clearly enough, then we are bound to follow it. I think we're bound to follow the statute and the rules as best we can understand them and interpret them.

As to the -- That's really the legal issue.

The factual issue, which we really haven't talked about a great deal here today but we talked about more at the last meeting is, really, were the essential parts of the facility in place before -- you know, back in September, October, November, and I think, as I've said before, factually, I think the record is relatively clear that factually the -- all those essential elements were in place, and that we've had evidence of thousands of tons of baled product during that period.

I think we start down a very slippery slope if we somehow try to give a great deal of flexibility and wiggle room to facilities that are essentially operating but, you know, are still making modifications and changes. I think the statute really doesn't give us that kind of flexibility. And, frankly, if the legislature wants us to do that, they can tell us that we have greater flexibility to do that, but I don't see it in the current statute and rules.

So that's my way of -- my comment and explanation where my vote comes from.

CHAIRMAN EDEN: Thank you. As Chair, I am extremely fortunate to always get to speak after Commissioner Reeve. And in this instance, we have discussed this. Our positions have not really changed, and he has very ably articulated my view on this, as well.

I do want to say that I agreed with Commissioner Van Vliet's comment way back when, when we first talked about this, that this is an extremely wonderful facility. We just can't -- It doesn't sound to me like we can get over the deadline problem, and we disagree with you, and we expect we'll see you in court. But it's not because we don't agree with the facility is doing exactly what it was designed to do. We just wish, as well as you do, Mr. Aden, that it had been brought to us sooner.

So with that, we probably need a roll call. It's been moved and seconded that we deny Tax Credit Application Number 4570. Director Marsh?

DIRECTOR MARSH: Commissioner Bennett.

COMMISSIONER BENNETT: Aye.

DIRECTOR MARSH: Commissioner Reeve.

MR. REEVE: Aye.

DIRECTOR MARSH: Commissioner Malarkey.

COMMISSIONER ROY: Aye.

DIRECTOR MARSH: Chair Eden.

CHAIR EDEN: Aye.

MR. KNUDSEN: Madam Chair, before we move on can we discuss the order? I can either prepare an order based upon Staff Report -- and I would suggest also the comments made during the taking of the motion as to the motion by various Commissioners and prepare that for the Director's signature, or I can prepare a draft order and bring that back for you at -- for the Commission at its next meeting, either regular or special, and then you can sign it, Ms. Chair. What is your pleasure?

CHAIRMAN EDEN: As far as I'm concerned, the first alternative is appropriate. I don't believe that we need to see another order on this again.

(MR. SPEAKER): I will do that.

CHAIRMAN EDEN: Thank you.

Thank you very much for coming.

(MS. SPEAKER): Thank you, Madam Chair.

(MR. SPEAKER): Thank you.

CHAIRMAN EDEN: Thank you, Mr. Huston.

MR. HUSTON: Thank you.

* * * *

AGENDA ITEM H

Consideration of Tax Credit Request for

Application Number 4570

July 14, 2000

* * * *

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AGENDA ITEM H
Consideration of Tax Credit Request for
Application Number 4570
July 14, 2000

CHAIRMAN EDEN: Calling for the Willamette item, which is part of Agenda Item H. But we're going to do this first before we do the rest.

The way I thought we would proceed on this would be to have the Staff make its presentation and then ask the Willamette representatives to come to the table to make whatever presentation you would like to within a reasonable time limit. We do have your stack of information here that was provided to everyone, and then any discussion.

So do we have Mr. Huston on the phone?

MS. VANDEHEY: No, he is not on the phone yet. They're still trying to get him through, so if we could wait a minute -- either that, or I can go ahead.

CHAIRMAN EDEN: Well, how long do you think it would take us to do the rest of the tax credits?

MS. VANDEHEY: The rest of the tax credits? They're very straightforward. They're very few. They're underground storage tanks, along with --

CHAIRMAN EDEN: Well, why don't we go ahead and do that, with my apologies.

MS. LOTTRIDGE: He's dialing in now. Michael is dialing in now.

CHAIRMAN EDEN: Oh, well, let's take 30 seconds. If we

don't have him in 30 seconds, we'll have to get some work done.

MS. VANDEHEY: Okay. Before us we have -- Michael? I'm putting you on hold. I'm putting you on the speakerphone now. Okay, thank you.
Michael?

MR. HUSTON: Yeah.

MS. VANDEHEY: Okay. We're going to do the other tax credits right now.

CHAIRMAN EDEN: Actually, no, we're not.

MS. VANDEHEY: Oh, no, we're not.

CHAIRMAN EDEN: As long we've got him on the phone, let's go ahead and do them now.

MS. VANDEHEY: Okay, we're not.

CHAIRMAN EDEN: We were waiting for you.

MR. HUSTON: Waiting for me?

CHAIRMAN EDEN: Yes. Can you --

MR. HUSTON: Well, Madam Chair.

CHAIRMAN EDEN: Can you hear us pretty well?

MR. HUSTON: If it's a little louder -- I can hear you. I hear Maggie real well.

MS. VANDEHEY: Thank you. Good morning, Madam Chair, Commissioners. To my left is Helen Lottridge, the Management Services Division Administrator. To my right is Michael Huston, Counsel, and today we're bringing before you

Willamette Industries Application Number 4570. It's presented in Agenda Item H. It's an addendum. And for your clarification, Application 4570 is a Pollution Control Facility Tax Credit Application.

This application has been part of EQC agenda, five times over the past four years. It was removed from consideration on four of those occasions. On December 20th, 1999, Willamette Industries did take the opportunity to present testimony before the Commission. The minutes to that meeting are provided in the Addendum at the back. Miller Nash's attorneys -- or Miller Nash, attorneys for Willamette Industries, also provided evidence with their letter to the Commission dated June 23rd, 2000, and it's in the black binder.

For these reasons, I'll be brief rather than comprehensive in my presentation of the application.

The claimed facility is East Multnomah Recycling. Willamette Industries is the owner of the claimed facility. East Multnomah Recycling was designed and built by Willamette for the purpose of leasing to its tenant, Far West Fibers. East Multnomah Recycling is very valuable in Oregon because of the amount of solid waste that it processes, about 400,000 tons of solid waste, such as corrugated cardboard, newspaper, mixed wastepaper, and high-grade office paper. This was from quotes from Jim Aden

of Willamette Industries for the years between 1994 and 1999.

Also, it processes about -- processes about 10 percent of all waste recycling in the Portland metropolitan area. As far as eligibility, the claimed facility includes land, a building, machinery, and equipment as allowed by law. The sole purpose of the eligible components is to prevent control, reduce -- or reduce a substantial quantity of solid waste. And for the final eligibility criteria, the pollution control is accomplished by a material recovery process.

This next part is particularly difficult, especially considering the important reduction in the amount of solid waste and that a \$2.8 million certified facility cost is at stake. It's difficult and it's unfortunate, that the only outstanding issues of this facility is when was construction substantially completed for pollution control purposes.

The Miller Nash submittal dated June 23rd in the black binder, 2000, did not provide evidence to change the Director's Recommendation. The pollution control facility tax credit law regarding when an application must be filed has two parts; the "do not file before" part and the "do not file after" part.

In the "do not file before" part, the law provides

that a pollution control facility tax credit application cannot be filed before construction is substantially completed, and it cannot be filed before the facility is placed in service. The Department considers that the application submittal met the first filing part of the filing requirement. The facility was not filed before construction was completed, and it was not filed before the facility was placed in service.

In the "do not file after" part, the law provides that the application must be filed within two years after construction of the facility is substantially completed.

On page 3 of the addendum there's a chronology of the relevant milestones as they relate to Application 4570. To recap, December 22nd, 1995 is the date that the application was submitted. Backtracking two years, construction of the facility had to have been completed on or after December 22nd, 1993, to be within the filing period and to be considered timely filed.

Staff interpretation of the "do not file after" part of the filing requirement concludes that the application was not submitted within the required filing period. Staff considered the facility began operating on September 27th, 1993. Willamette Industries was the owner of the claimed facility on that date. In the period between September 27th, 1993 and the key date of December 22nd, 1993,

over 12,200 tons of recyclable material were processed at East Multnomah Recycling.

In the absence of previous examples or a different direction from the Commission, the Director's Recommendation on the Review Report for the application, Application Number 4570, is to reject the application for untimely submittal.

CHAIRMAN EDEN: Does that conclude your --

MS. VANDEHEY: Yes, it does.

CHAIRMAN EDEN: Mr. Huston, do you have anything to add to that?

MR. HUSTON: Well, Madam Chair, I was ordered to spend five minutes or less. Let's kind of summarize the legal advice that we've offered in the case. Does that sound okay?

CHAIRMAN EDEN: That sounds appropriate.

MR. HUSTON: Okay. I'm going to spend, let's see, 47 seconds on a little background on the tax credit statutes and then speak to "substantially completed" standard, and then I just -- one new legal issue that's probably raised by the company's most recent submission. That would be the black book there.

Madam Chair, (inaudible) secret that the Environmental Quality Commission had, for a long time, (inaudible) imposed by the tax credit statutes, and I think the reason for that may be in part that this is not -- this

is not a delegated statute. This is (inaudible). It's not (inaudible) an instance in which the legislature has looked to this agency to establish a policy, but rather in this case, the legislature has exercised its prerogative to set the policy themselves and then assigned a different role to the Environmental Quality Commission, and that is basically one of interpreting their policy and fact finding. So it's the narrow -- narrower role that we think the Commission is obligated to play in this case.

On the issue of "substantially completed," the interpretation of that, the application of the facts here does seem to me that our office and the company has basically agreed, at least on the legal text here.

The Commission has very smartly taken the statute and offered to interpret it and provide more specific guidance to applicants, and so we have a fairly strict corporate statute which says that applications have to be filed within two years, and then a fairly strict court administrative rule interpreting that, and that rule says that you have to question when all the elements of the facility which are essential to perform its pollution control purposes of solid management or recovery in this instance and applying the facts, determine when that time period began to run -- and Maggie presented you with the department's view of that which we (inaudible) very easily,

legally defensible.

If I recall, that same test is set out in the most recent letter under the Miller Nash letterhead, so we have an agreement to that point. I think, though, part company, both the Department and our office, part company, is that the company argues that the Commission should give great weight, if not determinative weight, to the date of the leasehold, and it's our respectful judgement to give it absolute weight would certainly probably not be legally permissible, that you would establish a policy that the legislature opted not to establish.

Given a leasehold consideration is perfectly appropriate, weighing it with the other evidence. All is perfectly acceptable but not determinative weight. Rather, you have to search for that question about when the elements were in place so that it was operating for its pollution control purpose. Maggie summarized the evidence on that, her chronology on page 4, properly giving you the facts that you need.

I would just like spend my remaining 94 seconds on the question of consistency and how the Commission handles the past precedent that this or other commissions have established.

I think -- I hope the Commission understands that what has happened here is that the company, exercising its

rights under the public records law, made a very demanding public record request to DEQ. It basically, as I understand it, required that staff check or at least consider virtually all the Agency's tax credit files.

As a result of that search, the company found the -- I think at least most, if not all, the documents that are in the black book there, and so I think the Commission needs to ask itself what weight are those decisions entitled to, how do you manage to those, to what extent are you obligated to follow those.

The company does not (inaudible), that I saw, the legal test that applies here. Under the Administrative Procedures Act, which sets the Court review standards for all agency decisions, the test is as follows, Madam Chair. The Court will reject the Agency decision only if it is (inaudible) inconsistent with an official agency position or agency practice, only if the inconsistency is not explained by the agency. But that's one of three elements there. We have to have an officially stated agency position or agency practice.

Secondly, there has to be an actual inconsistency; first to say that you don't necessarily have to explain the differences between apples and oranges, but they have to be somewhat close to each other on the facts.

And then third, even if those two elements do

exist, the Agency Commission is entitled to deviate from that prior policy and practice by explaining the reason for doing so. What are the reasons for doing so? Well, perhaps the most obvious is the prior decisions were wrong, legally wrong or wrong or bad as a matter of policy. Those are perfectly acceptable reasons to deviate.

It certainly -- the courts have been smart enough not to require that an agency keep making the -- making the same mistakes, or that they keep perpetuating that decision is based on all the information.

If we look at the materials in the black binder, then we can certainly -- time won't permit much discussion of those and we can do so on a question-by-question basis if that's the Commission's desire, but, virtually, I think Ms. Vandehey and I felt that virtually all the decisions were either not official agency practices or not factually inconsistent. I think the one -- the reasons for that are I think that most of the tax credits -- and you can look at them, the Miller Nash letter dated June 23rd. They summarized the information here.

If you look at it, I think tax credits, at least eight, nine, ten, perhaps seven. I'm unsure about six, but Maggie informs me that all those reports have not yet been acted upon by the Commission, and I believe that they pulled from agendas, in part because it was understood that this

policy decision or interpretation was at issue here.

The Number 2, the Fujitsu, and it's maybe -- it's factually different, in the sense that both the leaseholds and the completion fell within the deadline, so it doesn't seem to be comparable. And Maggie and I were -- thought perhaps that the first tax credit report, a 1993 decision by the Commission, is perhaps an inconsistency in the fact that the Commission were to accept the Department's position, again, it's that 1993, it's a while back, and the Commission is certainly entitled to have refined its thinking and its skill in applying the legal test in this case. That is one case, though, I think in which it appears that maybe the leasehold had a significant effect on the outcome.

That's it, Madam Chair. I welcome questions. Thank you very much for letting me attend by phone. I had great hand gestures. I hope you noted that.

CHAIRMAN EDEN: Thank you very much.

COMMISSIONER MALARKEY: What did he say?

CHAIRMAN EDEN: He had great hand gestures. He hopes that we noticed them. Yeah, duly noted.

If you have nothing else at this time, Ms. Vandehey, then let's ask Willamette Industries representatives to come to the table and make their 10-minute presentation.

And if you could -- Well, introduce yourself for

the record. Then I'll ask my questions.

MR. BLY: For the record, I'm Rece Bly with the Miller Nash firm, appearing on behalf of Willamette, and this is Jim Aden, who is also with Willamette, also appearing on their behalf.

CHAIRMAN EDEN: Welcome, and thank you for coming to Tillamook. Mr. Bly, could you specifically talk about the -- in your presentation at some point, the 1993 case that seems to be the one previous decision that might be inconsistent with what you're faced with now in terms of the Director's Recommendation?

MR. BLY: All right. Let me, first of all, echo what was said. This is a behemoth among recycled facilities. This thing -- This facility basically recycles a lot of the cardboard on the eastern -- in the eastern half of the Portland metropolitan area. It moves literally mountains of cardboard. It's a very large facility.

We were told before we left for this trip, that we should provide a five-minute presentation so I kind of geared it toward that, but I think there's plenty to talk about here.

About all we can do in the time allowed is point to some glaring issues in the hope that maybe some of the commissioners will agree with us, that there are some notable glaring issues and perhaps pursue some of those

issues which we think will bring about a proper result here.

The first glaring issue I want to point to is Mr. Bill Bree. Time and time and time again in the Department's files, Mr. Bree has made a very firm written record that he believes that East Multnomah Recycling should be certified. Mr. Bree is the person to whom this file was assigned, and he's the man who worked this file on behalf of the Department for a long time, and when he makes his record, which he's done many many times, it exceeds the materials that we've submitted to the Commission. He gives reasons, and he explains that the Department is deviating from its established practices. He asks questions like, "Why are we doing this on EMR? This isn't the way we do things."

Now, it seems to me that one of the best things that the Commission could do is right after we're done with our five or ten minutes, that the Commission would call Mr. Bree because he's the man that handled this file, and that the Commission would ask Mr. Bree, "Why do you feel so strongly about this, that you keep making a clear written record that this thing should be certified?"

Mr. Bree is really pretty amazing to look at his performance from the outside because I assume that this was not very popular among the Staff, for him to continue to make a clear record that this thing should be certified, but

he kept doing that, and I would describe it as courageous or, at the very least, the guy sure sticks to his guns on some things. So Mr. Bree should be consulted. That's the first issue.

The second issue is Staff's response to document requests. Mr. Huston just called our document requests very demanding. On other occasions Staff has called it abusive, bad faith, that we had -- alleged that we had ill motives. Let me tell you just a bit about the document request because my question is what is there to hide. Willamette submitted its first extremely abbreviated -- I want to stress that, extremely abbreviated document request on January 27 of 2000. Three and one half months later, the documents had not been produced. We submitted a lawful public records request, and three and a half months later the documents weren't produced, still hadn't been produced.

On May 16, we received written notice from Staff that there absolutely would not be a settlement. You will recall that both Willamette and senior Staff had supported a settlement, but we were given written word on May 16, that there absolutely, positively would be no settlement, and we were given a demand that in no -- that in 19 days Willamette make its final submittal of written materials. That's on May 16. Two days later -- and that came as a surprise to us. Two days later we delivered a supplemental request for

documents. Why?

Well, we had one or two of the documents that Mr. Bree had offered. It was very clear that Mr. Bree was acting and speaking based on why the command of material in the Department's files. We suspected correctly, that there was probably a treasure trove of material in the Department's files that supported Willamette's position. In other words, the best source for information starting to support Willamette's position is the Department's own files. So we asked for those files not in bad faith, but so that we could prove that we were right about this and the facility should be certified.

Now, what happened after that is our request for documents. Supplemental request was May 18. The bulk of the production -- not all of it because parts of it were still coming in afterwards, but the bulk of the Department's production was June 12. We then spent 80 hours -- because we kept track of the time -- 80 hours reading, digesting, understanding, and researching based on the treasure trove of material that was delivered to us.

And on June 23 -- so this is 11 days later -- we submitted -- and I could say it's a pretty good piece of work because I didn't write it. We submitted a pretty good piece of work. It's a 12-page summary of everything we found, and a product of our research, and we backed it up

with this binder that's been referred to.

You know, if there's a bad faith request for documents, what people do is when they get the documents they chuck them in the corner and they forget them and they have a good belly laugh, and that's the end of it because they abuse the other party. That's not what went on here. We needed the documents. We got them, we used them, we wrote a good product, and we hope the commissioners have all had time to read our submittal.

So the second point was the response to the document request and the issue of what is there to hide.

The third issue is the failure on Staff's part to address anything in our 12-page submittal and our supporting authority. When Staff came out with their July 6th rejection letter, the rejection notice, or report, this report purports to list out what it is that Willamette has submitted. It does that on page 3. It lists exactly what Willamette has submitted. It says that -- I'm on page 3 of this -- of this July 6 rejection report. And it lists our submittals as December 8, '99, December 10, '99, and January 6th, '99, with the cost documentation, and then in the text at the very bottom of page 3, it again says what Willamette has submitted.

It doesn't even refer -- It's not even mentioned, our 12-page submittal and the one inch of authority, and,

perhaps more importantly, this rejection letter, or report, does not address any of the arguments or authority in our materials. It sure looks like -- and we don't know this, but it sure has the appearance that the report was written before our materials were submitted, in which case, if that's the way it was going to be, we should simply have been told that you are not going to be allowed to submit anything more, and if you do, it won't be considered.

The fourth glaring issue is what we call Staff's attempt to run away from the Department's own precedent, practices, and procedures. Mr. Bree does an excellent job of highlighting this time and time again in the file. Now, during Mr. Huston's presentation, I think what I heard is a suggestion that -- or almost a grudging acknowledgement yet that, yes, there is established precedent practice and procedure which is evidenced by the Department's own file, and if you are going to reject EMR, even though it is what it is -- I mean, it is a facility that should have been built to recycle mountains of solid waste.

If not withstanding your existing precedent you're going to reject that, I think the Counsel I heard describe this morning, or the message was, "Well, you might need to adjust in some of your existing policy or precedent. You might want to try and distinguish it or jettison it," and my question is why. Mr. Bree is right.

If you follow established practice and procedures you're not going to be straining to reject certification of EMR. You're going to certify a worthy facility.

Now, in response to your request, Chair Eden, we received nothing, not one scrap of paper, not one word by phone call, nothing in response to our submittal; nothing from Staff, nothing from Mr. Huston. And it's worse than that because when we sent this material, which is a product of 80 hours of hard work, to Staff, we sent an email at the same time and we said, "Do you want us to send it to the Commission members? Please advise." There was never any response to that email.

But we didn't stop with that. We sent our submittal also to Mr. Huston, and Carrie Kuerschner of my office called Mr. Huston, and Mr. Huston gave us a timely response because our question to Mr. Huston was, "Do you need more information? Would you like to discuss? Do you see any issues that need to be hashed out?" And Mr. Huston -- this was on the 30th -- called back and left us a message that he hadn't had a chance to look at the material yet, and we've never received any further response from the Staff or legal counsel about any interest in discussing anything in our submittal; nothing.

So until I showed up here this morning, I had no idea that Mr. Huston would take the position that maybe

you'll have to get around or repeal or somehow deal with the '93 decision that perhaps suggests that you should certify. I'm coming here unarmed because this is the first I've ever heard of it. So I don't know why he's picking out that one decision.

I will share -- I want to share one other thing before I hush up. What I want to share is a policy statement that came out in November, that set forth the Agency's policies on interpreting some of the issues that are germane here; and, specifically, I'm referring to a November 1999 interpretation document that Staff promulgated. And it wasn't a document that was proposing a change in policy, it was an articulation of the existing policy.

And what this staff document said is, "ORS 468.165 appears to separate the terms 'substantially completed' and 'placed in service.' The OAR definition of 'substantially completed' and the IRS definition of 'placed in service' have the same meaning, closed quote. That's from the Department's own November '99 interpretation document. That's extremely important because if this is true, and we take it to be true and Mr. Marsh apparently takes it to be true, because at the top of page 9 of our submittal to the Commission Mr. Marsh seconds this. He says, "The written interpretation has been relied upon by the Department to

establish the date of substantial completion," referring to this November '99 document.

What does this mean? I mean, what's the significance of this? Well, what it means to a lawyer, of course, is that you can now go to the IRS authority, and there's a substantial lobby of that, of course, and you can -- you can glean from it an understanding of whether this facility was substantially completed, because the Agency itself has gone on record as saying the IRS definition of "placement service" is equivalent to the agency definition of "substantially completed." That's exactly what we did in our submittal.

Now, in May we took this up because this document came to us late. Remember we filed our document request in January? We didn't find out about this official interpretation until May, and when we got it in our hands we thought it was potentially a very important document, which it is. We asked Staff and legal counsel about this. And, basically, our conclusion was this should be over. Based on the supporting IRS authority this whole thing should be disposed of, and the response was, "Gee, that wasn't an official statement," and, "Gee, well, that was discussed and, well, the EQC chose not to adopt that."

That's not what's significant here. This was Staff's statement of how it was interpreting the relevant

authority. This is how they were doing it, and we accept that. That's how they were doing it. And if we do the same thing here, then this facility should be certified.

Do you have anything, Jim?

MR. ADEN: No.

MR. BLY: Nothing further. Thank you.

CHAIRMAN EDEN: Thank you. Mr. Huston, do you have any response at this point?

MR. HUSTON: Well, probably -- probably one brief kind of factual note, Madam Chair. My understanding on the topic discussion document that Mr. Bly's referring to, he said it was an effort by Staff to provide some greater certainty to the determination of "substantial completion" in particular, and Staff very much wanted to have a bright line that they could use for these cases and so they talked about possibly using the IRS determination, and it was rejected.

The policy was considered. Maggie can tell you whether it actually proceeded to the Commissioner but it was basically rejected, and I think in part, based upon legal advice, that the desired policy here, that of using the IRS determination would probably conflict with the statute. So I don't think that an agency staff should be chastised or that they should be discouraged from examining, though, interpretational questions, and that's my understanding of that particular document.

Otherwise, I don't take issue with Mr. Bly's assessment of my comments. I do think -- My overall assessment is that the company found almost nothing of value in their public records request. To find perhaps one tax credit report in thousands that may be close to this one is certainly not overwhelming evidence.

Thank you, Madam Chair.

CHAIRMAN EDEN: Thank you, Mr. Huston. Does Staff have anything additional? Could we ask that you come back to the table?

Thank you very much, Mr. Bly and Mr. Aden.

MS. VANDEHEY: Madam Chair, I would like to know if you would ask Michael Huston to discuss the first records request made by Miller Nash, rather than me address that.

CHAIRMAN EDEN: The December one? The January one?

MS. VANDEHEY: Yes, the first records request.

MR. HUSTON: Are you nodding, Madam Chair? Do you want me to speak to that?

CHAIRMAN EDEN: I'm thinking. I think that I do.

MR. HUSTON: I think I can do so in two sentences.

CHAIRMAN EDEN: All right.

MR. HUSTON: I feel very, very sorry that there was a misunderstanding. Maggie and I both thought we heard and clearly understood that the company agreed to put that public record request on hold and entering a -- a three

months' settlement discussion. Anyway, I had very carefully advised my client, the Department Staff, not to mention those settlement discussions because we -- the company had requested that -- they put it on the record so I guess I'm free to just note that we did go into protractive settlement discussions to try to resolve this case. Those did not come to fruition.

And as soon as those were completed, Maggie started spending an enormous amount of her and other staff people's time in responding to a very big record.

Thank you.

CHAIRMAN EDEN: So the Department's position is that in fact the -- they thought there was an agreement that the public records request was put on hold until shortly after May 16th. Is that -- Is that your interpretation?

MR. HUSTON: Yes.

CHAIRMAN EDEN: And the bulk of the material was provided by June 12th.

MR. HUSTON: That's right, isn't it, Maggie? I think the response was on June 12th, right? That's the bulk of the material that --

CHAIRMAN EDEN: Yes, it was in June. That's what Mr. Bly said so --

Does Staff have anything additional?

MS. LOTTRIDGE: Yes. For the record, I'm Helen

Lottridge, Administrator of Management Services Division. I would like to just describe some Staff responsibility issues that might help to clarify roles within the Department. There were several references made to Mr. Bree being the man to whom the file is assigned. And, in fact, Mr. Bree carried a large part of the responsibility for reviewing this tax credit and many others. His particular part of the responsibility is primarily to review and often inspect the facility to determine whether it meets the definition of a pollution control facility.

And then, of course, we have many discussions among Staff representing possible points of view and different facts related to the matter so, yes, we do discuss these tax credits within the agency and different possibilities and ways of thinking about them.

And so if Mr. Bree wishes to venture and give facts or viewpoints on anything other than the basic responsibility of meeting the definition of a pollution control facility, we would certainly welcome that and discuss it among Staff. It is, however, Ms. Vandehey's ultimate responsibility to decide such issues as timely submission of the application.

I might just mention that in a memo that Mr. Bree wrote on August 23rd of 1996, he does make two observations about the facility, answering two questions here. Is the

facility eligible, based on sole principal purpose test? Yes. And I think that Ms Vandehey referred to the other earlier. I don't really think there's any disagreement on that question.

And the second question Mr. Bree poses in this memorandum is, is the facility eligible, based on meeting the filing deadline. No, is his answer. In the first paragraph he says, "I'm proposing that the Department reject Willamette Industries' tax credit application, based upon the discussion below about submission during the two-year period."

If you would like to have copies of that, we're very happy to provide it to you.

So that pretty much will help to clarify and delineate the responsibilities of Staff. And then --

COMMISSIONER REEVE: Excuse me.

MS. LOTTRIDGE: Yes, sure.

COMMISSIONER REEVE: Can you just -- What were you reading from?

MS. LOTTRIDGE: I was reading from a memorandum that Mr. Bree wrote on August 23rd, 1996 -- Maggie, do you want to go into --

MS. VANDEHEY: Yeah.

MS. LOTTRIDGE: This was following one of his earlier reviews of the application, I think.

MS. VANDEHEY: Normally, in the reviews that I looked at, what happens in the review process, the Department is in a process of discovery. And we move along and perform the review and when we come to a stopping point, we then stop going any further until we -- and we don't -- we don't explore until we resolve those issues.

That was the case with this application. Mr. Bree came to the point of filing the timely submittal, and he did not go farther in the review. He -- Every application review begins its life as an approval. And throughout this, all of the drafts still had approval pending resolution of the submittal issue.

I have several documents written by Bill Bree; one June 12th, 1996, and in that letter --

(There was a pause in the proceedings.)

MS. VANDEHEY: In that letter he's asking for additional information, additional information for issues that need to be clarified before he can complete his review. This is about the time that he sent his FAX to Mr. Jim Aden with a copy of the Review Report, and the Review Report actually had "Approve" on the top. However, the date of substantial completion had not been resolved.

In this letter he says a facility is considered to be substantially complete when it's capable of performing its purpose. He goes on to talk about the dates, and then

he also talks about types of documents that the Department may review to verify when the plant facility was in operation, and he says including information on when the equipment was being operated, when the facilities -- utilities were fully utilized, what related equipment was being operated on the site prior to that date, what material was being received, processed, and sold on the site prior to that date, and what startup date is used on the local permits and licenses.

That paragraph is part of our discovery process. There is -- With this term there is no magic bright line date that we can point to and still stay within the meaning of the legislative intent.

(Side B)

MS. VANDEHEY: I've also included the August 23rd, 1996 memo from Mr. Bree to Mr. Charles Bianchi, and in that he clearly states, "I am proposing that the Department reject Willamette Industries' Tax Credit Application 4570."

Also, Madam Chair, I would like to apologize for the lateness of this black book. I did not receive the email that Mr. Bly is talking about.

CHAIRMAN EDEN: Well, I received the book on Monday afternoon, the 10th. Did everybody else get it then or before?

COMMISSIONER BENNETT: I was on the road, so,

obviously, it's sitting in my (inaudible).

CHAIRMAN EDEN: Oh, so you haven't seen it at all
Commissioner --

COMMISSIONER BENNETT: That is correct.

MS. VANDEHEY: And I also -- I received a copy. I have
a copy of it.

CHAIRMAN EDEN: Anything further from the Staff?

Questions or comments from the Commission?

And just for the record, Commissioner Van Vliet will not be
participating in either the discussion or any vote that
might occur on this issue because he has a stated conflict
of interest.

Questions or comments?

Commissioner Reeve?

COMMISSIONER REEVE: Mr. Huston, could you fill us in a
little bit further on what the APA really means, how it's
been interpreted as far as precedent and practices because
my review of the -- of the materials in the submission from
Willamette Industries show review reports which certainly,
you know, make a statement that can be read, understood as
reports. But I don't know, frankly, out of the APA, whether
those reports would rise to the level of an accepted
position or a precedent that we either need to follow or
distinguish. So can you fill us in a little more on that?

MR. HUSTON: Madam Chair, members of the Commission,

could I have Commissioner Reeve simply say again what materials he's referring to? Was it an individual tax credit report or to Commissioner or --

COMMISSIONER REEVE: Yes.

MR. HUSTON: -- another document?

COMMISSIONER REEVE: Precisely what I'm saying is we received in the submission from Willamette Industries these tax credit reports. I'm at the black binder, and my question to you is how those reports relate to the issue of a position or a precedent under the EPA -- excuse me, the APA.

MR. HUSTON: Thank you. I would like to take a crack at this. I would certainly encourage Mr. Knudsen to add to it or contradict it. I think Larry's had an opportunity to read the Martini v. OSPC decision, which the Court has spoken to some of these issues.

This statutory test that -- Commissioner, is inconsistent with an officially stated agency position or agency practice. I think -- My recollection is that the Court has required a fairly -- at least a significant degree of formality to the agency decision, I think particularly to seeing a staff policy document that wasn't adopted. I don't think that represents an officially stated agency position. I think it represents a rejection of the position, perhaps.

What they're -- Let's do our best -- I'll try to

do my best to tell you whether I think Document 1, the Timber Products Company Tax Credit Report, what the status of that would be under the APA standard. I really doubt very much, Commissioner, that a Court would conclude that the paragraph in that document that addresses at least similar facts -- It doesn't accept much interpretive reasoning, that I recall. I doubt that a Court would conclude that that was in the category of an officially adopted position.

I do think, nonetheless, that Commissioner Knudsen or I might suggest to you that in the order in this case, that we nonetheless assume that it might be, and include some findings or reasonings that would tell the Court why the Commission prefers to go with the current interpretation, which reasons include that -- reasons which include the fact that the Agency has asked our office to examine the statute and the administrative rule on "substantial completion," and we would like to think that we're closer to being on the right track under the legislature guidance than we were before.

COMMISSIONER REEVE: Is there any evidence or document that you've run across, that during the Timber Products consideration there was discussion interpretation by the Commission or by Staff on this particular issue?

MR. HUSTON: During the consideration on the Timber

Products Company, that Tax Credit Report?

COMMISSIONER REEVE: Right.

MR. HUSTON: I personally have no recollection whatsoever of that tax credit, Commissioner Reeve. I may well -- I'm sure I was working with DEQ at that time. I probably served as the Commission's counsel at that time, but I don't -- but rarely would I have a recollection of that specific tax credit.

COMMISSIONER REEVE: Well, regardless of your personal recollection, would it be -- would documents relating to that be included within the document request that you responded to?

MR. HUSTON: Oh, I think most -- I'm sorry, Commissioner Reeve, if I didn't get the question right. I think the answer is most definitely yes. I think Maggie and I both were very clear that anything that would -- that would have been even remotely on this topic would have been provided to the company.

You know, contrary to Mr. Bly's suggestions that the Agency is hiding something, anything, I think the company, at least from my honest assessment of it, DEQ has been extremely careful in attempting to provide anything that might be related to this policy question. It's perfectly possible that they may have made a mistake, but there is certainly, to my knowledge, nothing being hidden.

It's all out there, for better or worse.

MS. VANDEHEY: Madam Chair?

CHAIRMAN EDEN: Would it be in the minutes?

MS. VANDEHEY: Madam Chair, may I offer --

CHAIRMAN EDEN: Ms. Vandehey.

MS. VANDEHEY: In the records request we copied all EQC agenda for the past ten years, provided them to Miller Nash, as they show in the binders, regarding tax credit. That includes that -- any summaries that were included in those binders, all review reports and all Director's letters that went before the Commission for the last ten years.

MR. KNUDSEN: Madam Chair, perhaps I can respond more to Commissioner Reeve's initial question. Most of the volume law in this issue -- and there isn't much, but most of it is developed in the context of either contested case decisions, where you have relatively formal findings and a discussion of the hearing officer or bodies decision, or in the case of more formal, but not rules, guidance, usually, internal management directives that have been adopted as formal guidance by an agency.

And so that's why it's a little bit difficult to apply it to this context where, typically, we just don't have that kind of detail in the tax credit decision, with the exception of a few cases like Tidewater or others where we've gone into detailed discussion and prepared elaborate

orders, we rely on just the report and the minutes for our final order, so that's the difficulty in applying the test to this case.

But that's also, I think, the reason for our advice that it's probably appropriate to go ahead and address this issue in any order you may, so that it would be clear if the case comes to judicial review.

CHAIRMAN EDEN: In case it comes to judicial review.

COMMISSIONER REEVE: Well, I think to be fair, frankly, to the public and that the applicant, to know what the rules are.

CHAIRMAN EDEN: Other questions or comments?

Commissioner Malarkey, what's your questions?

COMMISSIONER MALARKEY: I was referring to the earlier minutes --

MS. PURSER: You need to speak up.

COMMISSIONER MALARKEY: Oh. I'm not (inaudible).

CHAIRMAN EDEN: What's the pleasure of the Commission?

COMMISSIONER BENNETT: What we see is the motion in front of us, (inaudible).

CHAIRMAN EDEN: We don't have a motion in front of us as a motion. If there's --

COMMISSIONER BENNETT: That's the question, then.

CHAIRMAN EDEN: If there's going to be one, somebody needs to make one one way or the other, or if you want to

put it off in terms of thinking more about the argument about consistency, that's an option, as well. Maybe not.

Mr. Aden, would you like to comment on that?

MR. ADEN: If I could for just two minutes, that I was (inaudible) involved in 1996 and in 1994, actually, in this project, that I would say that I had been doing tax credits for 13 years before then. I had -- We, Willamette Industries, did this as a lease project, looked at the tax credit as part of the reason to do it.

Unfortunately, the operating people -- and the tax credit doesn't start until you get the thing certified, so I was pushing many, many years before we filed the danged thing to get it in. But I guess that, unfortunately, the guy that was retiring did this project, wasn't top on his priority list. He put it off.

But I guess that I believed when we filed it on December 22nd, that based upon everything I saw in all of my experience, as well, you know, I guess, of doing these, is that Willamette Industries, if you look at the application, the application of Willamette Industries, all of the return on investment is Willamette Industries. All of the additional questions are Willamette Industries integral to all of those questions are the lessor's questions. The lease was January 1st, that I believe and I still believe, that that was a date that we met. That was not a bad date,

and I know I wanted it the year before. I wanted it a long time before. But on December 22nd, I was relieved to have met that because I knew the date of January 1st, and I've been somewhat knowledgeable of our dealings with Far West Fibers, of the fact that they had to move when they had to move, that they moved a little early because of the problems with the former facility.

They had -- They did move in September, late September, that there's certain factors, and the dust filter was a thing that was part of the original design, part of the separately listed pieces of equipment, and it wasn't in service until 1994. And I guess that I felt that because of those things, that on December 22nd, we met the deadline. I didn't like it. I wished we would have done it a long way earlier. God, I wish now that we would have done it a lot earlier. But I guess I just wanted to make that clear, that when we filed it an experienced tax person felt that we met it, and, you know, right, wrong, or indifferent I just wanted to let you know that.

And I also say that I know that this has been a tremendous amount of Willamette's time, a tremendous amount of the Department's time. I'm sorry we didn't file it six months earlier, but I guess that's the facts.

Thank you.

CHAIRMAN EDEN: Thank you, Mr. Aden. We're still at

what's the pleasure of the Commission.

COMMISSIONER BENNETT: Well, aren't there several things that we could do, and what are those?

CHAIRMAN EDEN: Mr. Knudsen, would you like to lay this out for the Commission?

MR. KNUDSEN: Well, if you are inclined to agree with the Staff Report and the recommendations there, then a motion which is made to deny for those reasons.

If you are disinclined to follow the Staff Report, then I think you probably are going to have to make a call as to whether or not the basis for a different reason -- or a different decision is going to be the substantial completion, date of completion issue, and whether or not you are either going to agree that there should be -- at least they should control in this case, or you might take a position that the company is going to change that in the future, and why and what do you think was the past practice to rely on, at least, holds that's your determination.

Or, on the other hand, you might decide that you would be interested in this new -- what I'll characterize as a new argument, that the filter system or scales were integral to the materials recovery function and have the effect of (inaudible).

CHAIRMAN EDEN: That's not really a new argument. I mean, we've discussed that, I think.

MR. KNUDSEN: It came up later in the process.

CHAIRMAN EDEN: Yes.

MR. KNUDSEN: Don't mean to say that it's untimely or shouldn't be considered in this --

CHAIRMAN EDEN: We discussed it and considered it in our -- in the past.

There's a third option, is there not, of putting it off to more further -- more closely examine the consistency argument?

MR. KNUDSEN: Certainly you can make that decision. I'm a little concerned about that. In the past the company has been unhappy with doing that, and eventually they may decide to act on that unhappiness. So -- But it is an option. There's some risks, but it's an option.

CHAIRMAN EDEN: Does that answer your question, Commissioner Bennett?

COMMISSIONER BENNETT: Well, I was just waiting for sixth or seventh option.

CHAIRMAN EDEN: Commissioner Malarkey?

COMMISSIONER MALARKEY: Well, the thing that -- Madam Chair, is the fact that I've never seen this William Bree email. I may -- just because I was not on the Commission, and then --

CHAIRMAN EDEN: Which email are you referring to?

COMMISSIONER MALARKEY: I'm sorry, it was passed out

this morning from William Bree and Maggie Vandehey. And then I had known anything about the issue. Number 1 -- excuse me, the inconsistency issue, and that leaves me unable to make a firm vote.

CHAIRMAN EDEN: So what's the pleasure of the Commission?

COMMISSIONER BENNETT: Madam Chair, in the August 23rd, '96 email, it's not so much -- I'm looking under Number 2, "Is the facility eligible?" The note is there, and then the question is asked in the last sentence do we use September, do we use the start of -- start of operation, or the December date when they started the lease. And it looks like that was where the question was, if this was a "no" would that question following -- those questions follow.

So if you answer that question one day one way, the "no" stands. If you don't, then where are you from there? That decision appears, from the Staff's standpoint, to have been answered in support of the "no."

And the rest of it, then, becomes a question of is this one of those cases where somebody missed the date, and then that's the way it is.

So when I look at this, that's the pivot. And it's not so much whether I'm supporting the Staff in this case as I'm just reviewing what I've seen. I did not see (inaudible). But listening, it appears that the case is

being created, tried to produce an alternative to one of these dates, and it doesn't look like it to me.

So my motion would be to support the Staff.

CHAIRMAN EDEN: Are you making that motion?

MR. BENNETT: My motion would be, and, therefore, I'm making that.

CHAIRMAN EDEN: So let me make sure that I'm stating it correctly. Your motion is to accept the Staff Report and deny the tax credit application --

COMMISSIONER BENNETT: Correct.

CHAIRMAN EDEN: -- 4570.

COMMISSIONER BENNETT: Correct.

CHAIRMAN EDEN: Is there a second?

COMMISSIONER MALARKEY: I second.

CHAIRMAN EDEN: Any other questions or comments, any discussion?

Commissioner Reeve.

COMMISSIONER REEVE: Well, I think it's fair to make a comment applicable -- because this has been a long process and it's been a lot of time -- both the Commission and the Department, and certainly Willamette, I know, who have put a lot of effort in this, and I think they're entitled to some additional perspective on it, though I don't think, ultimately, they'll like probably what they're about to hear from, at least from me, and that is I think Mr. Bree, to the

extent he supported this application, was largely making legal interpretation, and while I respect his right to make one, I think the Commission has to make its own legal interpretation of what the statute and rules mean on substantial completion.

I think Mr. Bree does -- Mr. Bree's comments highlight the issue of the lease and whether "placed in service" is indeed the same thing as "substantial completion." I think, legally -- it's my interpretation, I think, perhaps the interpretation of the Commission, is that those are different terms, and that the extent those terms have been completed, that was a mistake. And if we've made that mistake in the past, I don't think it's our responsibility to continue to make that mistake if we feel strongly -- and I do feel strongly -- that it doesn't jive with the way the statute is actually written.

I think the statute does have those two terms separate. I think the first part of that phrase in the statute which says -- lays out the criteria before that must be -- before an application can be submitted is different from the two-year deadline. I think it's unfortunate if the Department's prior interpretations and discussions with Staff have not clearly made that distinction.

I think they were wrong if they didn't do that, and to the extent that lulled people like Mr. Aden into

reliance, I think that's a mistake and one that, frankly, the Department should apologize about, but it is not something that I can rely on in good conscience and say, well, because the Department did not make that distinction clearly enough, then we are bound to follow it. I think we're bound to follow the statute and the rules as best we can understand them and interpret them.

As to the -- That's really the legal issue.

The factual issue, which we really haven't talked about a great deal here today but we talked about more at the last meeting is, really, were the essential parts of the facility in place before -- you know, back in September, October, November, and I think, as I've said before, factually, I think the record is relatively clear that factually the -- all those essential elements were in place, and that we've had evidence of thousands of tons of baled product during that period.

I think we start down a very slippery slope if we somehow try to give a great deal of flexibility and wiggle room to facilities that are essentially operating but, you know, are still making modifications and changes. I think the statute really doesn't give us that kind of flexibility. And, frankly, if the legislature wants us to do that, they can tell us that we have greater flexibility to do that, but I don't see it in the current statute and rules.

So that's my way of -- my comment and explanation where my vote comes from.

CHAIRMAN EDEN: Thank you. As Chair, I am extremely fortunate to always get to speak after Commissioner Reeve. And in this instance, we have discussed this. Our positions have not really changed, and he has very ably articulated my view on this, as well.

I do want to say that I agreed with Commissioner Van Vliet's comment way back when, when we first talked about this, that this is an extremely wonderful facility. We just can't -- It doesn't sound to me like we can get over the deadline problem, and we disagree with you, and we expect we'll see you in court. But it's not because we don't agree with the facility is doing exactly what it was designed to do. We just wish, as well as you do, Mr. Aden, that it had been brought to us sooner.

So with that, we probably need a roll call. It's been moved and seconded that we deny Tax Credit Application Number 4570. Director Marsh?

DIRECTOR MARSH: Commissioner Bennett.

COMMISSIONER BENNETT: Aye.

DIRECTOR MARSH: Commissioner Reeve.

MR. REEVE: Aye.

DIRECTOR MARSH: Commissioner Malarkey.

COMMISSIONER ROY: Aye.

DIRECTOR MARSH: Chair Eden.

CHAIR EDEN: Aye.

MR. KNUDSEN: Madam Chair, before we move on can we discuss the order? I can either prepare an order based upon Staff Report -- and I would suggest also the comments made during the taking of the motion as to the motion by various Commissioners and prepare that for the Director's signature, or I can prepare a draft order and bring that back for you at -- for the Commission at its next meeting, either regular or special, and then you can sign it, Ms. Chair. What is your pleasure?

CHAIRMAN EDEN: As far as I'm concerned, the first alternative is appropriate. I don't believe that we need to see another order on this again.

(MR. SPEAKER): I will do that.

CHAIRMAN EDEN: Thank you.

Thank you very much for coming.

(MS. SPEAKER): Thank you, Madam Chair.

(MR. SPEAKER): Thank you.

CHAIRMAN EDEN: Thank you, Mr. Huston.

MR. HUSTON: Thank you.

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Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Eighty-Sixth Meeting

**August 22, 2000
Special Phone Meeting**

On August 22, 2000, the Environmental Quality Commission (EQC) held a special phone meeting at the Department of Environmental Quality (DEQ) headquarters, 811 SW Sixth Ave, Portland, OR. The following Environmental Quality Commission members were present:

Melinda Eden, Chair
Harvey Bennett, Member
Tony Van Vliet, Member
Mark Reeve, Member
Deirdre Malarkey, Member

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice (DOJ); Lydia Taylor, Deputy Director, Department of Environmental Quality; and other staff from DEQ.

Note: The Staff report presented at this meeting, which contain the Department's recommendations, is on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

Chair Eden called the meeting to order at 2:00 p.m. on Tuesday, August 22.

A. Rule Adoption: Revisions to On-Site Innovative Technology Rules

Mike Llewelyn, Water Quality Administrator, and Ed Woods, On-Site Manager, presented this item to the Commission.

The EQC reviewed the proposed rule revisions and made the following changes:

1. In 340-071-0116(2) The second sentence beginning "Performance is established..." was moved to be the third sentence. This was to make it easier to read.
2. In 340-071-0130(2)(b) the following changes were made. These changes were made to make the rule easier to understand.
 - The last word of the first sentence "is" was removed and added to the beginning of (A) and (B).
 - In (B) the phrase "the new and innovative technology or material" was removed.
 - (B) was divided into 2 sections called (C) and (C)(i). (i) starts with the sentence "During the evaluation of a product approved prior to July 1, 1999..." and includes subitems (i), (ii), and (iii). The remainder of (B) was renamed section (C).
 - Section (C) was renamed (B).

The EQC discussed the merits of allowing until December 31, 2002 for current approvals to expire. Mr. Llewelyn indicated the current approvals would have continued indefinitely were it not for the litigation. He also indicated DEQ intended to try to define the performance of the standard trench through a contract. If criteria were established as indicated in the proposed 130(2)(b)(C) they would be incorporated by rule. If for any reason DEQ were not able to establish criteria, current approvals could not use (C) would be able to get approval by any of the other options.

The "piggybacking" of approvals was discussed. The Commission asked what would DEQ expect from a company that wanted "functional equivalency" approval? DEQ responded that it would be up to the applicant to demonstrate "functional equivalency" to DEQ's satisfaction.

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

Deputy Director Taylor gave an update on the spill at 15 Mile Creek.

There being no further business, the meeting was adjourned at 2:55 p.m.

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Eighty-Seventh Meeting

**September 6, 2000
Special Phone Meeting**

On September 6, 2000, the Environmental Quality Commission (EQC) held a special phone meeting at the Department of Environmental Quality (DEQ) headquarters, 811 SW Sixth Ave, Portland, OR. The following Environmental Quality Commission members were present:

Melinda Eden, Chair
Tony Van Vliet, Member
Mark Reeve, Member
Deirdre Malarkey, Member

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice (DOJ); Lydia Taylor, Deputy Director, Department of Environmental Quality; and other staff from DEQ.

Note: The Staff reports from 1994 referred to at this meeting, are on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

Chair Eden called the meeting to order at 8:00 a.m. on Wednesday, September 6.

A. Informational Item: Standards, Criteria, Policy Directives and Hiring Procedures to be Used in Hiring the Director of the Department of Environmental Quality

The Commission discussed the Standards, Criteria, Policy Directives and Hiring Procedures in Hiring the Director of the Department of Environmental Quality that were used by the Commission in 1994. The changes they made were as follows:

- The Human Resources Services Division of the Department of Administrative Services would be asked to coordinate the application process.
- Recruitment would be held open until October 6, 2000. The Commission may choose to extend the deadline if not enough applications are received.

Written public comment on the standards, criteria, policy directives and hiring procedures will be taken until September 25, 2000. Oral comment will be heard at the September EQC meeting, and the Commission will vote on this action item after consideration of all comments.

A motion was made by Commissioner Van Vliet to propose for public comment the standards, criteria, policy directives and hiring procedures in hiring of the Director of the Department of Environmental Quality set forth in 1994 with the above amendments. Commissioner Reeve seconded the motion and it passed with four "yes" votes.

There being no further business, the meeting was adjourned at 8:35 a.m.

*Kitty Purser
For the record*

**Portland General Electric Company**

Trojan Nuclear Plant
71760 Columbia River Hwy
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August 16, 2000

SMQ-039-00

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Re: DEQ Tax Credit Application No. 5009 for Certification of Independent Spent Fuel Storage Application

Dear Commissioners:

The purpose of this letter is to address the new issues raised in the May 1, 2000 memorandum to the Environmental Quality Commission (EQC) from Langdon Marsh, Director of the Department of Environmental Quality (DEQ), and the corresponding DEQ Tax Credit Review Report recommending denial of PGE's preliminary application for a tax credit for its Independent Spent Fuel Storage Installation (ISFSI) facility. PGE has previously submitted several letters to DEQ, none of which have been provided to the Commission. Therefore, we are sending this letter directly to you, with a copy to DEQ to be included in the record of decision on this matter, because we believe it is important for the Commission to have all pertinent information bearing on the issues raised by PGE's application. We have included PGE's prior correspondence with DEQ in Attachment 1.

1. The ISFSI Prevents, Controls and Reduces a Substantial Quantity of Pollution.

DEQ acknowledges that “[d]ry storage controls, prevents, or reduces a substantial quantity of pollution control [sic] over no storage...”¹ DEQ claims however that the ISFSI does not meet the definition of a pollution control facility because it does not control a substantial quantity of pollution as compared to the existing spent fuel pool – a facility which has never received a tax credit and which serves a very different purpose from the ISFSI. For the reasons explained below, we believe that such a comparison is inappropriate. However, as we also explain below, if such a comparison is to be made then the ISFSI will qualify as a pollution control facility because it actually reduces and prevents a substantial amount of pollution as compared to the spent fuel pool – a fact not discussed in the DEQ Review Report.

A. The ISFSI Should Not Be Compared to the Spent Fuel Pool.

DEQ cites to no statute or rule that would warrant comparing the amount of pollution controlled by two different facilities. In support of its comparison, DEQ has informed us that in the past it has refused to certify replacement scrubbers on the grounds that the new scrubbers did not reduce substantially more pollution than the scrubbers being replaced. However, here, unlike with replacement scrubbers, DEQ is not comparing a piece of new equipment with older equipment that performed essentially the same function. DEQ's comparison of the ISFSI to the spent fuel pool is questionable given the vastly different purposes that the two facilities serve.

The spent fuel pool was designed to serve as an integral component of an operating nuclear power plant. In addition to temporarily storing spent fuel while the plant was operating until the fuel could be shipped to and disposed of in a permanent repository, it also

¹ Memorandum to Environmental Quality Commission from Langdon Marsh, May 1, 2000, p.4.

provided a temporary storage area for unused and reusable fuel during the refueling and maintenance operations of the plant. The spent fuel pool was an active operating system whose purpose was to facilitate the generation of power by the plant. The ISFSI, in contrast, is a passive storage system whose purpose is to reduce and prevent pollution while at the same time facilitating the ultimate disposal of the fuel in a permanent repository² -- a function that the spent fuel pool is unable to serve.

B. If the ISFSI Is Compared to the Spent Fuel Pool, It Qualifies for a Tax Credit Because It Reduces a Substantial Quantity of Pollution.

Should the Commission determine that, despite its unique function, it is appropriate to compare the ISFSI to the spent fuel pool then it must take into account the fact that the ISFSI will reduce a substantial amount of pollution which would otherwise be generated by the spent fuel pool. An important fact, not covered in the DEQ Review Report dated May 1, 2000 or Mr. Marsh's memorandum dated May 1, 2000, is that radioactive pollution is actually generated by the spent fuel pool.³ Since the spent fuel pool is open to the atmosphere, the spent fuel stored in the spent fuel pool resulted in approximately 50 curies of radioactive gases and tritium in the form of water vapor being released into the atmosphere in 1999. This is a substantial amount of radioactivity representing 21% of such releases during 1992, the last year of plant operation. In addition, smaller amounts of radioactivity generated from the spent fuel stored in the spent fuel pool also continue to be released as liquid effluents.⁴ As the plant continues to be decommissioned, the spent fuel pool would eventually become the sole source of radioactive waste for the entire site. Once the spent

² See testimony of David Stewart-Smith, Transcript of EQC work session, November 18, 1999, p. 10. Mr. Stewart-Smith's testimony is included as Attachment 2.

³ A diagram of the Spent Fuel Pool Cooling and Cleanup System is provided in Attachment C

⁴ See testimony of David Stewart-Smith, Transcript of EQC work session, November 18, 1999, p. 14.

fuel is moved to an ISFSI, the source of radioactive gases and tritium and the primary source of radioactive liquid effluents will be sealed in the ISFSI.

In addition, the spent fuel pool cleanup system demineralizer resin becomes solid waste when it collects radioactive material (17.5 curies in 1999) from the spent fuel pool water. The resin is typically replaced about 4 times a year, and PGE disposes of the solid waste in a low level radioactive waste landfill. The demineralizer resin will continue to collect approximately the same amount of radioactive material for as long as the spent fuel pool continues to operate. By constructing the ISFSI, PGE is eliminating the need to dispose of approximately 1200 gallons of contaminated resin as solid waste each year.⁵

Thus, by moving the spent fuel rods to an ISFSI, PGE is preventing pollution from escaping into the environment, substantially reducing the amount of solid waste generated by the spent fuel pool, and facilitating the disposal of the spent fuel waste. This is precisely the type of activity that the tax credit laws were designed to encourage.⁶ Because it reduces the amount of pollution and solid waste generated at the Trojan site, the ISFSI falls squarely within the requirements of ORS 468.155.

C. If the ISFSI Is Compared to the Spent Fuel Pool, It Qualifies for a Tax Credit Because It Prevents a Substantial Amount of Pollution That Would Otherwise Occur in the Event of a Catastrophic Occurrence.

In addition, the ISFSI prevents a substantial quantity of pollution over what is provided by the spent fuel pool because the ISFSI prevents pollution which might result from certain catastrophic events. At the EQC's November 18, 1999 worksession, Mr. Stewart-Smith with the Oregon Office of Energy and Secretary to the Oregon Energy Facility Siting Council,

⁵ This results in a total packaged burial volume of 205 cubic feet of solid waste per year.

⁶ Hearing before the Oregon Senate Committee on Revenue, June 27, 1983, Transcript of Proceedings, p. 4, l. 25 - p. 5, l. 14.

explained that the ISFSI will be able to withstand more external forces than the spent fuel pool.⁷ Nonetheless, DEQ urges the Commission to ignore this fact on the grounds that “protecting the environment from catastrophic events is beyond the scope of the pollution control facility tax credit program.” The Department offers no support for its contention. Indeed, the Department has approved tax credits for a number of facilities that protect the environment from pollution caused by catastrophic events. For example, the Department has approved tax credits for the construction of double hulls for petroleum barges; the double walling of underground storage tanks; and the construction of spill and overfill containment basins. Like the ISFSI (and unlike the spent fuel pool) all of these facilities are passive systems that are designed to prevent the release of pollution into the environment in the event of a catastrophe. Indeed, an accident must occur before any of these facilities become effective. The ISFSI serves the same purpose and the Commission would be acting inconsistently with its precedent if it were to deny PGE’s application on the grounds that protecting the environment from catastrophic events is beyond the scope of the pollution control facility tax credit program.

2. The Sole Purpose of the ISFSI Is Pollution Control.

In its Review Report, DEQ claims that cost savings appear to be a significant factor in PGE’s decision to move from wet storage to dry storage. DEQ observes that, at the time it filed its decommissioning plan, PGE anticipated achieving cost savings from the installation of the ISFSI.⁸ However, DEQ offers no evidence to support its contention that this was the purpose of the ISFSI. Indeed, the only evidence in the record on this issue is my affidavit dated March 2,

⁷ See testimony of David Stewart-Smith, Transcript of EQC work session, November 18, 1999, p. 10, ll 24-25- p. 11, ll 1-3; p. 16, ll 11-15.

⁸ PGE’s anticipated cost savings have decreased significantly since the time it filed its decommissioning plan. Any estimation of cost savings at this point would be purely speculative.

2000, in which I state that "PGE would construct the ISFSI even if it would not result in cost savings to PGE." DEQ did not include or mention the affidavit in the materials that it sent to the Commissioners in anticipation of the Commission's May 17, 2000 meeting. My affidavit is included with PGE's March 7, 2000 letter to DEQ, which is included as Attachment 1 to this letter. As we explain in our March 7, 2000 letter, the rules in effect at the time PGE submitted its application expressly acknowledge that there may be other benefits of economic value as a result of a sole purpose facility. This approach is consistent with the Commission's past decision-making. See Tax Credit Review Reports for Application Nos. 4959, 4965, and 4417 (finding that the double hulling of petroleum barges qualifies for tax credit relief as a sole purpose facility despite the potential for incidental cost-savings).

DEQ also claims that the sole purpose of the ISFSI is not for pollution control but rather to facilitate decommissioning. Again, there is no evidence in the record to support its contention. It is true PGE must remove the spent fuel from the Trojan site in order to fully clean up and decommission the site and that the ISFSI is an integral part of this process. However, the fact that it is necessary to dispose of the fuel in order to decommission the plant fully does not alter the fact that the only purpose of the ISFSI is to control and facilitate the disposal of the spent nuclear fuel waste. In particular, in his memorandum dated May 1, 2000, Mr. Marsh observes that as a result of the installation, most of the Trojan site will be available for unrestricted use. He notes that the site is a prime Oregon location that it is a suitable site for a power plant, and that PGE is considering conveying ownership of most of the site for recreational purposes. These observations would be equally valid even if PGE leaves the spent fuel in the spent fuel pool. In other words, PGE could leave the fuel in the spent fuel pool and obtain unrestricted use of the Trojan site to practically the same extent that the ISFSI allows unrestricted use. However, even though it is not required to do so, PGE has chosen the safest means for disposing of the fuel at

the earliest possible time and is eliminating pollution that otherwise would be generated at the site. This is precisely the type of action and initiative for which the tax credit program is designed.

3. Contribution of ISFSI Components to Pollution Control.

DEQ, in its May 1, 2000 Review Report, argues that even if the Commission were to determine that the ISFSI is a pollution control facility, then all but one of the individual components of the ISFSI should be excluded because, when viewed individually, the individual components make an insignificant contribution to pollution control. We take exception to DEQ's analysis.⁹ By examining one part at a time, DEQ miscomprehends the whole picture. Under DEQ's reasoning, if you analyzed a plant that moved pollutants out with belts and pulleys, you could argue that those mechanisms do not control pollution in and of themselves and therefore should not be considered. However, the fact remains that, without the belts and pulleys, no pollution would be controlled. Because they are essential elements to the complete system, they should be eligible for the credit. The same is true of the ISFSI. Each individual component is essential to the ISFSI's pollution control purpose. We offer the following description of how the individual components of the ISFSI contribute to its pollution control purpose:

Baskets: The purpose of the Pressurized Water Reactor (PWR) Baskets is to provide confinement of radioactive materials stored within them (no credit is assumed for the fuel cladding). This means no air, water, or solid release of contaminants, and no pollution, contrary to the Spent Fuel Pool, which releases airborne and water radioactivity that produces solid waste.

Vacuum Drying System (VDS): The VDS not only removes residual water but also removes residual air from the PWR Baskets and facilitates the introduction of a helium

⁹ DEQ's analysis of the ISFSI is also inconsistent with the EQC's past practices. For example, when the EQC has awarded tax credits for various vehicles, it did not evaluate whether the individual parts of those vehicles (e.g., radios, seat belts, headlights, etc.) made a significant contribution to pollution control. See Application Nos. 4564, 4690, 5269, and 5288.

gas blanket. The inert gas prevents corrosion and ensures the integrity of the baskets, which prevents pollution.

Welding System: The welding system is essential for pollution control because it provides the seal between the PWR Basket and the lids to ensure no pollutants are released during the lifetime of the ISFSI. Without an adequate seal, there would be no guarantee that pollution would not occur. The welding system is more than an insignificant contribution to the prevention of pollution.

Concrete Storage Casks: The Concrete Storage Casks provide shielding and structural support for the PWR Baskets as well as natural circulation cooling. The shielding ensures that the immediate environment is not a high radiation area and uninhabitable. The structural support ensures the integrity of the baskets is maintained, which prevents pollution.

Transfer Station: The transfer station and associated transfer equipment provides for the safe movement and safe handling of the PWR Baskets which contain the radioactive spent fuel. Safe handling of possible contaminants is essential to the prevention of pollution as the disposal process continues when loading the Baskets into transportation casks for transport to a permanent repository.

Concrete Storage Pad: The Concrete Storage Pad is similarly essential to the prevention of pollution. By providing structural support for the Concrete Casks, which contain the PWR Baskets, the Concrete Storage Pad ensures no pollution occurs under all conditions of storage, i.e., normal steady-state, during an earthquake, etc.

It is important to note that none of these individual components have any anticipated use or value to PGE other than as part of the ISFSI. The spent nuclear fuel will be shipped to a federal repository in the PWR Baskets. The VDS and welding system are designed specifically to accomplish the packaging of spent fuel into the PWR Baskets. Furthermore, certainly the VDS and probably the welding system will be contaminated after their use in packaging the spent fuel to the extent that they will eventually be disposed of as radioactive waste. Likewise, the concrete storage casks serve no other purpose than to house the PWR Baskets and will be radioactive, requiring disposal as radioactive waste. The transfer station has no other use than that related to the ISFSI. While the concrete storage pad could conceivably be used as a foundation for a future warehouse, the cost of its design and construction as part of the ISFSI system is over ten times greater than that of a typical warehouse foundation.

4. How the Pollution Control is Accomplished.

Mr. Marsh's May 1, 2000 memorandum discusses two of the categories identified in the statutes for how pollution control must be accomplished. However, he fails to discuss a third category – one that is included in DEQ's administrative rules and that is clearly applicable to the ISFSI. That category is set forth at OAR 340-016-0025(2)(g) and requires that the prevention, control or reduction of pollution be accomplished by the "installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases." "Spill or Unauthorized Release" is defined by OAR 340-16-010(10)(a) as "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 * * * while being stored * * *." Radioactive waste is a polluting substance and therefore is encompassed by this definition. Because the ISFSI is a facility used to prevent the release of radioactive waste into the air, land and water, it satisfies the requirement of OAR 340-016-0025(2)(g). PGE discussed the applicability of this category in its April 19, 1999 letter to DEQ staff. The applicability of this category was not discussed in Mr. Marsh's memorandum, nor was our letter included in the material that was sent to the Commission prior to the May 17, 2000 Commission meeting.¹⁰ These letters are included in Attachment 1 to this letter.

In conclusion, it is evident that the ISFSI is a pollution control facility under both the spirit and the letter of the tax credit statute. Its sole purpose is to prevent, control and reduce a substantial quantity of pollution, and it accomplishes its purpose in a manner identified in the Department's rules. We understand that the magnitude of our request has, appropriately, resulted

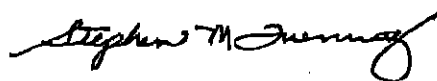
¹⁰ The Tax Review Report dismissed PGE's argument by stating merely that "PGE did not demonstrate the probability that releases to the atmosphere or spills to waters of the state with the current system is more than infinitesimal." As we discuss above, we find no basis in law or EQC precedent for comparing the ISFSI to the spent fuel pool.

in a close scrutiny of our application by DEQ. In this regard we believe that the number and complexity of issues raised in the May 1, 2000 DEQ Review Report deserve a thorough hearing. We were disappointed that we were denied the opportunity to speak at the November 18, 1999 work session at which our application was discussed. PGE would like sufficient time to fully explain its application and address any questions raised by the Commissioners at the hearing scheduled for September 2000. We have included as Attachment 4, a list of three representatives who will attend for PGE.

We have also enclosed a video that describes the design and function of the ISFSI in more detail. PGE requests that the video be included in the record of the EQC hearing on its application. In addition, given the complexity and significance of the issues raised by PGE's application, it may be helpful for the Commissioners to see the ISFSI firsthand. PGE is available to assist in arranging for an onsite visit. Arrangements for such a visit can be made by contacting Lanny Dusek at (503) 556-7409.

I appreciate your time and attention in considering this matter.

Very Truly Yours,



Stephen Quennoz
Vice President, Nuclear and Thermal Operations

Enclosures:

- Attachment 1:** Letters from PGE to DEQ dated February 24, 1999; April 19, 1999; and March 7, 2000
- Attachment 2:** Testimony of David Stewart-Smith, EQC Work Session, November 18, 1999
- Attachment 3:** Diagram of Spent Fuel Pool Cooling and Cleanup System
- Attachment 4:** List of PGE Representatives Attending September 2000 Hearing

cc: Ms. Maggie Vandchey (w/enclosures)

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VIA FACSIMILE TRANSMISSION

February 24, 1999

Maggie Vandehey
Tax Credit Coordinator
Department of Environmental Quality
811 S.W 6th Avenue
Portland, Oregon 97204

RE: PGE Application for Pollution Control Tax Credit Precertification dated
April 30, 1998 - Trojan Independent Spent Fuel Storage Installation ("ISFSI")

Dear Ms. Vandehey:

This letter supplements the above-referenced application. In recent telephone conversations with PGE representatives, it appeared to us that you or other DEQ staff might oppose PGE's application because of your view that the purpose of installing the ISFSI is to comply with a pollution control requirement imposed by an agency other than the DEQ, the EPA or a regional air pollution authority. Setting aside the legal issue of whether a facility can satisfy the "sole purpose" requirement in ORS 468.155(1)(a)(B) if the purpose of the facility includes compliance with such a requirement, this letter is intended to clarify that PGE's planned construction of the ISFSI is not required by regulations of the Nuclear Regulatory Commission, or by any other law, and that the sole purpose of the ISFSI is to prevent or control a substantial quantity of air or water pollution from radioactive spent nuclear fuel ("SNF").

In 1993, a decision was made to promptly decommission the Trojan nuclear power plant. Decommissioning is now well underway. The spent fuel pool is an integral part of the plant, and cleaning up the spent fuel pool is a necessary step to decommissioning the plant. Cleaning up the spent fuel pool requires removing the SNF from the spent fuel pool.

There presently is no permanent site available for the disposal of the SNF after its removal from the spent fuel pool. The U.S. Department of Energy ("DOE") had a statutory deadline of January 31, 1998 to begin accepting SNF for permanent disposal; however, the DOE has not yet begun to do so. The DOE estimates that because of delays in constructing a permanent repository for SNF (currently planned at Yucca Mountain, Nevada), it will not start accepting SNF until 2010 at the earliest. Until the DOE provides a permanent disposal site, PGE will therefore retain possession of the SNF.

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Letter to Maggie Vandehey

Re: Trojan Independent Spent

Fuel Storage Installation ("ISFSI")

February 24, 1999

Item (2), at the top of page 5 of PGE's application states that "in order to complete decommissioning of the Trojan Nuclear Plant in a timely manner, PGE has no alternative but to construct an ISFSI to provide for the temporary storage of Trojan's [SNF]."¹ Without further clarification, this statement could be misinterpreted. This statement was simply intended to recognize that, after PGE has decided to decommission the plant, and thus to move the SNF out of the spent fuel pool, the only practical choice is to store the SNF in an ISFSI, choosing among several different ISFSI designs. Storage of the SNF must be done in accordance with statutes and regulations designed to monitor and minimize contamination by radioactive material. However, that does not alter the fact that PGE has voluntarily chosen, in order to promptly decommission the plant, to move the SNF out of the spent fuel pool and place it in an ISFSI.

In summary, although current regulations require PGE to store the SNF in a manner that minimizes the risk of environmental contamination by radioactive material, the exclusive purpose of the ISFSI is to prevent or control pollution caused by the radioactive emissions from the SNF. That is, but for the risks associated with the radioactive content of the SNF, there would be no need for the ISFSI.

We would be happy to meet with you and to address any other questions that you may have. Please feel free to call me at the telephone number above.

Very truly yours,



Denise Saunders
Attorney for Portland General Electric

VDS:bg

cc: Doug Nichols

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¹ The reference there to the "Low-Level Radioactive Waste Policy Amendments Act of 1985" should have been to the "Nuclear Waste Policy Act of 1982."

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VIA FACSIMILE
VIA REGULAR MAIL

April 19, 1999

Maggie Vandehey
Tax Credit Coordinator
Department of Environmental Quality
811 S.W 6th Avenue
Portland, Oregon 97204

RE: Application of Portland General Electric Company for Preliminary Certification of ISFSI
Our File Number: 004191

Dear Ms. Vandehey:

I want to thank you and Dr. Zais for meeting with myself and others from PGE earlier this month to discuss PGE's Application for Preliminary Certification of its Independent Spent Fuel Storage Installation (ISFSI). We appreciate the insight that you provided into DEQ's decision-making process. During our meeting you indicated a number of reasons why the ISFSI may not qualify as a pollution control facility under the applicable statute and rules. However, you offered PGE the opportunity to submit its analysis of why the ISFSI meets the statutory definition of a "pollution control facility" and is therefore entitled to a pollution control tax credit. Based on our discussions and my review of the statute and rules, I believe PGE's analysis may diverge from the DEQ's on the following four issues: (1) whether the ISFSI replaces or reconstructs all or a part of any facility for which a pollution control facility certificate has previously been issued; (2) whether the sole purpose of the ISFSI is for pollution control; (3) whether the ISFSI qualifies as a pollution control facility under OAR 340-016-0025(2)(g)* because it is used to detect, deter or prevent spills or unauthorized releases; (4) whether the prevention, control or reduction of pollution is accomplished by the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste. I will address each of these issues in order.

* All citations are to the statutes and rules in effect on April 30, 1998, the date PGE filed its application.

Letter to Maggie Vandehey
Department of Environmental Quality
Re: Application of PGE
April 19, 1999

1. The ISFSI does not replace or reconstruct all or a part of any facility for which a pollution control facility certificate has previously been issued.

Under ORS 468.155(2)(e) and OAR 340-016-0025(3)(g), a facility is not considered a "pollution control facility" and therefore is not eligible for a tax credit if it is a "replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued." You suggested that the ISFSI may be considered to replace the entire Trojan Nuclear Power Plant (TNP) and that since parts of the plant have received tax credits then the ISFSI will not be considered a pollution control facility under this provision. When previous tax credits were granted TNP was operating for the purpose of generating electricity. Although this power generation has been replaced by generation from elsewhere, PGE is not replacing the TNP, it is decommissioning it. The ISFSI is being constructed to facilitate the decommissioning by providing a facility for the storage of spent fuel, and a system for the transport of spent fuel to a DOE facility for permanent disposal.

Following the original construction of the TNP, PGE received in the early 1980s several tax credits associated with pollution control equipment. Some of these previous credits involved equipment completely unrelated to radioactive emissions. These included the natural draft cooling tower that reduced thermal emissions and a system that removed chlorine from a cooling water system prior to discharge to the Columbia River. Some of the previous tax credits also involved radioactive emissions associated with the normal operation of the TNP or radioactive emissions associated with postulated accidents at the TNP.

None of the previous tax credits, however, involved the primary systems or structures intended for the storage and disposal of spent nuclear fuel waste, which accounts for 99.9% of the radioactive waste generated by Trojan. At the time of the construction of the TNP, onsite storage of spent nuclear fuel waste was viewed as a short term operation that was an integral part of the normal refueling operations that occurred every 12 to 24 months at an operating nuclear power plant. The spent fuel storage pool served a dual purpose. During refueling operations, all of the nuclear fuel assemblies from the reactor were moved to the spent fuel pool to allow maintenance on the reactor and to expedite the refueling process. Subsequently, approximately two-thirds of the fuel (fuel that had not yet been completely used) was moved back to the reactor along with new replacement fuel assemblies. Fuel waste that had reached the end of its useful life was stored in the spent fuel pool pending disposal by shipment to a permanent repository. The spent fuel pool provided shielding, cooling, and water cleaning systems to safely store the spent fuel waste. None of these systems were included in the tax credits previously granted to PGE.

In sum, the ISFSI serves as a storage and disposal facility for spent nuclear fuel waste – a function previously provided by the spent fuel pool and attendant systems and structures. However, PGE never received a tax credit for the spent fuel pool or for any of the primary systems or structures intended for the storage and disposal of spent nuclear fuel waste. In addition, to the extent the ISFSI

Letter to Maggie Vandehey
Department of Environmental Quality
Re: Application of PGE
April 19, 1999

also serves a purpose not previously provided for at the TNP – that of facilitating the nuclear waste disposal process, it is not a replacement facility. This point is discussed more fully in section 4 below.

2. The sole purpose of the ISFSI is for pollution control.

ORS 468.155 requires that a pollution control facility qualify as a principal purpose or a sole purpose facility to be eligible for a tax credit. Leaving aside the issue of whether the ISFSI is a principal purpose facility because it has been designed to comply with population dose limitations imposed by EPA, there is no doubt that the sole purpose of the ISFSI is “to prevent, control or reduce a substantial quantity of air, water or noise pollution.” OAR 340-016-0025(1)(b) explains that “in order to meet the definition of sole purpose, the only function or use of the facility must be the control, reduction, or prevention of pollution.” Here the only function and use of the ISFSI is to prevent high-level radioactive waste pollution. Unlike other facilities that have failed to meet the sole purpose test, the ISFSI does not protect a commercially valuable product or increase the productivity of a manufacturing process. At our meeting you indicated that because PGE may receive benefits from the construction of the ISFSI such as good public relations and reduced staffing, it will not satisfy the sole purpose requirement. Certainly, there is no evidence that PGE will receive good public relations from the project. However, even if PGE does receive incidental benefits from the ISFSI, neither the plain meaning of the statute, nor Commission precedent support an interpretation that such benefits will preclude a facility from meeting the sole purpose test.

By its very terms, the sole purpose test looks at the “function or use of the facility” (emphasis added) not the benefits which a company may receive from building the facility. In fact, the sole purpose rule itself clearly acknowledges that a sole purpose facility may generate “other benefits.” The rule states that “other benefits of economic value which result from the facility are not eligible for tax credit and must be eliminated through the return on investment calculation.” The plain meaning of this provision is that any economic benefits generated by a sole purpose facility will be eliminated through the return on investment calculation not that a facility will not qualify for a credit if it generates economic benefits. This makes sense because almost every pollution control facility will offer other benefits to the company installing it. For example, it could be argued that every pollution control facility offers potential public relations benefits to the installer and that any facility which prevents pollution benefits a company by eliminating subsequent expenditures for clean-up costs. Thus, an interpretation of the rule that disqualifies a facility from meeting the sole purpose test because it generates other benefits is not only inconsistent with the plain meaning of the rule but also serves to, in effect, nullify the statute by making it impossible for any facility to qualify for a credit under the sole purpose provision.

Such a restrictive interpretation is also inconsistent with prior EQC rulings. For example, at its March 19, 1999 meeting, the EQC approved certification, under the sole purpose test, for numerous recycling containers (Application Nos. 5113, 5117, and 5120). The question of whether these containers carried names, logos or other advertising insignia and thereby provided public relations benefits to the applicants was never raised. At the same meeting, the Commission approved final

certification for a walled secondary containment facility for a liquid fertilizer and chemical storage tank farm (Application No. 5080). This facility was built to prevent water pollution by containing fertilizer or chemical spills, just as the ISFSI is being constructed to prevent air, land and water pollution by containing radioactive releases. The Commission approved the fertilizer containment facility as a sole purpose facility with no discussion of whether the applicant received any labor or insurance savings or any other benefits from the facility. Thus, consistency and fairness, as well as the language of the statute, require that PGE's application be treated in a similar manner.

3. The ISFSI qualifies for a tax credit under OAR 340-016-0025(2)(g) because it is used to detect, deter or prevent spills or unauthorized releases.

In addition to meeting the sole purpose test, the ISFSI must also satisfy the requirements of OAR 340-016-0025(2) which sets forth seven categories by which the prevention, control or reduction of pollution may be accomplished. These seven categories are listed as subsections (a) through (g) to subsection (2) of the rule. To qualify for a credit, a facility must meet the requirements of any one of these categories. It is PGE's position that the ISFSI qualifies under at least two of these subcategories – (a) and (g). We believe that the application of subsection (g) is the most evident. This subsection requires that the prevention, control or reduction of pollution be accomplished by the "installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases." "Spill or Unauthorized Release" is defined by OAR 340-16-010(10)(a) as "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...while being stored..." If not controlled, radioactive waste would be a polluting substance and therefore is encompassed by this definition. Since the ISFSI is a facility used to prevent the release of radioactive waste into the air, land and water it satisfies the requirement of OAR 340-016-0025(2)(g).

At our meeting you stated your view that subsection (g) was intended to amplify subsection (a) and that therefore a facility will not qualify unless it meets both (a) and (g). The language of the rule does not support such an interpretation as the word "and" is not used in the rule, nor is there any other indication that the two subsections are to be read together. We have both agreed to look at the rulemaking history of this subsection. However, as a legal matter, if the intent of the Commission is clear from the text and context of the rule, as it is here, then a court will not examine the rulemaking or legislative history. Thus, based on the plain meaning of the rule, the ISFSI qualifies as a "pollution control facility" under subsection (g) of OAR 340-016-0025(2).

4. The prevention, control or reduction of pollution is accomplished by the disposal of industrial waste and the use of treatment works for industrial waste.

The ISFSI also qualifies as a "pollution control facility" under subsection (a) of OAR 340-016-0025(2). To satisfy this provision, the ISFSI must prevent pollution by "the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste..." The ISFSI satisfies this requirement because it serves as an essential component of the radioactive waste disposal process and it qualifies as the use of treatment works for industrial waste.

Letter to Maggie Vandehey
Department of Environmental Quality
Re: Application of PGE
April 19, 1999

An integral feature of the design of the Trojan ISFSI is the capability to ship the spent nuclear fuel waste to an off-site repository using the same components that are used for the interim storage of the spent nuclear fuel waste. The ISFSI will use sealed metal canisters or "baskets" that are housed inside of large concrete casks. These sealed metal canisters are designed to be transferred intact to a shipping container for eventual disposal by transport to a permanent repository. To facilitate this dual purpose, the baskets are designed to withstand various severe drops and other accidents that are postulated to occur during shipment. The ISFSI also includes a massive transfer facility that is used to remove the baskets from the concrete casks and load them into shipping containers. The design features of the ISFSI that provide for the eventual shipment and disposal of the baskets without the need to repackage the spent fuel waste account for a significant portion of the cost of the facility. Although there are a number of other ISFSIs around the country, the Trojan ISFSI is the first such dual purpose facility to be constructed and licensed in the United States.

The ISFSI also satisfies the requirement for the "use of treatment works for industrial waste." "Radioactive waste" is included in the definition of "industrial waste" in ORS 468B.005(2). "Treatment works" is defined by ORS 468B.005(6) as "any plant or other works used for the purpose of treating, stabilizing or holding wastes." Because the ISFSI holds radioactive waste, it qualifies as a treatment works for industrial waste.

Conclusion

In conclusion, our analysis indicates that the ISFSI meets the statutory requirements for a pollution control facility tax credit. ORS 468.165 sets forth a two-part test that a facility must satisfy in order to qualify for tax credit certification. The first part requires the facility to qualify as either a principal purpose or a sole purpose facility. The ISFSI satisfies the sole purpose requirement because its only function and use is to prevent high level radioactive waste pollution. The second part of the test requires that the prevention, control or reduction of the radioactive waste pollution be accomplished by one of seven methods set forth in OAR 340-016-0025(2). As discussed above, the ISFSI qualifies under two of these categories: it meets the requirements of OAR 340-016-0025(2)(a) because it prevents and controls radioactive waste pollution by the disposal of the radioactive waste and the use of treatment works. In addition, the ISFSI also qualifies under OAR 340-016-0025(2)(g) because it is used to detect, deter and prevent the unauthorized release of radioactive waste. Finally, the ISFSI is not excluded from receiving a tax credit under ORS 468.155(2)(e) because it does not replace or reconstruct all or a part of any facility for which a pollution control facility certificate has previously been issued.

PGE recognizes that it is a resource impactive enterprise and it is sensitive to its "environmental footprint." PGE's effort to promote the safe, timely resolution of the spent nuclear fuel waste issue by containing the Trojan spent nuclear fuel in an ISFSI is indicative of PGE's attempt to soften its footprint and is consistent with PGE's policy of achieving both operational and environmental excellence. However, PGE recognizes that the issue of whether the ISFSI qualifies for a tax credit does not turn on issues of policy but rather depends solely on whether the ISFSI meets the requirements of the applicable statutes and rules. As we discuss above, PGE's position is that the

Page 6
Letter to Maggie Vandehey
Department of Environmental Quality
Re: Application of PGE
April 19, 1999

ISFSI falls squarely within these requirements and that it is, therefore, entitled by law to a pollution control tax credit.

PGE appreciates the opportunity to submit this analysis. I understand that the magnitude of the credit which PGE is seeking will warrant close scrutiny of its application by DEQ and the Commission. Please let me know if I can provide any additional information to facilitate your review.

Sincerely yours,

A handwritten signature in cursive script that reads "Denise Saunders".

Denise Saunders
Attorney for
Portland General Electric Company

VDS:bg

cc: Douglas R. Nichols
Wayne Lei

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March 7, 2000

VIA FACSIMILE AND US MAIL

Ms. Maggie Vandehey
Tax Credit Coordinator
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: Portland General Electric Company; Preliminary Certification of ISFSI

Dear Ms. Vandehey:

Thank you for providing us with a copy of the Department of Environmental Quality's (the "Department" or "DEQ") file pertaining to Portland General Electric's ("PGE") application for preliminary certification of the Independent Spent Fuel Storage Installation ("ISFSI"). In reviewing the file, it appears that the Department may have several lingering questions regarding PGE's application.

First, it appears that the Department is unsure whether the 1990 administrative rules in effect at the time that PGE submitted its preliminary application apply to PGE's application. Your notes indicate that the Department may be taking the position that although there was a statute in place that directly addressed preliminary applications, because there was not an administrative rule in effect at the time of PGE's application which specifically governed preliminary applications, then none of the rules governing pollution control facilities should apply to PGE's application. We believe that such a position is illogical and inconsistent with the explicit language of the statute and the rules. In addition, it also appears that the Department may have some concerns over whether the ISFSI is a "sole purpose" facility for purposes of qualifying as a pollution control facility for tax relief purposes. We believe that the ISFSI clearly qualifies as a "sole purpose" facility. Finally, correspondence in the file raises the issue of whether the ISFSI meets the definition of a "disposal system," as referred to in the statute. Again, we believe that the ISFSI clearly meets this definition.

With this letter, we hope to set forth arguments and evidence to enable the Department and Commission to conclude without any doubt that the ISFSI qualifies for preliminary certification of a pollution control facility for tax relief purposes.

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Letter to Ms. Maggie Vandehey

Re: Preliminary Certification for ISFSI

March 7, 2000

I. The 1990 Administrative Rules Apply to PGE's Preliminary Application.

PGE filed its application for preliminary certification on April 30, 1998, pursuant to the procedures for preliminary applications set forth in ORS 468.167. At the time PGE filed its application, the Department and the Environmental Quality Commission (the "Commission" or "EQC") had administrative rules in effect that governed pollution control facility tax credit applications. Those rules are found at OAR 340-016-0005 through OAR 340-016-0050. (A copy of the rules is attached hereto as Exhibit A.) OAR 340-016-0025 sets forth the criteria for determining whether a facility qualifies for a tax credit. In particular, this rule expands upon the sole purpose test as set forth in the statute and describes a category of pollution control facilities which is not expressly described in the statute. PGE maintains that this rule should be applied to determine whether the ISFSI qualifies for a tax credit. Nowhere does the rule state that it is to be applied only to applications for final certification. Indeed, OAR 340-016-0005 discusses the purpose of the DEQ tax credit rules and expressly states that "[t]hese rules are to be used in connection with ORS 468.150 to 468.190 * * * ." Thus, by their express terms, the DEQ rules (including OAR 340-016-0025) applies to ORS 468.167, the statute governing preliminary applications. This makes sense as a practical matter. As you know, the Commission's approval of a preliminary application is prima facie evidence that the facility is qualified for final certification. Therefore, it is only logical for the Department and the Commission to use the same criteria to determine if a facility is a pollution control facility for both preliminary and final applications.

As you are aware, this issue is critical to the analysis of PGE's application for two reasons. First, if the 1990 administrative rules are applied, then, in determining whether or not the ISFSI meets the sole purpose test, OAR 340-016-0025 will focus the scope of the sole purpose determination on the function or use of the facility and not on any benefits that may result from the facility. In fact, the rule expressly acknowledges that there may be other benefits of economic value as a result of a sole purpose facility. Second, under the rules the ISFSI will qualify as a pollution control facility because it is a facility which is used to detect, deter or prevent spills or unauthorized releases. This category of pollution control facilities is not expressly described in the statute. PGE believes that even if the rules are not applicable to its application, the ISFSI would qualify for the tax credit under the statute because its sole purpose is to control pollution and it accomplishes such pollution control through the disposal of industrial waste and by the use of treatment works for industrial waste as those terms are defined in the statute. However, we believe that the rules make the fact that the ISFSI qualifies for a pollution control facility tax credit even more apparent.

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Letter to Ms. Maggie Vandehey

Re: Preliminary Certification for ISFSI

March 7, 2000

II. The Construction of the ISFSI Qualifies for Tax Credit Relief as a "Sole Purpose Facility."

PGE's position is that the construction of the ISFSI qualifies 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 340-016-0010(9). PGE contends that the sole purpose of constructing the ISFSI is to prevent pollution. As noted above, correspondence in the Department file indicates that the Department is considering the view that the ISFSI does not qualify for tax credit relief as a "sole purpose facility." Each of the individual issues raised in the Department's correspondence is addressed in turn below.

A. The Sole Purpose of the ISFSI.

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]nstallation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

As made clear in the affidavit of Stephen Quennoz, Vice President of Nuclear and Thermal Operations for PGE, the sole purpose of the construction of the ISFSI will be to prevent, control, and reduce a substantial quantity of pollution. (See Quennoz Affidavit, attached hereto as Exhibit B.) As noted in the description of the facility on the tax credit application form, the ISFSI will provide a safe temporary storage for spent nuclear fuel waste. The storage system provides for needed cooling of the spent fuel waste while maintaining the spent fuel waste in a sealed inert gas environment. The ISFSI is designed to completely preclude the release of radioactive materials to the air or water during normal operation.

Currently, there is no evidence in the record to dispute PGE's contention that the ISFSI will prevent a substantial quantity of pollution. Rather, it appears from the Department's correspondence that the ISFSI may serve other purposes, unrelated to pollution control. Each of these other alleged purposes is addressed in turn below.

B. While the ISFSI Improves the Safety of Workers and the Surrounding Community, The Purpose of the ISFSI Is Pollution Control.

According to the Department's correspondence, there is some belief that the sole purpose of constructing the ISFSI cannot be pollution control, because of the safety benefits to workers and the surrounding community.

PGE concurs that the ISFSI improves the safety of workers and the surrounding community. However, these benefits are a direct result of the reduction in the risk of pollution. Without the reduction in the risk of a release, there would be no safety benefit. The Department's position ignores the basic fact that there are always health and safety benefits to reducing the risk of pollution and, in fact, that is one of the very reasons to engage in capital investments to reduce pollution that is not otherwise required by law.

C. The Purpose of the ISFSI Is Not to Comply With NRC Requirements.

The Department's correspondence raises the notion that if the ISFSI is required for the purpose of complying with Nuclear Regulatory Commission ("NRC") requirements, then the "sole purpose" is not to prevent, control, or reduce pollution. Rather, if such were the case, the ISFSI would amount to a non-qualifying "principal purpose" facility.

The NRC does not formally require installation of the ISFSI system. At the same time, a preference has been expressed for the ISFSI system for reasons related to pollution prevention. (See Testimony of David Stewart-Smith, Administrator for the Energy Resource Division, Oregon Office of Energy, before the EQC, Nov. 18, 1999, at p. 24, attached hereto as Exhibit C.)

D. The Purpose of the ISFSI Is Not to Lower Insurance Costs.

Correspondence in the Department's file raises the notion that the purpose of the ISFSI facility may be to lower insurance costs. There is no evidence in the record that indicates that the ISFSI will lower insurance costs. On the contrary, according to Marsh USA, Inc., insurance brokers for PGE, the transfer of fuel to an ISFSI will not reduce PGE's insurance rates. (See Letter from Daniel S. McGarvey, Vice President, Marsh USA, Inc., to Jill Sughrue, PGE, Feb. 29, 2000, attached hereto as Exhibit D.)

E. The Purpose of the ISFSI Is Not For Economic Benefit.

While there may be various benefits that accrue as a result of constructing the ISFSI system, those benefits do not form the basis for the purpose of the facility. The purpose of the facility is solely pollution control. (See Quennoz Affidavit, attached hereto as Exhibit B.). In

Page 5

Letter to Ms. Maggie Vandehey

Re: Preliminary Certification for ISFSI

March 7, 2000

addition, the rules in effect at the time of PGE's application expressly acknowledge that there may be other benefits of economic value as a result of a sole purpose facility. We have located at least three other instances in which the Commission approved applications for sole purpose facilities that provided economic benefits to the applicant. (See Tax Credit Review Report for Precision Castparts Corporation, Application No. 2389, Sept. 30, 1997; Tax Relief Application Review Report for B & C Leasing, Inc., Application TC-4564, Oct. 3, 1996; and Tax Relief Application Review Report for Sabroso Company, Application No. T-4478, Oct. 17, 1995, all attached hereto as Exhibit E.) PGE anticipates that any economic benefits resulting from the construction of the ISFSI will result in lower rates to customers. In short, without respect to whether or not any economic benefit would result, PGE would proceed with construction of the ISFSI system. (See Quennoz Affidavit, attached hereto as Exhibit B, ¶ 4.).

F. The Purpose of the ISFSI Is Not to Gain Good Will.

The Department correspondence raises the notion that another purpose of this facility is to gain benefits in the nature of good will, and, therefore, the sole purpose is not pollution control. In a recent memorandum, the Department abandoned this view:

“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.”
See Memo. from Langdon Marsh to EQC, June 8, 1999, at 2-3 (regarding Agenda Item F for June 25, 1999 EQC meeting).

PGE 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, the evidence can only support a conclusion that the ISFSI is being constructed solely for the purpose of preventing, controlling, and reducing a substantial quantity of pollution.

III. The ISFSI Qualifies as a “Disposal System.”

As discussed above, the ISFSI qualifies as a pollution control facility under OAR 340-016-0025(2)(g), because it is a facility used to detect, deter or prevent spills or unauthorized releases of a polluting substance. PGE also maintains that even if the ISFSI did not qualify under this particular provision, it also qualifies as a pollution control facility under ORS 468.155(a) and OAR 340-016-0025(2)(a), because it is a facility that disposes of radioactive waste and qualifies

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Letter to Ms. Maggie Vandehey
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as the use of treatment works for industrial waste. The ISFSI is a container designed to facilitate the non-polluting transfer, storage, and final disposal of the spent nuclear fuel in an off-site repository.

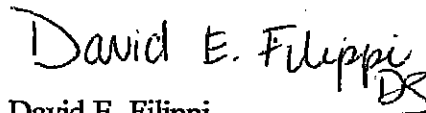
It appears from the correspondence in the file that the Department has some doubt over whether the ISFSI is in fact a "disposal system." Again, the ISFSI is a container designed to promote eventual transfer and final disposal. By analogy, the Department and Commission regularly qualify and approve underground storage tanks ("USTs") as disposal systems under the pollution control facility tax credit program. The ISFSI system should be treated no differently.

We would be happy to meet with you and/or Mr. Knudsen or Mr. Huston to discuss this or any other issue pertaining to PGE's application.

Sincerely,



V. Denise Saunders, P.C
Of Counsel for Portland General Electric



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Enclosures

LIST OF EXHIBITS

- Exhibit A: Oregon Administrative Rules.
- Exhibit B: Affidavit of Stephen Quennoz, Vice President of Nuclear and Thermal Operations for PGE.
- Exhibit C: Testimony of David Stewart-Smith, Administrator for the Energy Resource Division, Oregon Office of Energy, before the EQC, Nov. 18, 1999, at p. 24.
- Exhibit D: Letter from Daniel S. McGarvey, Vice President, Marsh USA, Inc., to Jill Sughrue, PGE, Feb. 29, 2000.
- Exhibit E: Tax Credit Review Report for Precision Castparts Corporation, Application No. 2389, Sept. 30, 1997;
Tax Relief Application Review Report for B & C Leasing, Inc., Application TC-4564, Oct. 3, 1996; and
Tax Relief Application Review Report for Sabroso Company, Application No. T-4478, Oct. 17, 1995.

Citation/Title
OR ADC 340-16-005, Purpose

*16012 OAR 340-16-005

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-005 Purpose

The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of tax credits for pollution control facilities. These rules are to be used in connection with ORS 468.150 to 468.190 and apply only to facilities on which construction has been completed after December 31, 1983, except where otherwise noted herein.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 12-1984, f. & ef. 7-13-84

ation/Title
OR ADC 340-16-010, Definitions

*16013 OAR 340-16-010

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-010 Definitions

- (1) "Circumstances Beyond the Control of the Applicant" means facts, conditions and circumstances which applicant's due care and diligence would not have avoided.
- (2) "Commission" means Environmental Quality Commission.
- (3) "Department" means Department of Environmental Quality.
- (4) "Facility" means a pollution control facility.
- (5) "Like-for-Like Replacement Cost" means the current price of providing a new facility of the same type, size and construction materials as the original facility.
- (6) "Material Recovery Process" means any process for obtaining from solid waste, hazardous waste or used oil, 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 purpose. This does not include any process in which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy. It does not include any type of process which burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process which burns waste if such device is otherwise eligible for pollution control tax credit under these rules.
- (7) "Principal Purpose" means the most important or primary purpose. Each facility may have only one principal purpose.
- (8) "Reconstruction or Replacement" means the provision of a new facility with qualities and pollution control characteristic equivalent to the original facility. This does not include repairs or work done to maintain the facility in good working order.
- (9) "Sole Purpose" means the exclusive purpose.
- (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 466.00 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 its intended purpose.

*16014 (b) For purposes of determining eligibility for tax credits under these rules, polluting substances released into the

OR ADC 340-16-010, Definitions

environment in conjunction with operation of a previously approved facility or activity where such facility or activity was operated in compliance with requirements imposed by the Department or the Federal Environmental Protection Agency, and where the polluting substances which must now be cleaned up are determined by the Department to have been an unanticipated result of the approved facility or activity and are not deemed to be a "spill or unauthorized release".

(11) "Substantial Completion" means the completion of erection, installation, modification, or construction of all elements the facility which are essential to perform its purpose.

(12) "Useful Life" means the number of years the claimed facility is capable of operating before replacement or disposal.

Stat. Auth.: ORS 468.150--468.190

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; DEQ 20-1987, f. & ef. 12-16-87; DEQ 6-1990, f. & cert. ef. 3-13-90

itation/Title

OR ADC 340-16-015 Repealed, Procedures for Receiving Preliminary Tax Credit Certification (Repealed)

*16015 OAR 340-16-015 Repealed

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-015 Procedures for Receiving Preliminary Tax Credit Certification (Repealed)

[DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; Repealed by DEQ 6-1990, f. & cert. ef. 3-13-90]

Citation/Title

OR ADC 340-16-020, Procedures for Receiving Tax Credit Certification

*16016 OAR 340-16-020

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-020 Procedures for Receiving Tax Credit Certification

(1) Filing of Application:

- (a) A written application for tax credit certification shall be made to the Department on a form provided by the Department.
- (b) The application shall be submitted within two years of substantial completion of construction of the facility. Failure to submit a timely application shall make the facility ineligible for tax credit certification;
- (c) The Commission may grant an extension of time to submit an application if circumstances beyond the control of the applicant would make a timely filing unreasonable;
- (d) An extension shall only be considered if applied for within two years of substantial completion of construction of the facility. An extension may be granted for no more than one year. Only one extension may be granted;
- (e) Within 30 days of receipt of an application, the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. The Department may also require any other information necessary to determine whether the construction is in accordance with Department statutes, rules and standards;
- (f) An application shall not be considered filed until all requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing;
- (g) An application may be withdrawn and resubmitted by applicant at any time within two years of substantial completion of construction of the facility without paying an additional processing fee, unless the cost of the facility has increased. An additional processing fee shall be calculated by subtracting the cost of the facility on the original application from the cost of the facility on the resubmitted application and multiplying the remainder by one-half of one percent;
- (h) If the Department determines the application is incomplete for processing and the applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected by the Department unless applicant requests in writing additional time to submit requested information;
- *16017 (i) If the application is submitted after the two year period following substantial completion and the applicant has filed an extension request, the application will be rejected by the Department.

(2) Commission Action:

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EXHIBIT A

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OR ADC 340-16-020, Procedures for Receiving Tax Credit Certification

(a) Notice of the Department's recommended action on the application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. The Commission shall act on an application for certification before the 120th day after the filing of a complete application. The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission;

(b) Certification:

(A) If the Commission determines that the facility is eligible, it shall make appropriate findings and certify the actual cost of the facility and the portion of the actual cost properly allocable to pollution control, material recovery or recycling as set forth in ORS 468.190. Each certificate shall bear a separate serial number for each such facility;

(B) The actual cost or portion of the actual cost certified shall not exceed the taxpayer's own cash investment in the facility or portion of the facility;

(C) No determination of the proportion of the actual cost of the facility to be certified shall be made until a complete application is filed;

(D) If two or more facilities constitute an operational unit, the Commission may certify such facilities under one certificate;

(E) A certificate is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and 317.116 if erection, construction or installation of the facility was completed and certified before December 31, 1995;

(F) Certification of a pollution control facility qualifying under ORS 468.165(1) shall be granted for a period of ten consecutive years. The ten-year period shall begin with the tax year of the person in which the facility is certified under this section. However, if ad valorem tax relief is utilized by a corporation organized under ORS Chapter 61 or 62 the facility shall be exempt from ad valorem taxation, to the extent of the portion allocable, for a period of 20 consecutive years, or ten years if construction is commenced after June 30, 1989 and completed before December 31, 1990, from the date of its first certification to the Commission;

*16018 (G) Portions of a facility qualifying under ORS 468.165(1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 316.097(8) or 317.116 whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

(c) Rejection: If the Commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant.

(3) Appeal: If the application is rejected by the Commission for any reason, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to pollution control, resource recovery or recycling, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

OR ADC 340-16-020, Procedures for Receiving Tax Credit Certification

Stat. Auth.: ORS 468.150-468.190

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; DEQ 20-1987, f. & ef. 12-16-87; DEQ 6-1990, f. & cert. ef. 3-13-90

ation/Title
OR ADC 340-16-025, Qualification of Facility for Tax Credits

*16019 OAR 340-16-025

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-025 Qualification of Facility for Tax Credits

(1) "Pollution control facility" or "facility" shall include any land, structure, building, installation, excavation, machinery, equipment or device, or alternative methods for field sanitation and straw utilization and disposal as approved by the Field Burning Advisory Committee and the Department, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person, which will achieve compliance with Department statutes and rules or Commission orders or permit conditions before certification, where applicable, if:

(a) The principal purpose of the facility is to comply 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. To meet the definition of principal purpose, the facility must be established to comply with the environmental requirements specified in this subsection for the control, reduction, or prevention of pollution, or for the material recovery of solid waste, hazardous waste or used oil. Other benefits of economic value that are a result of the facility, are not eligible for tax credit and must be eliminated through the return on investment calculation; or

(b) The sole purpose of the facility 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. In order to meet the definition of sole purpose, the only function or use of the facility must be the control, reduction, or prevention of pollution, or for the material recovery of solid waste, hazardous waste or used oil. Sole purpose is not applicable where the facility is established in response to the environmental requirements identified in subsection (a) of this section. Other benefits of economic value which result from the facility are not eligible for tax credit and must be eliminated through the return on investment calculation.

*16020 (2) Such prevention, control or reduction required by this subsection shall be accomplished by:

(a) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700;

(b) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

(c) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the Commission;

OR ADC 340-16-025, Qualification of Facility for Tax Credits

(d) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 468.850;

(e) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005; or

(f) Approved alternative field burning methods and facilities which shall be limited to:

(A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning;

(B) Propane flammers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts;

(C) Drainage tile installations which will result in a reduction of grass seed acreage under production.

(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases. This does not include any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred.

(3) "Pollution Control Facility" or "Facility" does not include:

(a) Air conditioners;

(b) Septic tanks or other facilities for human waste;

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

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

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

*16021 (C) Landscaping;

(D) External lighting;

(E) Company or related signs; and

(F) Automobiles.

(e) Facilities not directly related to the operation of the industry or enterprise seeking the tax credit;

(f) Asbestos abatement; or

(g) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has been issued under ORS 468.170, except:

OR ADC 340-16-025, Qualification of Facility for Tax Credits

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the Department, the Federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

(h) Property or facilities installed, constructed or used for cleanup of emergency spills or unauthorized releases. This includes any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred.

(4) Any person may apply to the Commission for certification under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if:

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967;

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977;

(c) The solid waste facility was under construction on or after January 1, 1973, or the hazardous waste, used oil, material recovery, or recycling facility was under construction on or after October 3, 1979, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1);

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 468.850:

(i) By mechanical processing or chemical processing; or

*16022 (ii) Through the production, processing, presegregation, or use of:

(I) Materials which have useful chemical or physical properties and which may be used for the same or other purposes; or

(II) Materials which may be used in the same kind of application as its prior use without change in identity.

(C) The end product of the utilization is an item of real economic value;

(D) The end product of the utilization, is competitive with an end product produced in another state; and

(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984 and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1); and

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(5) The Commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the Commission finds that the facility:

OR ADC 340-16-025, Qualification of Facility for Tax Credits

- (a) Was erected, constructed or installed in accordance with the requirements of ORS 468.165(1);
- (b) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and
- (c) Is necessary to satisfy the intents and purposes of and is in accordance with the applicable Department statutes, rules and standards.

Stat. Auth.: ORS 468.150-468.190

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; DEQ 20-1987, f. & ef. 12-16-87; DEQ 6-1990, f. & cert. ef. 3-13-90

Station/Title
 OR ADC 340-16-030, Determination of Percentage of Certified Facility Cost
 Allocable to Pollution Control

*16023 OAR 340-16-030

**OREGON ADMINISTRATIVE RULES
 CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
 RULES OF GENERAL APPLICABILITY AND ORGANIZATION
 DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-030 Determination of Percentage of Certified Facility Cost Allocable to Pollution Control

(1) Definitions:

(a) "Annual Incremental Cash Flow" means the estimated annual cash flow for each year of the useful life of a claimed pollution control facility integral to the applicant's business calculated as follows:

(A) Calculate the applicant's annual cash flow with the claimed facility by subtracting the annual operating expenses for the applicant's business from the gross annual income for the applicant's business for each year of the useful life of the claimed facility; and

(B) Calculate the applicant's annual cash flow assuming that the claimed facility was not erected, constructed, or installed by subtracting the annual operating expenses for the applicant's business using this assumption from the gross annual income for the applicant's business using this assumption for each year of the useful life of the claimed facility; and

(C) Subtract the applicant's annual cash flow assuming that the claimed facility was not erected, constructed, or installed from the annual cash flow with the claimed facility for each year of the useful life of the claimed facility.

(b) "Annual Operating Expenses" means the estimated costs of operating the claimed facility or the applicant's business if pollution control facilities are integral to the operation of the applicant's business, including labor, utilities, property taxes, insurance, and other cash expenses, less any savings in expenses attributable to installation of the claimed facility. Depreciation interest expenses, and state and federal taxes are not included;

(c) "Average Annual Cash Flow" means the estimated average annual cash flow from the claimed facility for the first five full years of operation calculated as follows:

(A) Calculate the annual cash flow for each of the first five full years of operation by subtracting the annual operating expenses from the gross annual income for each year; and

(B) Sum the five annual cash flows and divide the total by five. Where the useful life of the claimed facility is less than five years, sum the annual cash flows for the useful life of the facility and divide by the useful life.

*16024 (d) "Claimed Facility Cost" means the actual cost of the claimed facility minus the salvage value of any facilities removed from service. Certification of the actual cost of the claimed facility must be documented by a certified public accountant.

OR ADC 340-16-030, Determination of Percentage of Certified Facility Costs Allocable to Pollution Control

for facilities with a claimed facility cost over \$20,000;

(e) "Gross Annual Income" means the estimated total annual income from the claimed facility or the applicant's business if pollution control facilities are integral to the operation of the applicant's business, derived from sale or reuse of recovered materials or energy or any other means including savings that may occur as a result of the facility;

(f) "Internal Rate of Return" means the rate of return that will equate the present value of annual incremental cash flows over the useful life of the claimed facility with the present value of the claimed facility cost;

(g) "Pollution Control Facilities Integral to the Operation of the Applicant's Business" means that the business is unable to operate or is only able to operate at reduced income levels, without the claimed pollution control facility. Such instances include but are not limited to, commercial solid waste and hazardous waste landfills, solid and hazardous waste recycling businesses, environmental service providers. Pollution control facilities integral to the operation of the applicant's business does not include a facility as defined in OAR 340-16-025(1)(a) unless the pollution control facilities meet one or more of the factors included in the definition. Factors that the Department may use to determine whether pollution control facilities are integral to the operation of the business include:

(A) Pollution control facilities represent in excess of 25 percent of the total assets of the business; or

(B) The claimed pollution control facilities were erected, constructed, or installed in response to market demand for such pollution control facilities. This may occur as the result of requirements imposed by the Department, the Federal Environmental Protection Agency or regional air pollution authority, on parties unaffiliated with the applicant; or

(C) Erection, construction, or installation of the claimed facility and any previously certified pollution control facilities, allow the applicant to generate gross revenues at least 50 percent greater than would have been generated in the absence of the claimed facility and any previously certified pollution control facilities; or

(D) The applicant's operating expenses related to operation of the claimed facilities and any previously certified pollution control facilities are at least 50 percent of the operating expenses of the applicant's business.

(h) "Salvage Value" means the value of a facility at the end of its useful life minus what it costs to remove it from service. Salvage value can never be less than zero.

*16025 (2) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468.170, the Commission shall consider the following factors and make appropriate findings regarding their applicability:

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

(b) The estimated annual percent return on the investment in the facility;

(c) The alternative methods, equipment and costs for achieving the same pollution control objective;

(d) Related savings or increases in costs which occur or may occur as a result of the installation of the facility; or

(e) Other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the

OR ADC 340-16-030, Determination of Percentage of Certified Facility Cost Allocable to Pollution Control

prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

(3) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the Commission shall issue an order denying certification.

(4) In considering the factors listed in this rule, the Commission may determine in its findings that one or more factors are more important than others and may assign different weights to the factors when determining the portion of costs properly allocable to pollution control.

(5) When considering the estimated annual percent return on investment in the facility, subsection (2)(b) of this rule, for applicants where pollution control facilities are integral to the operation of the business, and for applications received on or after February 1, 1993, the following steps will be used:

(a) Using the applicant's primary four digit Standard Industrial Classification (SIC):

(A) Determine the industry median profit before taxes as a percent of total assets for the five years prior to the year of completion of the claimed facility from Robert Morris Associates, Annual Statement Studies; and

(B) Determine the industry average profit before taxes as a percent of total assets by summing the median profit before taxes as a percent of total assets for the five years prior to the year of completion of the claimed facility and divide by five. Where five years are not available, sum the number of years that are available and divide by the number of years.

(b) Determine the reference annual percent return on investment from Table 2. Select the reference percent return from Table 2 that corresponds with the year construction was completed on the claimed facility. For each future calendar year not shown in Table 2, the reference percent return shall be the five-year average of the rate of return before taxes on total assets for all United States manufacturing corporations for the five years prior to the calendar year of interest:

*16026 (A) If the industry average profit before taxes as a percent of total assets is greater than the reference rate of return, the percent allocable would be zero percent;

(B) If the industry average profit before taxes as a percent of total assets is less than the reference rate of return, the percent allocable will be determined from the following formula:

P subA = (RROI - IROI) x 100 / RROI

where:

P subA is the percentage of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.

IROI is the industry average annual profit before taxes as a percent of total assets.

RROI is the reference annual percent return on investment from Table 2.

(c) If the Annual Statement Studies do not list the industry median profit before taxes as a percent of total assets for the

OR ADC 340-16-030, Determination of Percentage of Certified Facility Cost Allocable to Pollution Control

applicant's primary four digit SIC, the applicant and the Department will determine whether an alternate SIC is appropriate for applicant's business. If no alternate SIC is appropriate, the percent allocable will be determined using the procedures in subsection (d) of this section;

(d) If an applicant whose pollution control facilities are determined by the Department to be integral to the applicant's business is dissatisfied with the percent allocable determination made using the procedures in subsections (5)(a) and (b) of this rule, or if no SIC is appropriate for the applicant's business, the applicant will furnish the following information to the Department:

(A) An income statement, balance sheet, statement of cash flows, and federal and state tax returns (if applicable) for the applicant's business for the applicant's three fiscal years prior to the date of submission of the application. If three years of such statements are not available, the applicant will submit information for the years that are available;

(B) Revenue and expense projections, and cash flow projections for the applicant's business beginning with the year the application is submitted and continuing for the entire useful life of the pollution control facility. The level of detail of these projections shall be substantially equivalent to the level of detail of information submitted in paragraph (A) of this subsection. The Department may elect to provide the applicant with a worksheet for this purpose;

(C) Revenue and expense projections, and cash flow projections for the applicant's business for the entire useful life of the claimed facility and assuming that the claimed pollution control facility is not erected, constructed or installed;

*16027 (D) A projection of the applicant's future capital expenditures for pollution control facilities;

(E) A letter signed by the applicant authorizing the Department to contract with an independent certified public accountant to review the financial information provided by the applicant. The applicant will agree to reimburse the Department for the cost of this review;

(F) Using the information submitted in paragraphs (A) through (D) of this subsection, the Department will calculate an Internal Rate of Return for the claimed facility by considering the claimed facility cost and annual incremental cash flow. The Internal Rate of Return will be compared to the reference rate of return:

(i) If the applicant's Internal Rate of Return is greater than the reference rate, the percent allocable will be zero percent;

(ii) If the applicant's Internal Rate of Return is less than the reference rate, the percent allocable will be determined by the following formula:

$$P_{\text{subA}} = \frac{(RROI - IRR) \times 100}{RROI}$$

where:

P_{subA} is the percentage of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.

IRR is the Internal Rate of Return for the claimed facility.

RROI is the reference annual percent return on investment from Table 2.

OR ADC 340-16-030, Determination of Percentage of Certified Facility Cost allocable to Pollution Control

(6) When considering the estimated annual percent return on investment in the facility, subsection (2)(b) of this rule, and for applicants where pollution control facilities are not integral to the operation of the business, the following steps will be used:

(a) Determine the claimed facility cost, average annual cash flow and useful life of the claimed facility. The Department may require additional information on or documentation of gross annual income estimates for evaluation purposes;

(b) Determine the return on investment factor by dividing the claimed facility cost by the average annual cash flow;

(c) Determine the annual percent return on investment by using Table 1. At the top of Table 1, find the number equal to the useful life of the claimed facility. In the column under this useful life number, find the number closest to the return on investment factor. Follow this row to the left until reaching the first column. The number in the first column is the annual percent return on investment for the claimed facility. For a useful life greater than 30 years, or percent return on investment greater than 25 percent, Table 1 can be extended by utilizing the following equation:

*16028
$$I \text{ subR} = \frac{1 - (1+i)^{\text{super-n}}}{i}$$

where:

I subR is the return on investment factor.

i is the annual percent return on investment.

n is the useful life of the claimed facility.

(d) Determine the reference annual percent return on investment from Table 2. Select the reference percent return from Table 2 that corresponds with the year construction was completed on the claimed facility. For each future calendar year not shown in Table 2, the reference percent return shall be the five-year average of the rate of return before taxes on total assets for all United States manufacturing corporations for the five years prior to the calendar year of interest;

(e) Determine the portion of actual costs properly allocable to pollution control from the following equation:

$$P \text{ subA} = \frac{(RROI - ROI) \times 100}{RROI}$$

where:

P subA is the percentage of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.

ROI is the annual percent return on investment from Table 1.

RROI is the reference annual percent return on investment from Table 2.

If ROI is greater than or equal to RROI, then the portion of actual costs properly allocable to pollution control shall be zero

OR ADC 340-16-030, Determination of Percentage of Certified Facility Cost Allocable to Pollution Control

percent.

Stat. Auth.: ORS 468.150--468.190

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; DEQ 20-1987, f. & ef. 12-16-87; DEQ 6-1990, f. & cert. ef. 3-13-90; DEQ 2-1993(Temp), f. & cert. ef. 1-29-93; DEQ 3-1993, f. & cert. ef. 3-9-93

NOTES

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

tation/Title
OR ADC 340-16-030 TBL. 1, TABLE 1

*16029 OAR 340-16-030 TBL. 1

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILTY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-030 TABLE 1

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYED.

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Citation/Title
OR ADC 340-16-030 TBL. 2, TABLE 2

*16030 OAR 340-16-030 TBL. 2

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-030 TABLE 2

Reference Annual Percent Return on Investment

Year Construction Completed	Reference Percent Return
1975	19.1
1976	19.8
1977	21.0
1978	21.9
1979	22.5
1980	23.0
1981	23.6
1982	23.4
1983	21.5
1984	19.9

Calculation of the reference percent return was made by averaging the average annual percent return before taxes on stockholders' equity for all manufacturing corporations as found in the Quarterly Financial Report for Manufacturing, Mining Trade Corporations, published by the U.S. Department of Commerce, Bureau of the Census, for the five years prior to the year shown.

itation/Title
 OR ADC 340-16-035, Procedure to Revoke Certification

*16031 OAR 340-16-035

OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS

Current through April 30, 1996.

340-16-035 Procedure to Revoke Certification

(1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Commission may order the revocation of the final tax credit certification if it finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or recycling or disposing of used oil as specified in such certificate, or has failed to operate the facility in compliance with Department or Commission statutes, rules, orders or permit conditions where applicable.

(2) As soon as the order of revocation under this section has become final, the Commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(a) of this rule, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.116.

(4) Except as provided in section (5) of this rule, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(b) of this rule, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.116 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.

*16032 (5) Once a determination has been made under section (1) of this rule, the commission may revoke tax credits held for any facility or piece of equipment which is for the purpose of preventing, controlling, reducing, or eliminating pollution to the same media and which is at a location adjacent to the non-complying facility.

(6) Upon notification by the certificate holder that the facility has been inspected by DEQ and found to be in compliance, the commission may reinstate any revoked tax credit certification if the commission finds the non-complying facility has been brought into compliance.

(7) If the Commission reinstates certification, the Commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit.

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OR ADC 340-16-035, Procedure to Revoke Certification

less the period of revocation. The period of revocation would be from the date the Commission revokes the certificate until the date the Commission reinstates the certificate.

(8) The Commission may withhold revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the Commission shall revoke the certificate.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85; DEQ 20-1987, f. & ef. 12-16-87

.tation/Title
OR ADC 340-16-040, Procedures for Transfer of a Tax Credit Certificate

*16033 OAR 340-16-040

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILTY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-040 Procedures for Transfer of a Tax Credit Certificate

To transfer a tax credit certificate from one holder to another, the Commission shall revoke the certificate and grant a new one to the new holder for the balance of the available tax credit following the procedure set forth in ORS 307.405, 316.097, and 317.116.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85

Citation/Title

OR ADC 340-16-045, Fees for Tax Credit Certification

*16034 OAR 340-16-045

OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 16. POLLUTION CONTROL TAX CREDITS

Current through April 30, 1996.

340-16-045 Fees for Tax Credit Certification

(1) An application processing fee of one-half of one percent of the cost claimed in the application of the pollution control facility to a maximum of \$5,000 shall be paid with each application. However, if the application processing fee is less than \$50 no application processing fee shall be charged. A non-refundable filing fee of \$50 shall be paid with each application. No application is complete until the filing fee and processing fee are submitted. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a pollution control facility tax credit.

(2) Upon the Department's receipt of an application, the filing fee becomes non-refundable.

(3) The application processing fee shall be refunded in whole if the application is rejected.

(4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.

(5) All fees shall be made payable to the Department of Environmental Quality.

(6) Notwithstanding section (1) of this rule, the Department may increase the processing fee above the maximum of \$5,000 when an application necessitates an unusually extensive evaluation or analysis to determine the portion of the facility allocable to pollution control or material recovery.

Stat. Auth.: ORS Ch. 183 & 468.150-468.190

Hist.: DEQ 31-1981, f. 10-19-81, ef. 11-1-81; DEQ 12-1984, f. & ef. 7-13-84; Renumbered from 340-11-200; DEQ 5-1985, f. & ef. 3-12-85; DEQ 6-1990, f. & cert. ef. 3-13-90

itation/Title
 OR ADC 340-16-050, Taxpayers Receiving Tax Credit

*16035 OAR 340-16-050

**OREGON ADMINISTRATIVE RULES
 CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
 RULES OF GENERAL APPLICABILITY AND ORGANIZATION
 DIVISION 16. POLLUTION CONTROL TAX CREDITS**

Current through April 30, 1996.

340-16-050 Taxpayers Receiving Tax Credit

(1) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS Chapter 61 or 62 or any predecessor to ORS Chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such corporation, the tax relief may be taken only under ORS 307.405.

(2) If the person receiving the certificate is an electing small business corporation as defined in Section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.

(3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.

(4) Upon any sale, exchange or other disposition of a facility written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.

(5) The company, corporation or individual claiming the tax credit for a leased facility must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.

(6) The taxpayer claiming the tax credit for a facility with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]
 *16036

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 12-1984, f. & ef. 7-13-84; DEQ 5-1985, f. & ef. 3-12-85

Citation/Title
OR ADC 340-17-055, Taxpayers Receiving Tax Credit

*16053 OAR 340-17-055

OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
RULES OF GENERAL APPLICABILITY AND ORGANIZATION
DIVISION 17. PLASTICS RECYCLING TAX CREDITS

Current through April 30, 1996.

340-17-055 Taxpayers Receiving Tax Credit

(1) A person receiving a certificate under this Division may take tax relief only under ORS 316.103 or 317.106, depending upon the tax status of the person's trade or business.

(2) If the person receiving the certificate is an electing small business corporation as defined in Section 1361 of the federal Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.103, based on that shareholder's pro rata share of the certified cost of the investment.

(3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided ORS 316.103, based on that partner's pro rata share of the certified cost of the investment.

(4) Upon any sale, exchange or other disposition of equipment, personal property or machinery written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of property to the Department of Environmental Quality.

(5) The company, corporation or individual claiming the tax credit for leased equipment, personal property, or machinery must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.

(6) The taxpayer claiming the tax credit for the equipment, personal property, or machinery with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

NOTE: ORS 468.955(3) refers in error to ORS 316.097 and 317.116, which relate to Pollution Control Tax Credits, rather than Plastics Recycling Tax Credits. OAR 340-17-040(3) refers instead to claiming Plastics Recycling Tax Credit under ORS 316.103 and 317.106, consistent with legislative intent.

*16054

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

Stat. Auth.: ORS 468.925--468.965

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OR ADC 340-17-055, Taxpayers Receiving Tax Credit

Hist.: DEQ 4-1986, f. & ef. 2-12-86; DEQ 29-1989(Temp), f. & cert. ef. 12-14-89; DEQ 7-1990, f. & cert. ef. 3-13-90

NOTES

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Citation/Title

OR ADC 340-172-020, General Provisions, UST Financial Assistance

*18970 OAR 340-172-020

**OREGON ADMINISTRATIVE RULES
CHAPTER 340. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT
DIVISION 172. UNDERGROUND STORAGE TANK FINANCIAL ASSISTANCE PROGRAM**

Current through April 30, 1996.

340-172-020 General Provisions, UST Financial Assistance

(1) To qualify for financial assistance under these rules, a person:

(a) Must be the owner of the USTs at a facility holding or that held an accumulation of motor fuel for resale; or

(b) Must be the person responsible for the USTs at a facility holding or that held an accumulation of motor fuel for resale. person responsible for the USTs at the facility must be:

(A) The property owner; or

(B) The permittee of the USTs.

(c) May be required to demonstrate financial need.

(2) A person may apply for financial assistance at the UST facility jointly with other eligible persons as determined in sec (1) of this rule if the persons receiving financial assistance provide a copy of a signed legal contract with the application that defines the proportionate share of the financial assistance to be paid to each person.

(3) A person owning or responsible for a UST may qualify to receive any or all of the following financial assistance for U project work at a facility location. Individual tanks at a facility location with multiple tanks are not each eligible for separate assistance:

(a) Copayment for a portion of the insurance premium for a policy that meets the UST financial responsibility requiremer (See OAR Chapter 340, Division 174.);

(b) Grant (See OAR Chapter 340, Division 175);

(c) Loan guarantee for a loan obtained from a commercial lending institution (See OAR Chapter 340, Division 176.);

(d) Reduced interest rate for a loan obtained from a commercial lending institution (See OAR Chapter 340, Division 178.

(4) A person owning or responsible for a UST may qualify to receive financial assistance for UST project work provided of the following conditions are met:

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OR ADC 340-172-020, General Provisions, UST Financial Assistance

- (a) The USTs are regulated or were previously regulated by OAR Chapter 340, Division 150 and federal regulation 40 CFR 280;
- (b) UST project work:
- (A) Was started after December 22, 1988;
- *18971 (B) Was approved for financial assistance by issuance of an UST financial assistance confirmation letter pursuant to OAR Chapter 340, Divisions 174, 175, 176 or 178 on or before December 31, 1994; and
- (C) Will be started by March 1, 1995.
- (c) Each UST has a valid UST permit or had a valid UST permit before permanently decommissioning, as required by OAR Chapter 340, Division 150;
- (d) The UST holds an accumulation of motor fuel for resale or that held an accumulation of motor fuel for resale before temporary or permanent decommissioning (closure);
- (e) Financial assistance under these rules was not provided to another person for work approved under these rules;
- (f) A site assessment for all tanks containing motor fuel for resale is to be or has been performed in accordance with OAR Chapter 340, Division 122 and these rules;
- (g) The UST does not hold motor fuel used as fuel for the operation of aircraft;
- (h) The UST does not hold motor fuel used as fuel for the operation of boats or marine vessels;
- (i) UST project work meets or will meet, upon project completion, the 1998 requirements of OAR Chapter 340, Division 150, including:
- (A) Corrosion resistance;
- (B) Spill prevention and overflow prevention;
- (C) Leak detection; and
- (D) Where applicable, Stage I and II vapor collection system requirements in OAR Chapter 340, Division 22.
- (j) The UST project site will meet the cleanup standards in OAR Chapter 340, Division 122.
- (5) A person owning or responsible for USTs permanently decommissioned (closed) in accordance with federal regulation 40 CFR 280 between December 22, 1988 and April 1, 1992 and not replaced with another UST shall meet the requirements of subsections (4)(a) through (i) of this rule.
- (6) Financial assistance may be provided for any or all of the following:

(a) Site assessment and corrective action to clean up soil and groundwater contamination in accordance with OAR Chapter 340, Division 122 and/or in accordance with the decommissioning requirements in OAR Chapter 340, Division 150;

OR ADC 340-172-020, General Provisions, UST Financial Assistance

(b) Upgrading or replacing a UST to new UST standards in accordance with OAR Chapter 340, Division 150 and federal UST regulation 40 CFR 280;

(c) Replacing existing USTs with aboveground storage tanks in accordance with state or local fire codes and federal aboveground storage tank regulation 40 CFR Part 112;

*18972 (d) Installation of Stage I and II vapor collection system underground piping, hoses and nozzles in accordance with OAR Chapter 340, Division 22 to meet present or future requirements for Stage I or II vapor collection;

(e) Copayment for a portion of the insurance premium for a policy that meets UST financial responsibility requirements of OAR Chapter 340, Division 150 and federal UST regulation 40 CFR 280.

NOTE: The legislature intended to provide financial assistance for the purpose of upgrading motor fuel resale facilities to comply with Federal/State underground storage tank regulations. The Department will not approve financial assistance where person intends to close a facility and not resell motor fuel.

(7) Project costs for UST project work shall meet the requirements of this section:

(a) Financial assistance for UST project work is available for:

(A) Equipment, labor and materials provided by a licensed UST service provider;

(B) Equipment, labor and materials to replace an UST with an AST;

(C) Equipment, employee labor and materials supplied by the applicant, provided the labor charge and hours charged to the project are approved by the Department;

(D) Interest paid lender during construction phase;

(E) Loan fees;

(F) Application and loan related project management, financial management or similar consultant fees;

(G) Preparing engineering reports, schedules, plans, designs, and conducting project oversight and inspections;

(H) Site assessment including engineering and hydrological investigations, testing of soil and water samples and related reports;

(I) Corrective action to remove petroleum contamination of soil and surface and ground-waters;

(J) Treatment and disposal of contaminated soil, liquids, sludges, and USTs;

(K) Tank tightness testing required as part of UST project work; and

(L) Other costs that the Department may approve.

(b) Financial assistance for UST project work is not available for:

OR ADC 340-172-020, General Provisions, UST Financial Assistance

- (A) Work on a UST that is not supervised by a licensed UST supervisor;
 - (B) Acquisition of land and rights-of-way;
 - (C) Costs which are treated as operation and maintenance expenses under general accounting practices;
 - (D) Costs previously paid under OAR Chapter 340, Division 170;
 - (E) Tax credits claimed and received as an Oregon Pollution Control Tax Credit under OAR Chapter 340, Division 16;
 - (F) Costs resulting from lost business while a UST is being upgraded, a UST is being replaced or while corrective action is being conducted;
 - *18973 (G) Insurance premiums or other costs associated with meeting state and federal UST financial responsibility requirements before completion of the project;
 - (H) Labor provided by an employee of the applicant where the labor has not been approved by the Department;
 - (I) Costs that are recoverable by the applicant, the property owner, the tank owner or permittee from insurance coverage or other persons or entities liable for those costs;
 - (J) Costs for bodily injury or damage to personal property of a third party;
 - (K) Costs not directly attributed or contributing to completion of the project;
 - (L) Interest and financing charges due to untimely payment of contractors and suppliers of material, equipment and labor;
 - (M) Labor performed by the applicant;
 - (N) Tanks other than tanks containing motor fuel for resale;
 - (O) Payment for insurance required to demonstrate financial responsibility in accordance with OAR 340-172-090;
 - (P) Annual tank tightness testing not required as part of UST project work; and
 - (Q) Other work not expressly included under subsection (a) of this section.
- (8) An applicant may only receive financial assistance for UST project work if all applicable financial assistance confirmation letters are signed by the Department on or before December 31, 1996.
- (9) An applicant may receive financial assistance when relocating an existing facility to another geographical location, providing:
- (a) The new resale facility services the same customer base as the original facility;
 - (b) The new resale facility is within five road miles of the original facility unless the Department determines the facility meets the requirements of subsection (a) of this section;

OR ADC 340-172-020, General Provisions, UST Financial Assistance

(c) Construction is completed at the new resale facility within 90 days after confirmation of UST project work unless otherwise approved by the Department;

(d) Financial assistance is based upon the original location; and

(e) Both facilities meet the requirements of these rules, including a site assessment in accordance with the requirements of OAR 340-172-050 at the location of any UST or AST at the new resale facilities.

(10) If the applicant disputes a Department finding under this rule, the applicant may seek resolution of the dispute through appeals procedures in OAR 340-172-110.

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

*18974 Stat. Auth.: Ch. 661, OL 1993

Hist.: DEQ 29-1991(Temp), f. 12-18-91, cert. ef. 12-20-91; DEQ 14-1992, f. & cert. ef. 6-11-92; DEQ 8-1994, f. & cert. ef. 3-22-94

NOTES

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AFFIDAVIT OF STEPHEN M. QUENNOZ

STATE OF OREGON)
) ss.
County of Multnomah)

I, Stephen M. Quennoz, having been duly sworn, do hereby depose and say that:

1. I am the Vice President of Nuclear and Thermal Operations for Portland General Electric Company. I have had functional executive responsibility for the Trojan Nuclear Plant since 1994. My current responsibilities include matters relating to general operations and financial matters for PGE's Trojan Nuclear Plant, including responsibility for overseeing the construction of the Independent Spent Fuel Storage Installation (ISFSI) at the Trojan plant.

2. I make this affidavit in support of PGE's Application for Preliminary Certification of the ISFSI as a Pollution Control Facility for Tax Relief Purposes pursuant to ORS 468.155 et seq. I am familiar with PGE's application through information that I have obtained as an officer of PGE. To the best of my knowledge, all of the matters stated herein are true and correct.

3. The sole purpose of the ISFSI is to prevent a substantial quantity of radioactive waste pollution by containing spent nuclear fuel in sealed containers capable of being transported to a permanent federal repository for spent nuclear fuel when the repository is available.

4. PGE may experience cost savings as a result of moving the spent nuclear fuel from the spent fuel pool into an ISFSI. However, PGE would construct the ISFSI even if it would not result in cost savings to PGE.

Stephen M. Quennoz
Stephen M. Quennoz, Vice President
Nuclear and Thermal Operations

SUBSCRIBED AND SWORN to before me this 2nd day of March, 2000.

Bari H. Gilbert
Notary Public, State of Oregon
My Commission expires: 12/10/2000



1 requirements for the Trojan plant are in administrative
2 rules. The site certificate itself is a one-page document
3 signed by Governor McCall in 1971 and had no conditions.
4 But it did require that the company comply with all future
5 rules of the (indiscernible).

6 COMMISSIONER REEVE: Okay. So this decommissioning
7 plan, does it require this dry storage?

8 MR. STEWART-SMITH: The decommissioning plan, as put
9 together by the company, said they were going to do that,
10 and the company has held essentially to what they said they
11 were going to do. While there is no regulatory requirement
12 for a dry spent fuel storage facility, either at the state
13 or the federal level, other than tying the company to the
14 commitments they made, the Nuclear Regulatory Commission has
15 made it very clear that their preference for a closed
16 reactor is dry interim storage of spent fuel, rather than an
17 active spent fuel pool storage. They have not made that a
18 mandatory requirement but they've made it clear that that's
19 their strong preference.

20 COMMISSIONER REEVE: Okay, but in terms of the need
21 for the company to meet its obligations to the Office of
22 Energy, does PGE have to move forward and construct this dry
23 storage facility?

24 MR. STEWART-SMITH: They do today because they made
25 the commitment to do it. And we will hold them to their

Daniel S. McGarvey
Vice President

Marsh USA, Inc.
100 North Tryon Street
Suite 3200
Charlotte, NC 28202
704 343 4753 Fax: 704 376 0404
Daniel.S.McGarvey@marshmc.com

February 29, 2000

MARSH

Ms. Jill Sughrue
Risk Management Department
Portland General Corporation
121 Salmon St
Portland, Oregon, 97204

Subject: ISFSI Insurance Cost Considerations

Dear Jill:

I am sending this in response to your inquiry regarding the cost of nuclear liability and other insurance coverages when spent nuclear fuel is transferred to an Independent Spent Fuel Storage Installation (ISFSI).

As far as limits required, it may be possible to reduce your current nuclear liability limits once the fuel is stabilized and stored safely in the ISFSI. We have never recommended this, however, as the policy and limits have always been written on a "continuous until cancelled" and "rolling single aggregate" basis. Any reduction in limits triggers a ten year countdown or "discovery period", after which your historical "occurrence" limits will be reduced across the board for any events recorded during the operational history of the Trojan plant. We would urge you, therefore, to avoid reducing this limit until sufficient time has passed for any latent injuries which may have been suffered during plant operation or decommissioning to be identified. Even were you to ignore this advice and reduce your limits to, say, \$50 million – the vast majority of premium is generated by the first \$10 million. As a decommissioned site is already underwritten on low exposure basis, there is also no reason to believe that any rate reduction would be in order.

Regarding other coverages, I see no evidence that the transfer of fuel to an ISFSI will have any impact on current pricing, other than to increase the values (and hence cost) of your conventional property program.

I wish I had better news to support your transfer of this fuel, but I do not believe it will lead to any substantive cost savings. Please call if I can be of further assistance on this or any topic.

Sincerely,



Daniel S. McGarvey

MAR 06 2000

EXHIBIT 0
PAGE 10/1

Daniel S. McGarvey
Vice President

Marsh USA, Inc.
100 North Tryon Street
Suite 3200
Charlotte, NC 28202
704 343 4753 Fax: 704 376 0404
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February 29, 2000

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121 Salmon St
Portland, Oregon, 97204

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Sincerely,



Daniel S. McGarvey

MAR 06 2000

EXHIBIT 0
PAGE 1 of 1

1 requirements for the Trojan plant are in administrative
2 rules. The site certificate itself is a one-page document
3 signed by Governor McCall in 1971 and had no conditions.
4 But it did require that the company comply with all future
5 rules of the (indiscernible).

6 COMMISSIONER REEVE: Okay. So this decommissioning
7 plan, does it require this dry storage?

8 MR. STEWART-SMITH: The decommissioning plan, as put
9 together by the company, said they were going to do that,
10 and the company has held essentially to what they said they
11 were going to do. While there is no regulatory requirement
12 for a dry spent fuel storage facility, either at the state
13 or the federal level, other than tying the company to the
14 commitments they made, the Nuclear Regulatory Commission has
15 made it very clear that their preference for a closed
16 reactor is dry interim storage of spent fuel, rather than an
17 active spent fuel pool storage. They have not made that a
18 mandatory requirement but they've made it clear that that's
19 their strong preference.

20 COMMISSIONER REEVE: Okay, but in terms of the need
21 for the company to meet its obligations to the Office of
22 Energy, does PGE have to move forward and construct this dry
23 storage facility?

24 MR. STEWART-SMITH: They do today because they made
25 the commitment to do it. And we will hold them to their



Tax Credit Review Report

Revised 9/30/97

**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 an investment casting manufacturer taking tax relief under taxpayer identification number 93-0460598. The applicant is the owner of the facility. The applicant's address is:

Large Parts Campus
4600 SE Harney Drive
Portland, OR 97206

Director's
Recommendation: **APPROVE**

Applicant	Precision Castparts Corporation
Application No.	2389
Facility Cost	\$937,677
Percentage Allocable	55%
Useful Life	10 years

Facility Identification

The certificate will identify the facility as:

The elementary waste neutralization system consisting of a 4000 square foot building, holding tanks, piping systems, transfer pumps, sludge blender equipment, filter press, treatment tanks, mixers, pH monitoring/charting systems, and all associated electrical and pneumatic services and controls.

The facility is located at:

4600 SE Harney Drive
Portland, OR 97206

Technical Information

The facility is an elementary neutralization unit that combines waste acids with spent caustic solutions generated on-site, eliminating two hazardous waste streams by removing the corrosive characteristic of the wastes. The facility treats over 700,000 gallons of waste acid and 100,000 gallons of spent caustic per year. Non-hazardous liquid effluents are discharged to the publicly owned treatment works (POTW) and solid wastes are land-filled as non-hazardous waste. Before installation of the facility, waste acids were neutralized with purchased caustic, and the spent caustic was shipped to Chemical Waste Management in Arlington as hazardous waste.

Background

A pollution control facility must be in compliance with state and federal hazardous waste regulations before a tax credit may be granted. PCC's original application described two operations at the facility which raised issues under the hazardous waste regulations.

1. Some of the spent caustics generated off-site and subsequently being used to neutralize the acids at the facility were "likely" to be hazardous because of their heavy metal content. Therefore, an elementary neutralization unit (ENU) that used this waste would have been illegal under RCRA.

The basis of the tax for the tax credit was the use of spent caustic materials in lieu of commercial caustic to neutralize spent acid. If PCC stopped using the "alleged" heavy metal laden spent caustic waste stream to neutralize acid, then PCC would need to amend their application to reflect the change. At the time DEQ was under the impression that PCC had indeed stopped using the metal-bearing caustic; therefore, an amendment was necessary.

2. If the chemical milling of the finished parts was performed to dimension the parts, that constituted "electroplating." In this case, the sludge produced from neutralizing the milling acids would have been an F006 listed hazardous waste. The Commission would have to deny the tax credit under this circumstance because PCC would have been illegally disposing of F006 hazardous waste in a solid waste landfill. However, if the milling was done exclusively to clean the surface of the parts then the sludge generated would not be designated F006 and the facility would most likely be approved.

The technical evaluation to determine whether or not the chemical milling process was by definition "electroplating" was extremely difficult as evidenced by the chronology of the project attached to this report. The conclusion of the evaluation was that the material was not a F006 hazardous waste. The metals levels in the sludge were below hazardous waste and Land Disposal Restriction levels.

Eligibility

ORS 468.155

(1)(a) The sole purpose of this new installation is to

ORS 468.155 eliminate a substantial quantity of hazardous waste as defined in ORS 466.005.

(1)(b)(B)

Timeliness of Application

The Department determined that delays in submitting a complete application were beyond the control of the applicant and has waived statutory deadlines for filing a complete application within two years of substantial completion of the facility. See the attached chronology.

<i>Application Received</i>	<u>12/27/90</u>
<i>Application Substantially Complete</i>	<u>9/15/97</u>
<i>Construction Started</i>	<u>9/1/95</u>
<i>Construction Completed</i>	<u>12/31/88</u>
<i>Facility Placed into Operation</i>	<u>12/31/88</u>

Facility Cost

Facility Cost	\$ 947,586
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d) temporary fencing, replacement parts, spare filters, pump maintenance, and some equipment for a fluoride treatment system	-\$ 9,909
Ineligible Costs	
Eligible Facility Cost	<u>\$937,677</u>

Price Waterhouse provided the independent auditor's report provided with the application. Coopers and Lybrand, LLP, provided the certified public accountant's statement on the Department's behalf.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
<p>ORS 468.190(1)(a) Salable or Usable Commodity</p> <p>ORS 468.190(1)(b) Return on Investment</p>	<p>The facility does not recover or convert waste products into a salable or usable commodity.</p> <p>The useful life of the facility used for the return on investment consideration is 26 years. The average annual cash flow is \$54,338 which results from the decreased cost of disposal and chemical purchases (e.g., new caustic purchases are reduced, and spent caustic disposal fees are eliminated) less operating cost of the facility. This cash flow amount was determined by deducting from the applicant's claimed operating costs an amount equal to 19 hours of labor per week. This labor is associated with operation of the fluoride treatment system, a connected but ineligible system. The applicant agreed to this reduction in facility operating costs. Dividing the average annual cash flow into the cost of the facility gives a return on investment factor of 17.26. Using Table 1 of OAR 340-16-30 for a useful life of 26 years gives an annual return on investment of 3.25%. As a result, the percent allocable is 55%.</p>
<p>ORS 468.190(1)(c) Alternative Methods</p> <p>ORS 468.190(1)(d) Savings or Increase in Costs</p>	<p>No alternative investigated.</p> <p>There is an average of \$488,060 per year savings from the facility due to the avoided costs associated with purchasing caustic to neutralize the waste acid and paying for disposal of the spent caustic. After deducting the labor costs to operate the fluoride system, the average annual cost of maintaining and operating the facility is \$433,722.</p>
<p>ORS 468.190(1)(e) Other Relevant Factors</p>	<p>No other relevant factors.</p>

Considering these factors, the percentage allocable to pollution control is 55%.

Compliance

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

Reviewers: SJO Consulting Engineers, Inc., Michael T. Gordon
 Dave St.Louis, DEQ
 Gary Calaba, DEQ
 Coopers and Lybrand, LLP
 Maggie Vandehey

Chronology

11/30/1987	PCC submits Notice of Intent to Construct
12/31/1988	Facility complete and placed into operation.
12/27/1990	DEQ receives application.
01/18/1991	DEQ requests additional information.
05/06/1991	PCC submits additional information.
08/15/1991	PCC submits more information.
09/27/1991	DEQ notifies PCC that they have suspended processing the application because of the water designation issues.
09/18/1992	EPA Region 10 staff meets with DEQ Director and staff. EPA transfers hazardous waste enforcement responsibilities to DEQ for violations discovered during EPA's multimedia inspection of PCC. EPA's position on F006 is that the waste stream must be properly managed at a Subtitle C hazardous waste facility and not disposed in a solid waste landfill. It is clear that EPA expects this resolution as part of the enforcement settlement.
10/26/1992	EPA determines that PCC does chemical milling therefore, the sludge generated from the neutralization process are F006. EPA provides the SAIC report and background documents on F006 listing. DEQ contemplates designating the sludge F006.
06/21/1993	PCC asserts that the materials treated in the ENU is spent acid and the sludge generated from treating the acid cannot carry the F006 designation because F006 can only be generated from treating waste-waters.
07/14/1993	DEQ staff discusses among themselves that the F006 designation be applied but concludes that the sludge may be disposed of in a landfill if it meets LDR limits.
08/31/1993	DEQ writes EPA region 10 that DEQ does not interpret the F006 wastes code as an appropriate waste code for facilities that conduct chemical milling and etching to further dimension products to near or final dimensions. DEQ proposes wastes be regulated on the basis of constituents present. DEQ suggests that PCC submit the tax credit application as a water quality application if the sludge is non-hazardous wastes and are treated in an ENU.
11/02/1993	PCC meets with DEQ on hazardous waste issues focusing on F006 issues. EPA has not responded to DEQ's 8/31/1993 correspondence.
01/14/1994	DEQ verbally advises PCC to update their application.
01/18/1994	EPA responds to DEQ's correspondence dated 8/31/1993. EPA disagrees with DEQ's

	redefinition of the scope of the F006 listing and will continue to consider sludge from chemical etching and milling to be F006 hazardous waste until it is de-listed or the federal rules are changed.
03/10/1994	DEQ notifies PCC of EPA's 1/18/94 response. DEQ includes a discussion that generators need to consider F006 in making waste determinations and demonstrations to DEQ on a case-by-case basis if an F006 listing is not warranted for a particular waste-stream. DEQ suggests they will take that position with EPA if necessary.
03/14/1994	DEQ visits PCC and recommends they amend their application in light of new information regarding the type of caustics being used in the neutralization process.
04/05/1994	DEQ send PCC's attorney the SAIC report and other background materials on EPA's F006 interpretation.
06/20/1994	DEQ writes a follow-up to their 4/5/94 visit suggesting that PCC update their application since some processes had changed.
07/26/1994	PCC's attorney submits documentation describing why F006 standards and that the argument that the process is chemical milling for the purpose of dimensioning parts are inappropriate for PCC. The attorney suggests that DEQ has committed to counter EPA's position when appropriate. He provides analysis that the sole purpose of the acid dipping is cleaning or removal of a brittle surface layer on the parts – not dimensioning. The attorney states that PCC has provided exhaustive information to EPA demonstrating it does not acid dip parts for the purpose of dimensioning.
07/26/1994	<p>PCC writes to the Director of DEQ describing 7/1991 meeting and the difficulties associated with EPA's contention that the sludge is a F006 listed hazardous waste. PCC asserts that DEQ agreed that the F006 listing should be applied in an environmentally sensitive manner and should not apply to benign waste such as PCC's waste. They state that EPA's interpretation would require an F006 designation be applied to all sludge from non-metal forming chemical milling and etching unless EPA were to limit it to metal forming only. SIC code analysis would apply F006 in a similarly broad manner, but F006 does not apply to primary metals industry (SIC 3400). Chemical milling and etching is not relevant in this interpretation.</p> <p>They state the "plain reading" of broad language of the listing would exclude chemical milling and etching when conducted outside an electroplating operation where electricity is used. In summation, EPA's interpretation has many holes in it - it is too broad, constituent-identical waste streams are manage differently, etc.</p>
07/26/1994	<p>PCC's attorney responds to DEQ's 6/20/94 letter. Attorney claims DEQ is asking the applicant to choose between</p> <ol style="list-style-type: none"> 1) the sludge being F006 listed hazardous waste and therefore in violation of hazardous waste rules or 2) the sludge is not a hazardous waste and is therefore not eligible for a hazardous waste tax credit. <p>He claims PCC does not generate F006 and that if DEQ agrees, then PCC would be in compliance with all rules. He states that the sludge is not relevant to the tax credit</p>

	application because the goal of the ENU is to render a corrosive stream non-hazardous. DEQ's failure to act on the application has prejudiced PCC financially.
03/06/1995	PCC submits analytical data in 11 laboratory reports. DEQ concludes that the constituents of concern in the sludge appear to be below LDR standards but DEQ staff is still not convinced that the process is not chemical milling.
10/09/1995	DEQ advises PCC that the Department has determined that the milling process is not for the purpose of dimensioning parts and that the sludge produced from neutralization the spent milling acid does not carry the F006 listing designation.
02/18/1996	DEQ verbally advises PCC to update its application.
03/22/1996	DEQ writes PCC and requests that they update their application.
05/28/1996	PCC submits an amended tax credit application.
10/22/1996	Tax credit assigned to SJO Consulting Engineers for review.
11/19/1996	SJO writes requesting additional information.
4/30/1997	PCC provides additional information to SJO.

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

B & C Leasing, Inc.
P O Box 14788
Portland, Oregon 97214

The applicant is a leasing company which has common ownership with a solid waste collection company, Trashco, and a waste cooking oil and grease collection company, Oregon Oils, Inc.

2. Description of Facility

The facility consists of the following equipment: 1993 International truck, Model 9200, serial # 2hsfma656pco71448; Lely-pac 3500 gallon tank, serial # 93,2175-1387; 1995 International truck, Model 8300, serial # 1hskdpr7rh591894; 1993 26 foot WABO trailer, serial # 1b9102d0gp1310010; and, grease collection containers with no serial numbers.

Claimed equipment costs are listed below:

1993 International truck and Lely-pac tank	\$ 84,500
1995 International truck and 1993 WABO trailer	65,850
Grease collection containers	<u>45,730</u>
Total cost	\$196,080

The actual cost of the facility was certified by an independent public accountant.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The components were purchased between December 11, 1993 and October 31 1995.
- b. The final elements of the facility were placed into operation on October 31, 1995.
- c. The application for tax credit was submitted to the Department on December 7, 1995, within two years of substantial completion of the facility.
- d. The application was filed complete on October 3, 1996

4. Evaluation of Application

- a. The sole purpose of the facility is to provide collection of waste cooking oil and grease for recycling. This recycling collection service is a part of a material recovery process which obtains useful resources from material that would otherwise be solid waste, pursuant to Oregon Administrative Rule 340-16-025(1)(b) and (2)(d).
- b. Eligible Cost Findings

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

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

The facility is used 100% of the time for collection of oil and grease, a material recovery process.

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

A) The Applicant originally claimed a facility cost of \$248,230. This cost has been adjusted to remove all ineligible equipment and costs and the adjusted cost is \$196,080.

B) Annual Percentage Return on Investment

The applicant has calculate the average annual cash flow for this recycling equipment as the cash flow resulting from the lease of this equipment to the company that operates the equipment, Oregon Oils. The average annual cash flow is \$2,433. The useful life of the equipment is as 10 years. The annual percentage return on investment is 0.13%.

The portion of the adjusted cost of the facility properly allocable to pollution control as determined by using these factors is 97%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose the trucks is collection and recycling of waste oil and grease.
- c. The facility complies with DEQ statutes and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 97%

6. Director's Recommendation

Based upon the findings, it is recommended that Pollution Control Facility tax credit certificate bearing the cost of \$196,080 with 97% allocable to pollution control be issues for the facility claimed in Tax Credit Application TC-4564.

William R. Bree
TAX\TC4564RR.STA
(503) 229-6046
October 3, 1996

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Sabroso Company
690 S. Grape Street
Medford, OR 97501

The applicant owns and operates a fruit processing plant in Medford, Oregon.

Application was made for tax credit for a water pollution control facility.

2. Description of Facility

The facility consists of a 15 Hp pump, a 750 gallon storage tank, filters, electrical controls and associated plumbing system.

Claimed Facility Cost: \$23,519
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on June 29, 1995 and the application for certification was found to be complete on July 13, 1995, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of water pollution. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

One of the processes of fruit concentrate manufacturing is the removal of water by heat and vacuum. Air ejectors are used to create this vacuum. Air ejectors create a vacuum by placing steam into a vessel and

aspirating fresh water into the vessel. The vacuum is created by a combination of the aspiration effect and the condensing steam. The water and condensed steam had previously been discharged into the city sewer.

The collection and filtration system allows the reuse of the wastewater and condensed water as fruit washwater. This reduces the amount of wastewater discharged to the city sewer by about 100,000 gallons per day.

b. Eligible Cost Findings

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

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

Wastewater generated from the ejectors are collected and reuse as fruit washwater. This resulted in a decrease of fresh water usage of 100,000 gallons per day. This is equivalent to an operational cost savings of \$95 per day or \$15,865 per year.

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

The percent return on investment for this facility is 0.50%, which would result in a percentage factor that is allocable to pollution control of 89%. However, under the revised statutes facility claims that do not exceed \$50,000 are exempt from the customary return on investment methodology if they are used 100% of the time for pollution control purposes.

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

The applicant did not consider other alternatives; however, this is an acceptable cost-effective approach to wastewater pollution control.

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

The installation of the facility resulted in a savings of fresh water usage of about 100,000 gallons per day and also a decrease of wastewater discharge to the City of Medford sanitary sewer.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by use of treatment works for industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules.
- d. Then portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$23,519 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4478.

Jonathan Gasik:
(503) 776-6010 x 230
October 17, 1995

WQTCSR-1/95

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

WORK SESSION ON:

Portland General Electric
Company's independent spent fuel
storage installation at the
Trojan Nuclear Power Plant.

TRANSCRIPT OF PROCEEDINGS

November 18, 1999

BEFORE:

COMMISSIONERS

MELINDA EDEN, Chair
TONY VAN VLIET
LINDA McMAHAN
MARK REEVE

DIRECTOR:

LANGSTON MARSH
LARRY KNUDSEN
DEQ Counsel

Transcribed from electronic recording by

Patricia Morgan
16360 S. Nelbur Road
Oregon City, OR 97045

Morgan Verbatim, Inc.

Official Transcriber

(503) 631-8885

1 disposal site at Hanford.

2 In '96, the NRC and the Oregon Energy Facility Siting
3 Council approved the Trojan decommissioning of the plant.
4 This year, PGE removed the reactor vessel to the disposal
5 site at Hanford. Currently PGE is preparing the Trojan site
6 for unrestricted use. Unrestricted use means that the
7 property could be used for other industrial or recreational
8 purposes. Finally, during the first quarter of the next
9 century, the spent nuclear fuel will be moved to a yet
10 unknown federal repository.

11 In a minute, I'll discuss the scope of the
12 preliminary application with you. I'll also discuss
13 questions that the staff will have to answer before we
14 complete the review. At this time, Dave Stewart-Smith will
15 provide information regarding the independent spent fuel
16 storage installation, dry storage versus wet storage, air or
17 water contaminants, decommissioning of Trojan, and the
18 federal repository.

19 MR. STEWART-SMITH: Thank you, Madam Chair. For the
20 record, my name is David Stewart-Smith, Secretary to the
21 Oregon Energy Facility Siting Council. I'm pleased to be
22 here today. I have some brief prepared notes that I will go
23 over, and I would encourage the Commission to interrupt me
24 at any time, in case I get a bit too oblique or I say
25 something that needs to be clarified.

1 As Maggie mentioned the Trojan plant closed its
2 commercial operations in 1993. Under the rules of the U.S.
3 Nuclear Regulatory Commission they had -- first choice they
4 had to make was whether or not they would put the plant into
5 long-term storage and allow much of the radioactivity to
6 decay, and the Nuclear Regulatory Commission refers to that
7 option as Safe Store. Or whether they should decommission
8 the plant in the near term, and they refer to that option as
9 Decom.

10 Portland General Electric made the case to the NRC
11 and to the Energy Facility Siting Council that, given the
12 specifics in their situation, that immediate dismantlement
13 was an appropriate option. The regulatory agencies agreed,
14 and shortly thereafter PGE began preparations for
15 decommissioning the plant.

16 They are well over halfway done with decommissioning
17 at this point, having sent five large components, the -- the
18 four steam generators and a pressurizer tank, off for
19 disposal at our regional disposal site in 1995. And having
20 sent the reactor vessel itself, without the spent fuel in
21 it, to our regional low level waste disposal site in August
22 of this year.

23 About 10 percent of the nonspent fuel radioactivity
24 was disposed of with the large components: the steam
25 generators and the pressurizer, something less than 10

1 percent. And about 90 percent of the nonspent fuel
2 radioactivity was disposed of with the reactor vessel. The
3 balance of the contamination on the Trojan site is in the
4 form of contaminated concrete, piping, tanks, storage and
5 radioactive waste treatment systems and similar pieces of
6 equipment.

7 Once the site is decontaminated, the site can be
8 released, as Maggie mentioned, for unrestricted use. It
9 doesn't mean that all of the buildings will be gone. It
10 means that what is left will not need to be restricted for
11 reasons of radiation safety.

12 The process of site release is a -- is a complex and
13 detailed one. PGE has broken some new ground in this area,
14 being the first large commercial power plant to undergo
15 decommissioning. There have been several of them a number
16 of years older that that have undergone decommissioning, but
17 this was a very different kind of decommissioning because of
18 the size of the facility, and they will use many different
19 measurements throughout the site and a sophisticated
20 computer model to determine the potential pathway exposures
21 to the public once the site is unrestricted. And based on
22 their measurements and on the computer modeling, the
23 company, along with the regulatory agencies will decide when
24 the site is ready for unrestricted release.

25 Maggie also asked me to talk about the difference

1 between storing spent nuclear fuel in the spent fuel pool,
2 as it is today, and storing it in dry spent fuel casks. Let
3 me explain those a little bit. Since the plant began
4 commercial operation, spent nuclear fuel which comes out of
5 the plant -- an individual fuel bundle stays in the reactor
6 for about -- in Trojan's case for about three years. Every
7 year they had an annual refueling outage at which time about
8 a third of the reactor core was removed, having spent three
9 years in the reactor, and placed in the spent fuel pool.

10 The spent fuel pool is a water cooling system. It
11 has about eight-foot thick foundation built on basaltic
12 bedrock. The plant itself is built on a bedrock outcropping
13 next to the Columbia River. It's got about five-foot thick
14 concrete walls. It maintains about 20 feet of water over --
15 at all times over the top of the spent fuel. The water
16 provides not only cooling capacity, because, as these spent
17 fuel bundles come out of the reactor, their degree of
18 radioactivity is high enough that they generate a great deal
19 of heat, but it also provides for the shielding. You can
20 walk up to the edge of the spent fuel pool, look down
21 through ultra-pure water that is a boric acid solution, and
22 you can see the top of the spent fuel bundles and the racks
23 that hold them.

24 The spent fuel pool has active pumping cooling and
25 purification systems. That's the main -- other than the

1 difference between wet and dry -- that's the main difference
2 between storing spent fuel and spent fuel pool -- I'm going
3 to trip over that phrase, I know I am -- and storing it in
4 dry concrete casks. The spent fuel pool relies on active
5 cooling and maintenance in order to maintain its
6 capabilities. Once the spent fuel is welded into stainless
7 steel cylinders and placed inside concrete silos or concrete
8 casks, it's basically a passive protective and cooling
9 system.

10 Water is a better heat transfer medium than air
11 convection, and as long as the fuel is less than five years
12 out of the reactor, it must be cooled with water. All of
13 the spent fuel at Trojan is greater than five years out of
14 the reactor, having been closed in 1993. So this an
15 appropriate spent fuel storage medium for fuel of this age.

16 The dry casks are massive structures. They provide
17 not only radiation shielding capability with about 21 inches
18 of concrete, high-density concrete as part of the concrete
19 cask, but they provide for a very robust structurally sound
20 storage medium. These concrete casks are placed on a
21 concrete pad that's about 18 inches thick, and, as I recall
22 seeing it before the concrete was poured, I think it has as
23 much rebar in it as it has concrete. And this system is
24 designed with enough mass and enough structural stability to
25 withstand any credible earthquake.

1 The spent fuel pool was also designed to withstand an
2 earthquake, but being open at the top, it was certainly less
3 contained, if you will, than a dry concrete cask system.

4 I want to talk a little bit about air and water
5 pathways of release of radioactive materials. A spent fuel
6 pool is open to the environment. As I mentioned, you can
7 walk up to the edge of it and you can look through the water
8 and you can see the tops of the spent fuel assemblies. And
9 it's housed in an industrial building. There are, because
10 of -- because of the nature of spent nuclear fuel, the
11 temperatures and pressures inherent in a commercial nuclear
12 reactor are such that on the order of one half to one
13 percent of the spent fuel pins that make up a fuel assembly
14 that are sealed when the fuel assembly goes into the reactor
15 become unsealed. That provides a small but a measurable
16 pathway for radioactive materials to be released into the
17 water of the spent fuel pool, hence the radioactive waste
18 treatment systems that are built into that storage material.

19 COMMISSIONER REEVE: Excuse me. Did you pens?

20 MR. STEWART-SMITH: Pins.

21 COMMISSIONER REEVE: Pins.

22 MR. STEWART-SMITH: They're called pins. Each fuel
23 assembly contains 144 pins that are about a centimeter in
24 diameter and about 12 feet long, making up a fuel assembly.
25 held together with brackets. But for a commercial nuclear

1 reactor, the need to maximize surface area to transfer the
2 heat from the fuel to the water surrounding it means you
3 need a lot of small pins rather than one large fuel rod.
4 You'll often hear people talk about nuclear fuel rods.
5 Well, the actual fuel assemblies for a commercial reactor
6 are a 12 by 12 array of about one-centimeter diameter zircon
7 tubes -- excuse me, zirconium alloy tubes filled with
8 ceramic uranium fuel.

9 COMMISSIONER REEVE: Okay, so there -- you said some
10 percentage of them -- of those -- are those the little tubes
11 that actually --

12 MR. STEWART-SMITH: The tubes. Correct.

13 COMMISSIONER REEVE: Some percentage leak or --

14 MR. STEWART-SMITH: One or something less than one
15 percent. They're sealed at each end. They're -- they're
16 spring loaded at each end to keep the fuel pellets
17 themselves held together and held in place, but in fact the
18 seals at the ends of some small percentage of them become
19 unsealed because of -- because of the conditions inherent in
20 the core of a commercial reactor.

21 COMMISSIONER REEVE: Now, if that happens, what --
22 what is it that escapes? Is it actual physically the fuel
23 or is it radiation or what --

24 MR. STEWART-SMITH: It's not the pellets themselves.
25 And certainly there's a great deal of radiation that can

1 escape from the fuel pins, radiation being either high
2 energy photons or particulate alpha particles, beta
3 particles, different kinds of radiation. Some of that can
4 escape from the fuel assemblies themselves.

5 What I'm talking about is a small amount of fission
6 products. These are the -- usually radioactive isotopes
7 left over from an individual atom or, in this case,
8 countless individual atoms of uranium undergoing nuclear
9 fission, becoming two smaller atoms. Some of those are
10 gaseous in nature: Isotopes of krypton and xenon. Many of
11 them -- most of them are not, but in any case, once the seal
12 in the end of one of those spent fuel pools begins to leak,
13 the annular space around -- between the zirconium tubing and
14 the fuel pellets themselves can become filled with water,
15 become contaminated, and a small amount of it can leak out
16 through the leak in the seal at the end of the tube.

17 COMMISSIONER REEVE: Now, during this act that you
18 described -- the current storage is kind of an active system
19 in terms of the water being filtered and whatnot. Is there
20 a system that actually is able to remove that from the
21 water --

22 MR. STEWART-SMITH: Yes.

23 COMMISSIONER REEVE: -- as it circulates?

24 MR. STEWART-SMITH: Yes. There are radioactive waste
25 treatment systems that remove the contamination that is

1 dissolved in the water; also remove the excess heat from
2 that water and transfer it to another system, another
3 industrial heat removal system (indiscernible) in the plant.

4 So those isotopes can be removed. There are,
5 however, as I mentioned, some small amount of those isotopes
6 that are gaseous in nature, and once they're released into
7 that cooling water, the spent fuel pool may become airborne
8 in the gaseous space above the spent fuel pool itself.

9 So there is a pathway, however, vanishingly small it
10 might be. During normal storage of spent fuel for a small
11 amount of radioactive material to be released into the
12 cooling water and into the air surrounding the spent fuel
13 pool all of which is tightly regulated under federal and
14 state rules.

15 CHAIR EDEN: Excuse me, but that creates -- taking
16 the radioactivity out of the water in the pool then creates
17 another repository of --

18 MR. STEWART-SMITH: A more --

19 CHAIR EDEN: -- contamination.

20 MR. STEWART-SMITH: A more concentrated low-level
21 radioactive waste which is in turn disposed of at our
22 regional commercial low-level radioactive waste site.

23 CHAIR EDEN: So it does ultimately become low level
24 through that -- through the systems that --

25 MR. STEWART-SMITH: Correct.

1 CHAIR EDEN: -- pull it out of the water?

2 MR. STEWART-SMITH: Correct.

3 CHAIR EDEN: In the most simple terms.

4 MR. STEWART-SMITH: The spent fuel itself is known as
5 high-level radiation.

6 CHAIR EDEN: Right.

7 MR. STEWART-SMITH: But any resulting contamination
8 or treatment system that works with the cooling water, any
9 radioactive material resulting from that is -- is low level.

10 CHAIR EDEN: Thanks.

11 MR. STEWART-SMITH: As I -- as I mentioned there are
12 small amounts, however vanishingly small, of radioactive
13 material released from the spent fuel pool. In contrast, a
14 -- a dry spent fuel storage system, the fuel has been -- has
15 been vacuum dried and sealed inside a stainless steel
16 container known -- you'll see references to it in some of
17 the material Maggie has supplied you -- known as a basket.
18 For the life of me I don't know why they would could
19 something a basket. But if you see that term, that's what
20 they're talking about.

21 The walls are about three-quarters of an inch thick
22 stainless steel; there's a shielding and a structural lid
23 that are -- that are more massive yet. And these are welded
24 on so that the spent fuel becomes sealed inside this
25 stainless steel cylinder known as a basket, and the

1 atmosphere around it, rather than being atmosphere as is
2 around us, is replaced with an atmosphere of helium. The
3 reason for that is that helium is a very good heat transfer
4 gas, unlike nitrogen which is the bulk of the air around us.

5 So the dry spent fuel storage system is sealed, and
6 even if the spent fuel pool was remarkable effective at --
7 at isolating radioactive materials from the environment, the
8 dry spent fuel storage system theoretically, at least, is
9 probably more effective yet, because of the nature of it
10 being a dry storage medium and being welded shut.

11 In addition, under severe accident conditions,
12 because the dry storage casks are sealed and massive, they
13 should be able to withstand even more external forces, be
14 earthquake, be it some kind of intentional destructive
15 force. The dry spent fuel storage system is probably more
16 robust yet than the spent fuel pool that is in use at
17 Trojan.

18 Portland General Electric, let me briefly explain
19 what they have proposed. Let me preface that by saying that
20 this system has been -- has been reviewed by the Nuclear
21 Regulatory Commission, has been reviewed by the technical
22 staff at the Oregon Office of Energy, approved by Oregon's
23 Energy Facility Siting Council through a publicly accessible
24 process.

25 The applicant in their tax credit application, I

1 believe, claimed 36 storage baskets to use within the
2 concrete casks to store spent fuel. My understanding is
3 their -- their current plans are to build 34. They -- they
4 needed to leave themselves a little bit of flexibility
5 earlier on in the process, and the first number, some years
6 ago, is 36, but I believe there will be 34 double sealed
7 sealed canisters that serve a rather unique purpose in the
8 American nuclear industry: They are proposed to be both
9 storage baskets and transport baskets. The only difference
10 will be the shielding container that the basket is put into.
11 It'll be stored in these concrete casks on site until the
12 material is taken possession of by the U.S. Department of
13 Energy at which time the transfer system that the company
14 has built on site will be used to transfer the baskets in a
15 shielded condition from the storage cask into a transport
16 cask that will be loaded onto a rail car -- PGE being
17 fortunate to have a rail line running through the middle of
18 their plant site. They have easy access to rail. -- and
19 shipped to wherever the final spent nuclear fuel disposal
20 site will be for the country.

21 The baskets are about 15 feet tall, about five and a
22 half feet in diameter. The outside of the basket is made of
23 stainless steel, as I mentioned, and the internal structures
24 inside the cylinder are made of high carbon steel, coated
25 with a coating to prevent corrosion.

1 Each basket can store up to 24 spent fuel assemblies.
2 That's the assemblies of 144 fuel pins each. And after the
3 basket is loaded with the fuel assemblies, and all that
4 loading happens in the spent fuel pool itself, by the way,
5 so that the spent fuel can never be unshielded. It's much
6 too radioactive to ever be in an unshielded condition. So
7 the loading of the basket happens in the spent fuel pool. A
8 shield lid and a structural lid are welded in place.

9 The applicant has also built a fuel transfer station
10 and transfer cask assemblies. If they are going to
11 decommission the spent fuel pool, which is their intention,
12 once the independent spent fuel storage facility is
13 finished, they will decommission the spent fuel pool. They
14 have to have the ability in the unforeseen chance that there
15 is a leak of one of those baskets to be able to -- or damage
16 to one of the shield containers -- to be able to transfer
17 that basket to an interim shield and then finally into a new
18 shield. So that the transfer station and the transfer cask
19 assemblies are something that the regulatory agencies have
20 insisted beyond site if the spent fuel pool will no longer
21 be there, because it would serve similar purposes.

22 The transfer cask and the -- and the transfer station
23 will also be used when it comes time to ship the fuel off
24 site, transferring these baskets into a shipping cask.

25 When the basket is removed from the transfer cask,

1 it's placed inside the dry spent fuel storage, the massive
2 structure that I described before, the concrete cask, which
3 is seventeen and a half feet tall and eleven feet in
4 diameter. The cask is lined with carbon steel, and the
5 walls are 29 inches thick to provide the massive shielding
6 necessary to contain the spent fuel.

7 The casks will have their own temperature monitoring
8 systems because the easiest way to determine whether or not
9 all is well with this kind of a system is whether or not the
10 temperature is going up. If the temperature goes up, that's
11 some indication that the provision for natural convective
12 cooling is somehow been interfered with, whether it's debris
13 of some kind blowing into the vents at the bottom of the
14 storage cask, preventing air from moving up the channels and
15 out the top, or whatever it may be; that possibility is
16 monitored for.

17 When loaded, these casks weight about 145 tons. They
18 are -- there's an example of a cask over here, and you'll
19 see on one of the examples a -- I believe the one in the
20 middle has an air pallet on the bottom of it. An air pallet
21 is essentially an inflatable heavy rubber circle open at the
22 bottom; it's pressurized and then allows the cask to be
23 repositioned floating on a cushion of air. Strap it to a --
24 to a truck, if you will, and move it around the site
25 wherever they need it with the pressurized air pallets

1 inflated. It really is pretty amazing to see 100 pounds per
2 square inch move 145 tons, but it works.

3 Then the concrete casks are placed on the -- on the
4 storage pad, 170 feet by 105 feet, for its long-term storage
5 until the U.S. Government is prepared to take it.

6 That's pretty much my explanation and presentation on
7 the site. And at this point, I would be happy to answer any
8 questions the Commission would have.

9 CHAIR EDEN: Thank you. Questions or comments from
10 the Commission? Commissioner Van Vliet.

11 COMMISSIONER VAN VLIET: In the very last statement,
12 you said, when the U.S. Government was prepared to take it.

13 MR. STEWART-SMITH: Correct.

14 COMMISSIONER VAN VLIET: Is it -- have they had a
15 site really ready to go to accept these now at all in the
16 future?

17 MR. STEWART-SMITH: No.

18 COMMISSIONER VAN VLIET: They do not?

19 MR. STEWART-SMITH: No.

20 COMMISSIONER VAN VLIET: The Nevada thing still is up
21 in the air?

22 MR. STEWART-SMITH: It is -- the -- the U.S.
23 Department of Energy is preparing an acceptance document for
24 the President's signature. I don't believe that it's
25 actually been signed yet, but the U.S. Department of Energy

1 has made it clear they feel there is no fatal flaw with the
2 site. But the U.S. Nuclear Regulatory Commission must
3 license this site, and site licensing is -- is some years
4 off yet. I think an optimistic estimate of when that site
5 might be available will be sometime after 2012, 2014.

6 COMMISSIONER VAN VLIET: So to use the current Trojan
7 site, what you have to do is develop a series of these to
8 store for a long period of time with guarded --

9 MR. STEWART-SMITH: Right.

10 COMMISSIONER VAN VLIET: -- fence around it and
11 security and everything?

12 MR. STEWART-SMITH: Yes. That is PGE's plan. They
13 could have left the spent fuel in the spent fuel pool.
14 That's a perfectly adequate long-term storage system, but
15 because of its active components, it -- it requires
16 additional staff. It is a more detailed and expensive site
17 to maintain over time, and, as I mentioned the dry spent
18 fuel storage facility is more massive and is sort of
19 inherently passively safe.

20 COMMISSIONER VAN VLIET: The legislature in this last
21 session did not do anything, right, on this issue?

22 MR. STEWART-SMITH: To my knowledge there were --
23 other than -- other than the bill that was in to allow PGE
24 to continue to recover a portion of its investment from the
25 decommissioned plant, this session, I believe there were no

1 bills affecting storage of spent fuel on site.

2 Current state law requires that if spent fuel is
3 stored on site, it must be stored under the auspices of both
4 a license issued by a Nuclear Regulatory Commission and
5 site certified issued by the Oregon Energy Facility Siting
6 Council, (indiscernible), and we'll be maintaining those in
7 the future.

8 COMMISSIONER VAN VLIET: And when the people of the
9 State of Oregon voted to shut Trojan down, was there any
10 provision in that at all as to the responsibility for the
11 cost of the eventual decommissioning?

12 MR. STEWART-SMITH: Well, while there were three
13 votes that I remember, the question of which was whether
14 not to shut down Trojan, none of them passed. And I don't
15 believe any of them specifically dealt with the monetary
16 issues. They were fairly simple measures that required the
17 closure of the plant. They all were defeated by 60-40
18 percentages or better. So I don't -- I can't quote you
19 chapter and verse on those initiatives --

20 COMMISSIONER VAN VLIET: Okay.

21 MR. STEWART-SMITH: -- but I do not believe that
22 there were any financial --

23 COMMISSIONER VAN VLIET: That's my memory too.

24 MR. STEWART-SMITH: -- components to those. The
25 company may be able to answer that more competently than I

1 can.

2 COMMISSIONER REEVE: What -- just one. You mentioned
3 that there's a decommissioning plan that has been approved?

4 MR. STEWART-SMITH: Correct.

5 COMMISSIONER REEVE: That -- and that was approved by
6 EFSC?

7 MR. STEWART-SMITH: Yes.

8 COMMISSIONER REEVE: Okay. Does the NRC review that,
9 or is that really the State?

10 MR. STEWART-SMITH: The NRC reviewed and approved
11 that plan as well, although under current NRC rules that
12 have been promulgated after that approval, the Nuclear
13 Regulatory Commission has changed their policy so that they
14 no longer require a plan for NRC approval. They have a set
15 of conditions that must be met by a utility with a closed
16 nuclear reactor, and they will inspect against those
17 conditions, but they no longer, for the next plant, for
18 example, that closes will no longer require specific
19 approval of the decommissioning of the plant, is my
20 understanding.

21 COMMISSIONER REEVE: Okay, now, is the plant -- is
22 the plan tied to the site certificate somehow?

23 MR. STEWART-SMITH: Yes. The plan -- the plan
24 recognizes the existence of both state requirements and
25 federal requirements (indiscernible). Most of our

1 requirements for the Trojan plant are in administrative
2 rules. The site certificate itself is a one-page document
3 signed by Governor McCall in 1971 and had no conditions.
4 But it did require that the company comply with all future
5 rules of the (indiscernible).

6 COMMISSIONER REEVE: Okay. So this decommissioning
7 plan, does it require this dry storage?

8 MR. STEWART-SMITH: The decommissioning plan, as put
9 together by the company, said they were going to do that,
10 and the company has held essentially to what they said they
11 were going to do. While there is no regulatory requirement
12 for a dry spent fuel storage facility, either at the state
13 or the federal level, other than tying the company to the
14 commitments they made, the Nuclear Regulatory Commission has
15 made it very clear that their preference for a closed
16 reactor is dry interim storage of spent fuel, rather than an
17 active spent fuel pool storage. They have not made that a
18 mandatory requirement but they've made it clear that that's
19 their strong preference.

20 COMMISSIONER REEVE: Okay, but in terms of the need
21 for the company to meet its obligations to the Office of
22 Energy, does PGE have to move forward and construct this dry
23 storage facility?

24 MR. STEWART-SMITH: They do today because they made
25 the commitment to do it. And we will hold them to their

1 commitment. Save for that, the Energy Facility Siting
2 Council has no requirement for dry spent fuel storage per
3 se.

4 COMMISSIONER REEVE: Per se, but if they were --
5 obviously they could come in and, with a proposal for a
6 modification or amendment or some other type of storage,
7 you'd have to review it --

8 MR. STEWART-SMITH: Correct.

9 COMMISSIONER REEVE: -- but as it stands today,
10 they've committed, and it's an enforceable commitment?

11 MR. STEWART-SMITH: Correct.

12 COMMISSIONER REEVE: Okay. And the criteria under
13 which that plan was approved, I take it they must be -- a
14 number of criteria, a number of factors, public interest,
15 health and safety, all those sorts of things, including
16 water and air pollution?

17 MR. STEWART-SMITH: Correct.

18 COMMISSIONER REEVE: But not solely limited to water
19 and air pollution?

20 MR. STEWART-SMITH: Correct. And those are contained
21 in Condition 26 or OAR Chapter 345, rules of the Siting
22 Council.

23 COMMISSIONER REEVE: Okay.

24 MR. STEWART-SMITH: The Siting Council promulgated
25 criteria by which a decommissioning plan would be reviewed

1 and approved. Then the company submitted the
2 decommissioning plan; that review was done; staff wrote a
3 review of the plan and a recommendation to Council, and then
4 Council did approve the decommissioning plan. By rule
5 (indiscernible).

6 COMMISSIONER REEVE: Thanks.

7 CHAIR EDEN: Do we have any idea, or is appropriate
8 to ask at this point, what the relative cost of the two
9 systems is? Given -- given a finite date which I realize
10 doesn't exist for removal -- final removal of the spent
11 fuel?

12 MR. STEWART-SMITH: The company's decommissioning
13 plan does keep track of both costs of decommissioning and
14 ongoing operation and maintenance costs of both the plant
15 and the independent spent fuel storage installation. And it
16 -- the annual costs of maintaining the spent fuel pool are
17 in that -- in that cost matrix is pegged, I believe, at
18 about \$10.4 million a year. The cost of maintaining the
19 independent spent fuel storage installation is pegged at
20 about \$3.6 million a year. So while there's a higher
21 initial cost, there is some point at which the costs are
22 even and -- and/or, if stored on site long enough, the cost
23 of storage in the spent fuel pool would have been more
24 expensive.

25 CHAIR EDEN: And we as a State have no control move

1 when --

2 MR. STEWART-SMITH: No.

3 CHAIR EDEN: -- the federal facility is going to be
4 ready?

5 MR. STEWART-SMITH: We do not. PGE has estimated
6 that the last of their spent fuel will be off site in year
7 2018. Given U.S. Department of Energy record to meeting
8 their deadlines, that may be optimistic in itself. It seems
9 (indiscernible).

10 COMMISSIONER VAN VLIET: At the time that this fuel
11 is safely stored, the value of that property now becomes
12 both useable as real estate, and has it got any other
13 projected uses at this current time?

14 MR. STEWART-SMITH: There are certainly possible uses
15 for the site. It is currently a site served with a -- an
16 active water right. It's a site with a switchyard and a 500
17 kilovolt power line to it. It has natural gas service on
18 Highway 30 right outside the front gate of the plant. So
19 it's a site that is situated both geographically and
20 electrically, being near the major load centers of the state
21 as an advantageous site for a power plant.

22 The company has considered putting in natural gas
23 combustion turbines on that site. They have not made the
24 decision yet to do that, but I believe it's still an option
25 they are holding open. It is a good site for a power plant.

1 And they certainly -- given the expected load growth over
2 the next 20 years, in order to maintain an healthy
3 electrical transmission system, they would be well served by
4 having electrical resources on the west side of the Cascades
5 rather than the most on the east side of the Cascades with a
6 line -- long -- very long transmission lines.

7 So, it's very possible that that site could be used
8 in the future as a power plant again. The company has also
9 offered to the Department of -- the State Department of
10 Parks to delegate on the order of 500 acres of the 640 or so
11 acre site as a state park which they currently maintain much
12 of it as a state park and wildlife refuge. But they are
13 going to be moving most of their equipment off the site,
14 then they'll looking for somebody else to take over that
15 responsibility.

16 So there are possible multiple uses for the site..
17 But for the area inside the fence, it may be in the future
18 redeveloped into a power plant, probably fueled by natural
19 gas.

20 COMMISSIONER VAN VLIET: That's interesting, because
21 in the '90's -- late '80's and '90's all we heard from the
22 legislature was the abundance of electric power in the
23 Pacific Northwest power grid, and all of a sudden now we're
24 hearing that there's a substantial shortage, which means the
25 advocates who were trying to shut down all the nuclear

1 plants in the world at the same time you're trying to get
2 rid of dams and the hydroelectric part didn't quite have the
3 scenario right as to what our needs were actually going to
4 be as the population increased.

5 So now we're faced with the fact that we not only
6 have to store this material, we no longer have the nuclear
7 plant to provide the power which doesn't give us an option
8 to do anything away with dams, but we'll have to bring
9 additional power plants back on line.

10 MR. STEWART-SMITH: That is correct. There were power
11 surpluses in the Pacific Northwest in the 1980's, but they
12 were fairly well gone by 1992. And given the anticipated
13 restructuring of the electric industry, new power plants
14 will probably come on line as closely as possible to match
15 load growth rather than building large -- very, very large,
16 like Trojan was an 1130 megawatt electric generating station
17 -- that's twice as big -- over twice as big as any power
18 plant left in the state. Most of the plants that are being
19 proposed now are either in the 260 megawatt range or the 500
20 megawatt range. And they'll come on line, you know, in a
21 fashion that the market dictates they can build the plant
22 and begin with a profit and not any time before that.

23 CHAIR EDEN: Other questions or comments? Are there
24 any questions of the company representatives?

25 COMMISSIONER McMAHAN: Madam Chair --

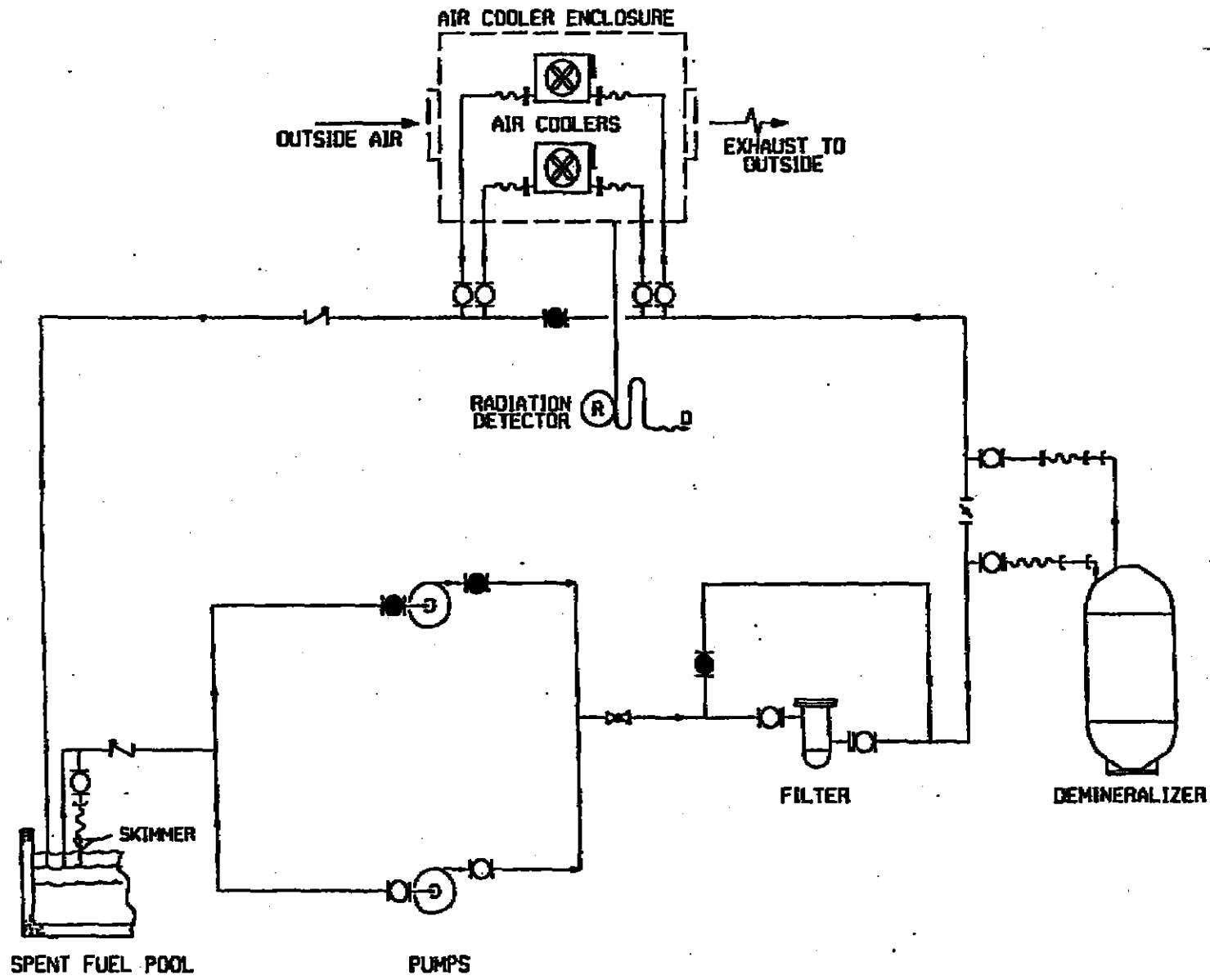


Figure 3.3-4 Modular Spent Fuel Pool Cooling and Cleanup System

**Lansing Dusek, Manager
Nuclear Regulatory Affairs**

Lansing "Lanny" Dusek has over 18 years of experience with nuclear power operations, engineering and licensing. He holds a BS in nuclear engineering and is a professional engineer registered in Oregon and Texas. Following college he served in the U.S. Navy as an officer aboard a nuclear-powered submarine where he was also qualified in nuclear weapons. His experience in the nuclear power utility industry includes engineering responsibility for a spent fuel pool cooling and cleanup system. He is currently working for PGE at Trojan, managing a department responsible for the licensing and regulatory compliance of the nuclear power plant and the independent spent fuel storage installation (ISFSI).

**Wayne Lei, Director
Environmental Policy**

Dr. Lei has over 25 years experience with the nuclear power fuel cycle, in academic, public and private sectors. For the last 12 years he has worked for PGE both at Trojan in Radiation Protection and as Corporate Director for Environmental Policy. He holds a BA and MS in biological science and the PhD in Environmental Health. His doctoral research focused on the long-term environmental mobility of thorium and plutonium elements due to high level nuclear waste disposal in deep geologic repositories. Since 1986, Dr. Lei has been certified in the comprehensive practice of health physics by the American Board of Health Physics.

**Stephen M. Quennoz, Vice President
Nuclear and Thermal Operations**

Stephen "Steve" Quennoz has over 31 years of experience with nuclear power operations and executive level management. He is a 1969 graduate of the U.S. Naval Academy, where he earned a BS in applied science. During his career he has added MS degrees in nuclear engineering, mechanical engineering, and operations management, and he is a registered professional engineer. He also holds an MBA in finance. Prior to joining PGE, Mr. Quennoz was the Plant General Manger of Arkansas Power and Light Company's ANO nuclear station and Plant Superintendent of Toledo Edison Company's Davis-Besse nuclear station. He also served in the U.S. Navy as a naval officer in the nuclear submarine program and retired with the rank of Captain in the U.S. Naval Reserve. He was hired by PGE in 1991 as Site Engineering Manager of the Trojan nuclear plant. He then served as Plant General Manager and Trojan Site Executive before assuming his current position in 1998, where he oversees the decommissioning of the Trojan nuclear plant and the operation of the Trojan independent spent fuel storage installation (ISFSI). He also oversees the operation and maintenance of PGE's thermal power plants, including the Boardman Coal Plant, Beaver Combustion Plant, Coyote Springs I & II Combined Cycle Plants and one in Colstrip, Montana, which is partly owned by PGE.

Portland General Electric Company (PGE)

Presentation to

Oregon Environmental Quality Commission

Regarding Tax Credit Application No. 5009

for the

**Trojan Independent Spent Fuel Storage
Installation (ISFSI)**

**Roseburg, Oregon
September 29, 2000**

Portland General Electric Company (PGE) Representatives

- ◆ **Stephen Quennoz**
Vice President, Nuclear and Thermal Operations
- ◆ **Wayne Lei**
Director, Environmental Policy
- ◆ **Lanny Dusek**
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- ◆ **Denise Saunders**
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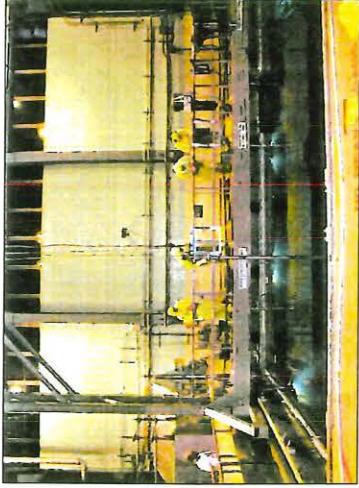
ISFSI

Independent Spent Fuel Storage Installation

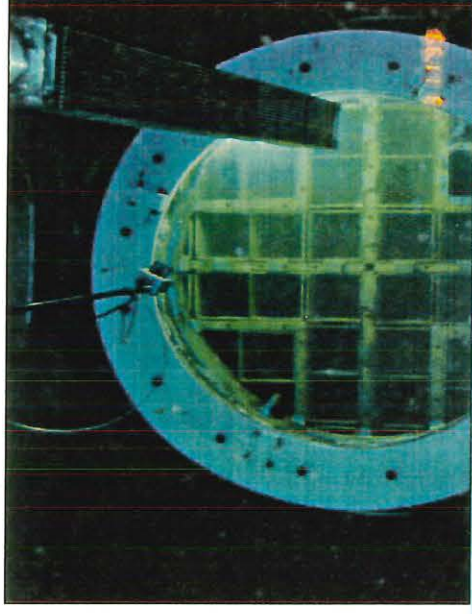
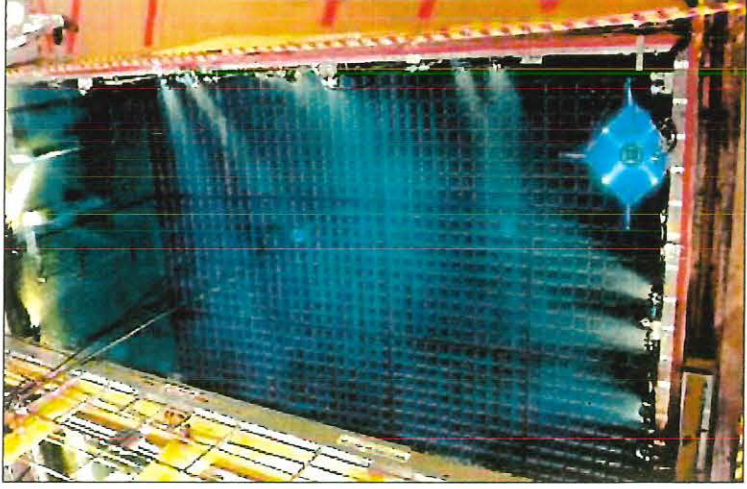


- ◆ Needed until US Department of Energy fulfills agreement to take possession of spent fuel waste
- ◆ Passive storage for spent fuel waste that is packaged in sealed containers ready for disposal

Spent Fuel Pool



- ◆ Nuclear Power Plant Operational Component
 - Temporary New and Spent Fuel Storage
 - Reactor Refueling



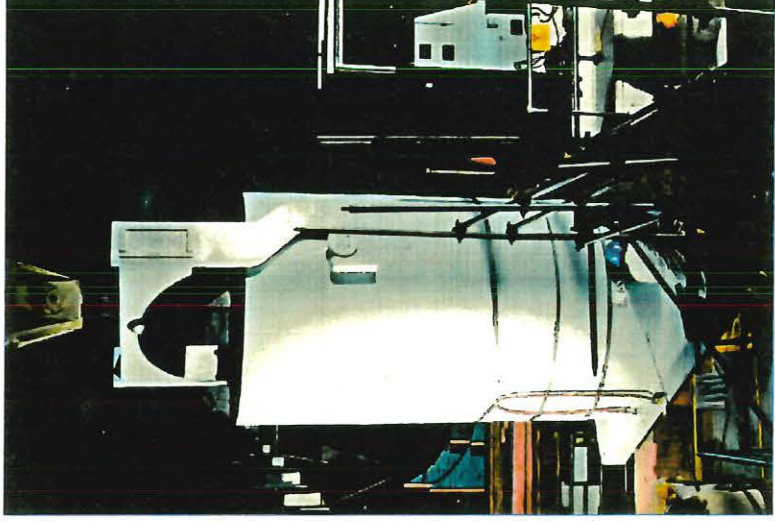
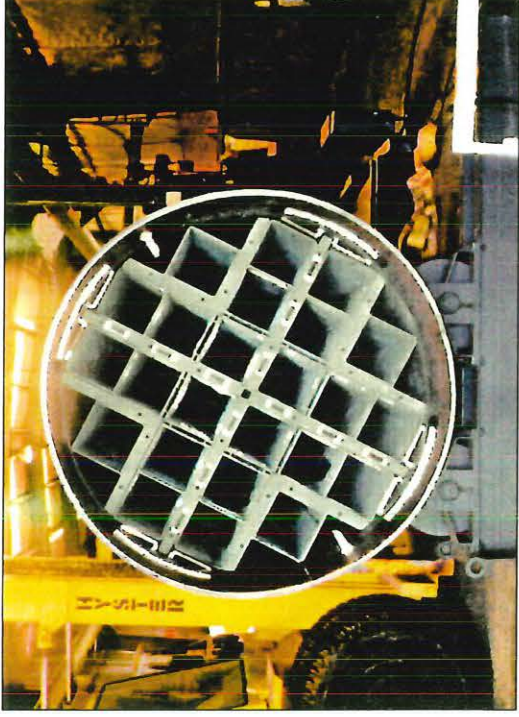
ISFSI Does Not Compare to Spent Fuel Pool

- ◆ **No evidence to justify comparison of facilities with two very different purposes**
 - ISFSI - passive dry storage pollution prevention and disposal system
 - Pool - operational component of plant forced into service to store fuel due to DOE failure to perform
- ◆ **DEQ agrees the ISFSI is not a replacement facility for the spent fuel pool**
- ◆ **DEQ cites no statute or rule requiring a comparison**

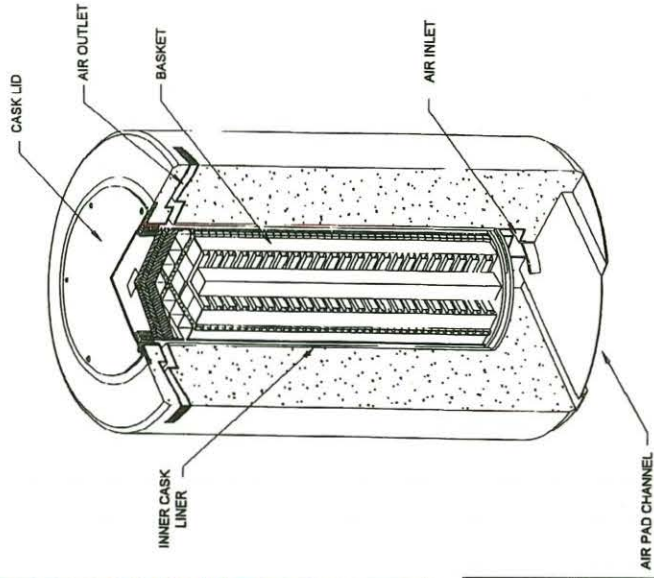
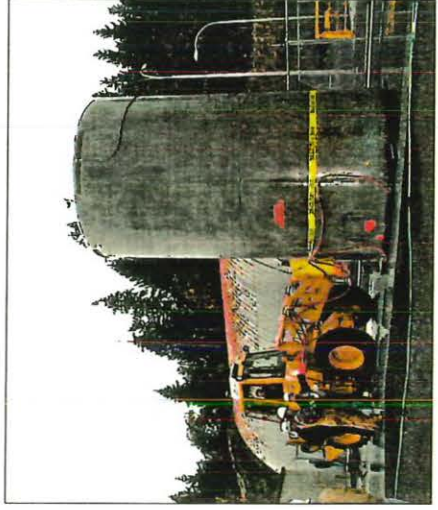
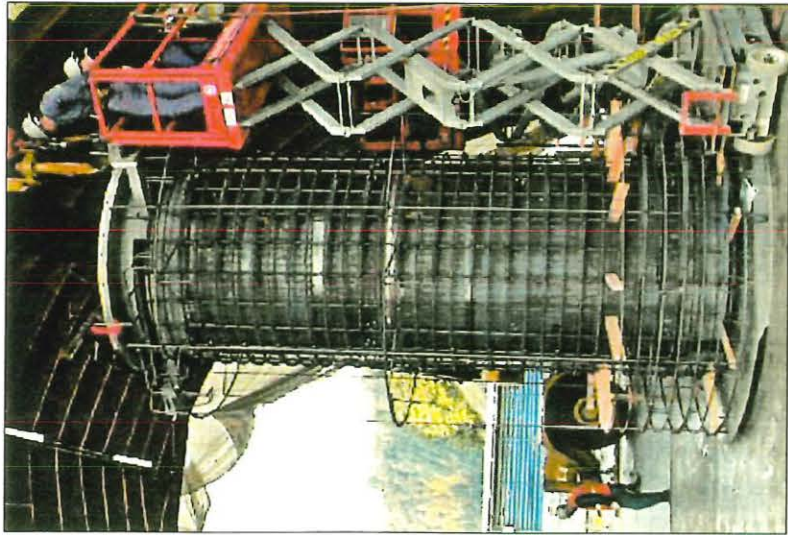
IF ISFSI Must Be Compared to Spent Fuel Pool

- ◆ The evidence in the record establishes that the ISFSI reduces a substantial quantity of air and water pollution when compared to the spent fuel pool
 - The ISFSI eliminates 50 curies currently of radioactive gasses and tritium released annually into the atmosphere by the spent fuel pool
 - The ISFSI would eliminate both the source and the means of production of radioactive substances
 - The ISFSI eliminates need to dispose of approximately 1200 gallons of contaminated resin annually as solid waste
 - The ISFSI prevents pollution from catastrophic occurrences

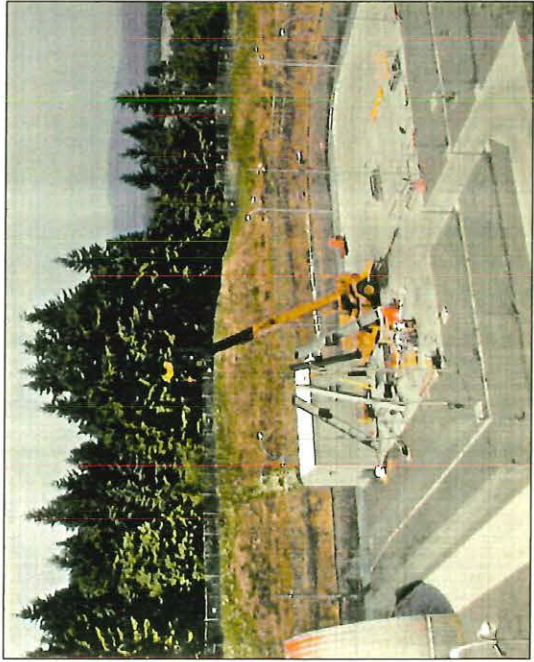
ISFSI PWR “Basket” and Transfer Cask



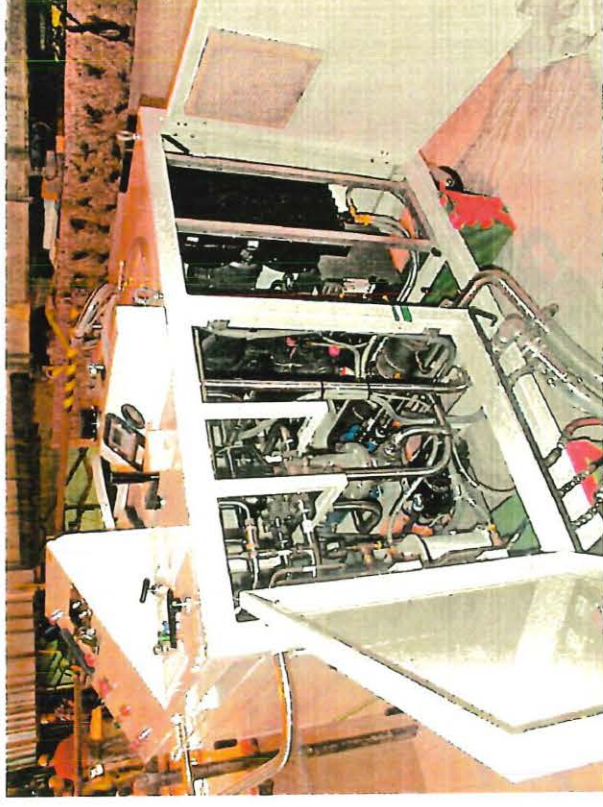
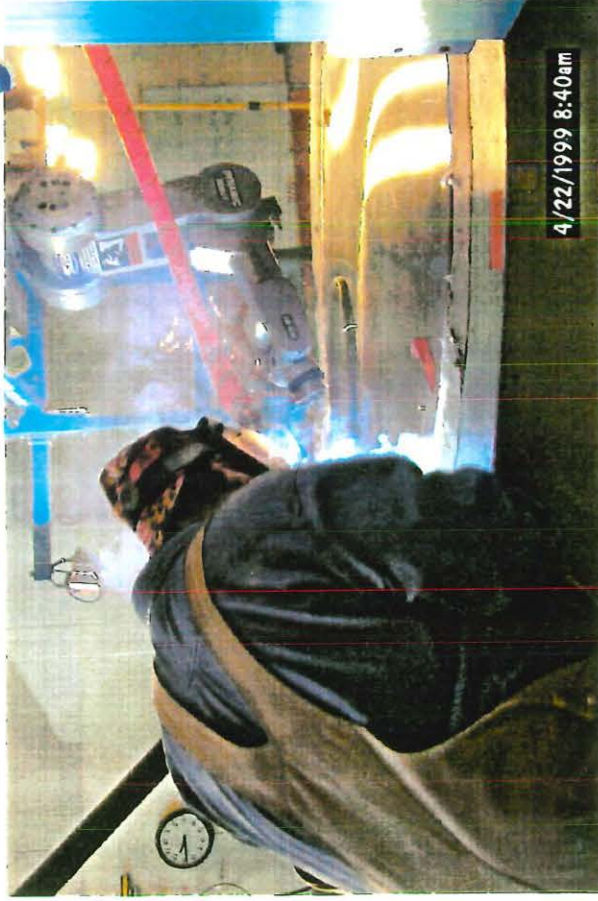
ISFSI Concrete Cask



ISFSI Pad and Transfer Station



ISFSI Welding and Vacuum Drying Systems



ISFSI Sole Purpose Is Pollution Control

- ◆ **ISFSI meets ORS 486.155(1)(a)(B) in that it's sole purpose is to prevent, control or reduce a substantial quantity of pollution**
- ◆ **ISFSI meets OAR 340-016-0025(2)(a) in that the prevention, control or reduction is accomplished by the disposal or elimination of industrial waste and the use of treatment works for industrial waste**
- ◆ **ISFSI meets OAR 340-016-0025(2)(g) in that it will be used to detect, deter, or prevent spills or unauthorized releases**

ISFSI Accomplishes Pollution Control As Provided for in Rules & Statutes

- ◆ **The ISFSI accomplishes pollution control by disposal of industrial waste and the use of treatment works for industrial waste**
 - **The ISFSI is designed for the pollution-free disposal of high level waste**
- ◆ **The ISFSI accomplishes pollution control because it is used to detect, deter, or prevent spills or unauthorized releases by removing air contaminants**

Each ISFSI Component Is An Integral Part of the Facility

- ◆ Compare ISFSI components to ORS 468.155(2)(d), which states in part:

(3) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” does not include:

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

- (A) Office buildings and furnishings;
- (B) Parking lots and road improvements;
- (C) Landscaping;
- (D) External lighting;
- (E) Company or related signs; and
- (F) Automobiles.

ISFSI Sole Purpose Is Pollution Control

- ◆ **The purpose is not to comply with regulatory requirements (NRC, EPA, DEQ, OOE)**
- ◆ **The purpose is not for economic benefit**
- ◆ **The purpose is not to lower insurance costs**
- ◆ **The purpose is not for decommissioning**
- ◆ **The purpose is not to gain goodwill**

Conclusion

- ◆ **The Trojan ISFSI meets both the letter and the spirit of the tax credit law for pollution control**
- ◆ **PGE has provided substantial evidence to support this position, because...**
- ◆ **The Commission's decision must be supported by substantial evidence**

ISFSI EQC Tax Credit Presentation
9/29/2000

Outline of Key Points

- 1) The Commission's Decision Must be Supported by Substantial Evidence.**
- 2) There is no Evidence to Justify Comparing The ISFSI To The Spent Fuel Pool.**
 - a) DEQ cites no statute or rule which would warrant comparing the amount of pollution controlled by two different facilities. DEQ concedes that the ISFSI is not a replacement facility for the SFP.
 - b) The ISFSI performs a different function than the SFP.
 - c) The ISFSI is also integral to ultimate disposal of the spent fuel (i.e. the first step in a long journey to the landfill) whereas the spent fuel pool serves no disposal function.
- 3) The Evidence in the Record Establishes that the ISFSI Reduces A Substantial Quantity Of Air And Water Pollution When Compared To The Spent Fuel Pool.**
 - a) Even though the SFP is safe and PGE is within the limits for human exposure, the ISFSI will still result in a significant reduction of pollution. As we pointed out in our 8/16/2000 letter, it will eliminate the approximately 50 curies currently of radioactive gasses and tritium that are released annually into the atmosphere by the SFP.
 - b) 50 curies is significant.
 - i) The guiding principle behind radiation protection is found in 10 CFR 20. It requires that radiation exposures should be kept "As Low As Reasonably Achievable (ALARA)," taking into account economic and social factors. It is also a concept that DEQ is directed to follow. See ORS 468A.010(1); ORS 468B.020(2); ORS 468.160. The ALARA approach means that radiation doses for workers and the public are kept as far below the regulatory limits as is practical. The trend has been historically to go lower and lower on exposure limits. Current US standards allow doses that are higher than those recommended by the International Committee on Radiation Protection (ICRP), and the Chairman of the NRC in a speech last year stated, "For the future, the NRC will continue to consider carefully the recommendations of the ICRP."¹ The purpose of DEQ's tax credit program is to encourage businesses to go beyond what is required by law. This is what PGE is doing.
 - ii) Failure to control the spent fuel pollutant would result in a significant effect on the environment. If the pollutant were exposed to the environment, the direct

¹ A REGULATORY PERSPECTIVE ON RADIATION PROTECTION: NUCLEAR LAW AND RADIATION SCIENCE - DOES THIS COMBINATION WORK? By The Honorable Greta Joy Dicus, Chairman U.S. Nuclear Regulatory Commission to the International Nuclear Law Association, Nuclear Inter Jura '99, Washington, D.C. October 25, 1999

radiation exposure alone would literally cook living plant and animal tissue near the fuel. Over time, the breakdown of the fuel assemblies would release their highly radioactive contents directly into the air, water and soil. The sole purpose of the ISFSI is to control this pollutant. If the ISFSI is to be compared to the spent fuel, then tritium and krypton gas releases will continue to occur from the spent fuel pool that would not occur from the ISFSI. Tritium is a radioactive isotope of hydrogen that easily combines chemically with oxygen as water. Water contaminated with tritium is released from the spent fuel pool primarily as vapor that enters the atmosphere where it can remain in vapor form or recondense as liquid. Water contaminated with tritium acts chemically no different than normal water, thus it can be inhaled, ingested and absorbed into the body. Krypton is a gas, which when radioactive can result in a dose from inhalation or via direct exposure to the skin.

- c) The construction of the ISFSI will also eliminate the need to dispose of approximately 1200 gallons of contaminated resin (205 cubic feet packaged volume) as solid waste per year over a 15-20 year period. The only response that DEQ has provided to this is that components of the ISFSI will also be contaminated and disposed of as solid waste. DEQ ignores the fact that it will be at least 10-20 years before the ISFSI components will need to be disposed of while the contaminated resin produced by the SFP necessitates approximately 4 trips a year to the landfill. More importantly, the volume of solid waste stemming from the ISFSI will be lower than that generated by the SFP. The vacuum drying and welding systems together will result in 400 cubic feet packaged volume and other miscellaneous items (gap flush system with resin and decon materials) requiring disposal will result in an additional 350 cubic feet packaged volume. This results in a total disposal volume of 750 cubic feet compared to the 3,075 to 4,100 cubic feet of contaminated resin that would be disposed of over a 15 to 20 year period if the spent fuel were left in the spent fuel pool.
- d) The ISFSI also prevents a significant amount of pollution that would occur in a catastrophic event.
 - i) A spent fuel assembly is a potentially significant source of radioactive releases due to the concentration of radionuclides inside the fuel rods and the potential release pathway. The most significant credible accident that could occur while spent fuel is in the SFP is a fuel handling accident where a fuel assembly is either dropped or struck, in which the integrity of some of the fuel rods in the assembly could be compromised, resulting in a release of the gaseous fission products from the gap space in those rods. Once the spent fuel is sealed inside the ISFSI baskets, there is no credible mechanism for creating a path to the environment.
 - ii) The Commission's approval would not expand the tax credit program because the precedent is already there, e.g., DEQ approved credits for double hulling of barges and diapering of substations – the purpose of these facilities is to prevent releases in the event of catastrophic occurrences.

4) The Evidence in the Record Establishes that the Sole Purpose Of The ISFSI Is For Pollution Control.

a) The purpose Of the ISFSI is not cost savings.

- i) DEQ's calculations of cost savings do not take into account the capital cost of construction; when this is considered, there may be no cost savings. In constructing the ISFSI, PGE could exceed the rational payback periods.
- ii) PGE submitted affidavit: "PGE would construct the ISFSI even if it would not result in cost savings to PGE."

b) PGE has submitted letters from experts establishing that the sole purpose of the ISFSI is pollution control. There is no expert opinion attesting otherwise.

c) DEQ misapplies the statute when it considers whether each individual component makes a significant contribution to pollution control.

ORS 468.155(2)(d) references the following items: office buildings and furnishings; parking lots and road improvements; landscaping; external lighting; company or related signs; and automobiles. These are all stand-alone components. The parts of the ISFSI are not anything like these. Each component that we have included in our application is integral to the whole (e.g. the storage casks support the baskets and are essential to the structural integrity of the facility). PGE did not ask for a credit for the parking lot, fence, etc.

d) The sole purpose is not for decommissioning. DEQ's assertion to the contrary is without merit. DEQ concludes correctly that there is no regulatory requirement for PGE to install a dry storage system². Indeed, 10 CFR 50.82(a)(3) allows 60 years from the date of permanent cessation of operations to decommission the plant. Therefore, PGE is not driven to create the ISFSI to meet a deadline for decommissioning the plant. The objectives of decommissioning (i.e., to remove the facility safely from service and reduce residual radioactivity to a level that permits release of the property) has in fact already been substantially accomplished. To date over 80% by volume of the low level waste projected to result from decommissioning has been removed from the site, representing 99.9% of the non-fuel radioactivity at the site. With a license amendment most of the site could be released while the spent fuel remains in the spent fuel pool. Therefore, PGE is also not driven to create the ISFSI to meet the objectives of decommissioning the plant.

e) DEQ's conclusion that there will be policy implications because the Commission will be approving shielding is wrong. PGE is not asking the Commission to approve the facility because it provides shielding. Rather we are asking for approval because the casks are integral to the purposes of the facility. The shielding component is fortuitous.

² Memorandum to EQC from Langdon Marsh, 9/1/2000, p. 7.

- f) DEQ's alleged policy implication for approval of the transfer station as a material handling station is also wrong. The transfer station is an essential component of the disposal process. The EQC has approved similar types of components in the past, e.g. ash handling system at Boardman (certificate #1761).

5) The ISFSI Accomplishes Pollution Control In The Manner Provided For In the Statute and Rules.

a) The ISFSI accomplishes pollution control in the manner provided for under OAR 340-016-0025(2)(G) because it is used to detect, deter, or prevent spills or unauthorized releases.

- i) DEQ acknowledges that this rule was in effect at the time that we filed our application and DEQ has stated that the rules in effect at that time should be used to evaluate our application
- ii) The Oregon Attorney General's Office has advised DEQ that agencies must presume their own rules to be valid.³
- iii) The only reason DEQ offers for why we do not meet the requirements of this rule is that we have not demonstrated that the probability of unauthorized releases into the environment is more than infinitesimal. Although the probability of a spill or unauthorized release may be small, the impacts would be devastating. Because the ISFSI detects, deters and prevents releases it falls squarely within the requirements of the rule.

b) The ISFSI also accomplishes pollution control by removing air contaminants. The ISFSI meets the definition of "air cleaning device" because it removes and reduces air contaminants. DEQ incorrectly reads the statute to require the removal and reduction "prior to discharge to the atmosphere." The words "prior to discharge to the atmosphere" refer to "rendering the air contaminants less noxious" not to removing or reducing air contaminants.

c) The ISFSI also accomplishes water pollution control by eliminating industrial waste. DEQ acknowledges that the baskets accomplish pollution control by disposing of or eliminating industrial waste. If the baskets accomplish pollution control then so does the rest of the facility because every other component is essential to the function of the baskets.

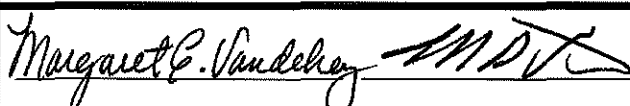


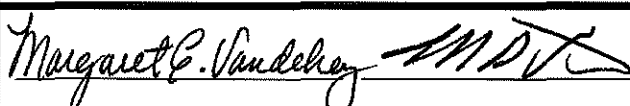


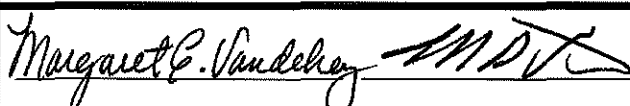


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³Memorandum to EQC from Langdon Marsh, 9/1/2000, p. 11.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item B
September 29, 2000 Meeting

Title: Preliminary Certification Denial Application 5009 – Independent Spent Fuel Storage Installation Portland General Electric Company			
Summary: Staff recommends the denial of tax credit application number 5009.			
<p>Portland General Electric Company requested the preliminary certification of their Independent Spent Fuel Storage Installation (ISFSI) as a pollution control facility for tax credit purposes. PGE is constructing the ISFSI to replace the spent fuel storage pool that will be dismantled and decontaminated as part of the Trojan Nuclear Power Plant decommissioning plan.</p> <p>Staff recommends that the Commission deny application number 5009 because the claimed facility does not meet the definition of a pollution control facility in ORS 468.155(1) in that it does not:</p> <ol style="list-style-type: none">1. Control a substantial quantity of air and water pollution over what is currently being provided in the spent fuel storage pool.2. Have an exclusive purpose of pollution control, prevention or reduction.3. Make a significant contribution to the sole purpose. <p>Please read the transcript in Attachment C for a full description of the ISFSI.</p>			
Deny preliminary certification of the facility presented on application number 5009 as presented in the Staff Report and supporting documents.			
<table style="width: 100%; border: none;"><tr><td style="width: 33%; text-align: center;"> Report Author</td><td style="width: 33%; text-align: center;"> Division Administrator</td><td style="width: 33%; text-align: center;"> Director</td></tr></table>	 Report Author	 Division Administrator	 Director
 Report Author	 Division Administrator	 Director	

September 1, 2000

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

Date: September 1, 2000

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item B, September 29, 2000, EQC Meeting
Denial of Preliminary Certification
Application 5009 -- Independent Spent Fuel Storage Installation
Portland General Electric Company

Statement of the Need for Action

This report presents staff's analysis of preliminary application number 5009 and their recommendation for Commission action. Portland General Electric Company (PGE) requested the preliminary certification of their Independent Spent Fuel Storage Installation (ISFSI) under the "pollution control facility tax credit" laws.

Legislation approved in 1995 provided for the preliminary certification of any facility that would otherwise be eligible for a pollution control facility tax credit. The Environmental Quality Commission is the authority that approves or denies preliminary certification that a claimed facility is, in fact, a pollution control facility according to ORS 468.155 to 468.190.

Preliminary Applications

On May 1, 1998 rules (new rules) became effective that implemented 1995 legislation. This legislation reinstated the preliminary certification process. The Department reviewed PGE's preliminary application according to the 1995 legislation and the 1990 rules (old rules) that were in effect on April 30, 1998 – the date PGE submitted their application.

An applicant may submit a preliminary application anytime prior to completing the construction of a facility. PGE submitted their preliminary application within this timing.

The Department reviewed the claimed facility to determine if it met the definition of a pollution control facility. The Department did not review any financial details.

The Commission's approval of a preliminary application is prima facie evidence that the facility meets the definition of a pollution control facility under ORS 468.170. However, it does not ensure that the facility will receive certification under ORS 468.170 or tax relief under ORS 307.405 or 315.304.

Should the claimed facility be approved for preliminary certification and if the applicant builds the facility as planned then the final application would be reviewed under the new rules and would focus on the facility cost and the percentage of the cost allocable to pollution control.

Background of the Claimed Facility

PGE is constructing the ISFSI to replace a spent fuel storage pool that will be dismantled and decontaminated as part of the Trojan Nuclear Power Plant decommissioning plan.

The claimed facility is a dry storage system that will provide temporary storage of spent nuclear fuel assemblies, fuel debris, and radioactive waste materials. The ISFSI consists of the following major components.

1. Thirty-four sealed metal baskets used to store the sealed zirconium tubes containing the radioactive waste.
2. A vacuum drying system used to remove water from each basket following loading of the sealed zirconium tubes containing the radioactive waste.
3. A semi-automatic welding system used to seal-weld the baskets.
4. A ventilated concrete storage cask for each basket.
5. A transfer station and associated transfer equipment. A transfer cask is used to move a loaded basket from the spent fuel pool to the concrete cask. It is also designed to be used to transfer a basket to a shipping cask, or to a basket overpack.
6. A reinforced concrete storage pad used to support the storage system baskets.

The facility is further described in the attachments to the Staff Report.

PGE permanently ceased operating the Trojan Nuclear Power Plant in 1992 and is required to decommission Trojan. PGE must provide for the temporary safe-storage of spent nuclear fuel until the federal government provides a permanent storage site for its disposal. The U.S. Department of Energy estimates that it will not begin accepting spent nuclear fuel until after 2010.

On November 18, 1999, staff briefed the Environmental Quality Commission regarding the physical aspects of claimed facility, the background of the Trojan Nuclear Power Plant, the nature of the spent fuel and PGE's decommissioning plan. The transcript from that session is in Attachment B.

Definition of a Pollution Control Facility

For a claimed facility to be certified for tax credit purposes it must meet the definition of a "pollution control facility" in ORS 468.155(1) but it must not be excluded from the definition as set out in ORS 468.155(2).

There are two parts to the definition of a pollution control facility — the first part must apply to the claimed facility before the second part is considered. The first part defines the purpose of the facility and the second part defines how the pollution control must be accomplished.

Part 1 Pollution Control Purpose

The claimed facility must have a “principal purpose” or a “sole purpose” of pollution control.

- If the Commission determines that the claimed facility or any distinct portion of the claimed facility has a pollution control purpose then the Commission must consider how the pollution control would be accomplished as described in Part 2.

Any distinct portions of the claimed facility that do not have a pollution control purpose are not eligible for preliminary certification and are not provided a second opportunity to be eligible under Part 2.

The statute also provides exclusions from the definition of a pollution control facility in ORS 468.155(2). One of those exclusions is for any distinct portion of a claimed facility that makes an “insignificant contribution” to the principal or sole purpose of the facility.

- If the Commission determines that the claimed facility does not have a pollution control purpose then the claimed facility must be denied preliminary certification as a pollution control facility. If the Commission determines that distinct portions of the claimed facility make an insignificant contribution to pollution control those portions must be removed from consideration.

Part 2 How Pollution Control is Accomplished

The pollution control must be accomplished in a specific manner.

- If the Commission determines that the pollution control would be accomplished in one of the specific manners described in statute and rule then the Commission must issue preliminary certification.
- If the pollution control is not accomplished in a specific manner described in statute and rule then the Commission must deny the claimed facility preliminary certification.

Part 1 – Purpose of the Facility

DEQ, the federal Environmental Protection Agency (EPA) or a regional air pollution authority does not require the ISFSI. Therefore, it is not a “principal purpose” facility. The applicant claimed the “sole purpose” of the installation is to control, prevent, or reduce a substantial quantity of air and water pollution. To meet the definition of Part 1 of the definition of a pollution control facility, the ISFSI must meet each of the items below.

- | | |
|-----------------------------|--|
| <u>Media Protected</u> | The claimed facility must control ¹ air pollution as defined by air quality statute or water pollution as defined by water quality statute. |
| <u>Substantial Quantity</u> | The claimed facility must control a substantial quantity of air or water pollution. |
| <u>Exclusive Purpose</u> | The claimed facility must have an exclusive pollution control purpose. |

If items 1, 2, and 3 above are met for ISFSI as a whole then the ISFSI has a pollution control purpose.

If items 1, 2, and 3 above are met for any distinct portions of the facility that make a significant contribution to the sole purpose of pollution control then those distinct portions have a pollution control purpose.

If any one of items 1, 2, or 3 above is not met then the ISFSI does not meet the definition of a pollution control facility and must be denied certification.

Media Protected The applicant claims the sole purpose of the ISFSI is pollution control, and that it controls air and water pollution. The spent fuel assemblies in the spent fuel pool contain radioactive substances. Radioactive substances meet the definition of a water pollutant (ORS 468B.005) and an air pollutant (ORS 468A.005.) Radioactive material is specifically excluded from the definition of a Hazardous Waste in ORS 466.005.

The Department concludes that radioactive waste may meet the definition of an air pollutant as defined by the air quality statute or water pollution as defined by the water quality statute.

Substantial Quantity To meet the second “sole purpose” criteria, the ISFSI must control a substantial quantity of air or water pollution.

¹ “Control” is used as a shortened form of “prevent, control or reduce.” For used oil facilities it means “to recycle or appropriately dispose of.”

Dry storage controls, prevents, or reduces a substantial quantity of pollution control over no storage as indicated by 10 CFR 20 (Standards For Protection Against Radiation.) However, the applicant did not provide evidence that dry storage would control, prevent, or reduce a substantial quantity of air or water pollution over what is provided by the existing wet storage system.

Policy Implication

- For final certification, the Department compares conditions that existed prior to installation of the pollution control with the conditions that exist as a result of the installation of the pollution control.
- For preliminary certification, the Department compares the conditions that currently exist to the conditions that would exist as a result of installing the pollution control.

Ignoring the conditions that existed or currently exist prior to the installation of the claimed facility would deviate from previous program implementation. The Department considers that this would expand the program.

The application requires that the applicant describe how the impact on the environment would be reduced or minimized. The application also requires the applicant provide quantitative data if it is available.

In the case of application number 5009, the applicant did not provide evidence that releases from the spent fuel pool to the atmosphere or spills to waters of the state is more than infinitesimal. In the spent fuel pool, the vast majority of any possible releases would be captured by the water treatment systems for disposal. The balance would be gaseous fission-products but the applicant did not provide a discussion of how this would pose a threat to the environment. In the ISFSI, the spent fuel assemblies would be encapsulated in the baskets and casks.

The Department did not review any part of the claimed facility from the perspective of protecting the environment from pollution occurring as a result of a catastrophic events such as earthquakes; terrorist attacks.

Policy Implication

The Department considers that it is at the discretion of the Commission to determine when protecting the environment from catastrophic events is within the scope of the pollution control facility tax credit program.

The Department considers that reviewing applications from this perspective would expand the program.

The Department concludes that the ISFSI would not control a substantial quantity of pollution as compared to what is provided by the existing wet storage system.

Exclusive Purpose

To meet the third “sole purpose” criteria, the ISFSI must have an “exclusive” pollution control purpose.

Concern for public health and safety as relates to nuclear materials was specifically separated from other types of environmental concerns:

On June 1, 1976, the U.S. Supreme Court held that pollutants subject to regulation under the Federal Water Pollution Control Act do not include source, byproduct, and special nuclear materials,...” *Train v. Colorado PIRG*, 426 U.S. 1 at 25.

10 CFR 51, Subpart A – National Environmental Policy Act – Regulations Implementing Section 102 (2)

In Oregon, the regulatory agency that applies the Federal Rules governing the release of radioactive materials into the environment is the Oregon Health Division, Radiation and Protection Services. The Health Division established the standard for levels of safety for releases of radioactive material to the atmosphere.

Safe storage of the spent and failed fuel is required under 10 CFR 20 (Standards For Protection Against Radiation.) Safe storage meets the requirements of OAR 345-026-0390 for Spent Nuclear Fuel Storage as administered by the Oregon Office of Energy. The requirements are, in part, for protection of the environment.

There is no regulatory requirement for PGE to install a dry storage system in place of a wet storage system other than the legal obligation to implement its decommissioning plan approved by the NRC and the Oregon Energy Facility Siting Council (EFSC.) Both dry storage and wet storage meet the requirements for safe storage set out in the U.S. NRC's Standards For Protection Against Radiation, 10 CFR 20.

PGE's Decommissioning Plan includes the Independent Spent Fuel Storage Installation. The Oregon criteria under which the plan was approved are contained in Division 26 of OAR 345. Now that the plan has been approved, the applicant is legally bound to meet these conditions or request approval of an amendment to the plan from the Energy Facility Siting Council (EFSC).

As a result of the installation, most of the Trojan site would be available for unrestricted use. At that time, PGE would operate the facility under a Part 72 license – Licensing Requirements for the Independent Storage of Nuclear Fuel and High Radioactive Waste (10 CFR 72). The site is a prime Oregon location; transportation is readily available with a rail line running through the property, access to the I-5 corridor and sited on the Columbia River. The site is suitable to be used as a power plant fueled by natural gas and the applicant is considering donating most of the site for recreational purposes.

The cost savings appear to be a significant factor in PGE's decision to move from wet storage to dry storage at this time. The decommissioning plan tracks the costs associated with operation and maintenance of the independent spent fuel storage installation (\$3.6 million a year) and the spent fuel pool (\$10.4 million a year), which represent a savings of \$6.8 million per year.

The applicant is required to provide safe storage of spent nuclear fuel and high level radioactive waste, and is legally obligated to meet the conditions of the approved decommissioning plan. The financial benefits to decommissioning seem to be significant as they are set out in the Trojan Decommissioning Plan.

Part 1 - Discussion of the Significant Contribution of Distinct Portions

The applicant identified the following distinct portions of the facility and the Department reviewed each portion to determine if they each made a significant contribution to the sole purpose of the pollution control as follows.

Baskets

The purpose of 34 PWR and two GTCC sealed metal-baskets is for temporary storage of the spent fuel assemblies while in Oregon, during transportation within and outside Oregon, and then for permanent storage at the federal repository. The sealed metal-baskets would provide the secondary containment for the spent fuel pellets should the primary containment (sealed zirconium tubes) fail. Currently, the majority of any releases within the spent fuel pool would be

captured by the water treatment system. The remaining releases would be gaseous fission-products but the applicant did not demonstrate that this would pose a threat to the environment. The applicant did not demonstrate the probability and the conditions under which the current system could release contaminants to the atmosphere or spill to public waters.

Vacuum Drying Equipment

The purpose of the vacuum drying equipment is to remove residual water from each basket after they are loaded with the spent fuel assemblies within the spent fuel pool. The Department concludes that the vacuum drying equipment makes an insignificant contribution. The equipment has a one-time use. The 1998 rule formalized the Commission's practice to remove the cost of equipment purchased for the purpose of installing the pollution control because that equipment makes an insignificant contribution to the purpose of the facility — OAR 340-0016-0070 (3)(o).

Welding System

The purpose of the semi-automatic welding system is to weld the baskets closed. The Department concludes that the welding system makes an insignificant contribution to the pollution control purpose and it does not have an exclusive pollution control purpose. The 1998 rule formalized the Commission's practice to remove the cost of equipment purchased for the purpose of installing the pollution control because that equipment makes an insignificant contribution to the purpose of the facility — OAR 340-0016-0070 (3)(o).

Concrete Storage Casks

The concrete storage casks have openings in the top and bottom to allow air to circulate through the inside of the cask. They do not have the ability to prevent, control, or eliminate releases to air or water pollution should the spent fuel assemblies and baskets fail. The purpose of the concrete storage casks is to provide shielding of gamma-rays and to provide structural integrity for the baskets to withstand a man-made or natural catastrophic event such as an earthquake, flood, tsunami or tornado etc.

Policy Implication

Shielding has not previously been approved for tax credit purposes. Approval would mean medical and industrial x-ray shielding would then become eligible for a tax credit.

Tertiary containment has not been approved for tax credit purposes. —

The Department considers that providing a pollution control facility tax credit for shielding and tertiary containment would expand the program.

Transfer Station

The transfer station and associated transfer equipment provides for the safe movement of the spent fuel during the transfer of spent fuel assemblies from the spent fuel pool to the baskets and then during transportation to the federal repository. The transfer station must remain with the storage system as long as the fuel is on site. The transfer station provides an essential material handling function. Though essential, material handling is not a pollution control purpose.² The Department concludes that the transfer station provides an insignificant contribution to the pollution control purpose.

Policy Implication

The Department considers that the approval of this type of material handling system would expand the program.

Concrete Storage Pad:

The concrete storage pad is not capable of preventing, controlling or reducing releases to the air or spills to the water should the spent fuel assemblies and the baskets fail. The pad provides structural support for the casks.

Part 1 Conclusion Considering each of the factors in Part 1, the Department concludes that the claimed facility does not have a pollution control purpose. Staff also concludes that the ISFSI includes distinct portions that make an insignificant contribution to the pollution control purpose. For these reasons the Department concludes that these other purposes are more than incidental and that the applicant has not demonstrated that the exclusive purpose of the facility is pollution control.

Because the facility does not meet all three of the "sole purpose" criteria, the Department concludes that the ISFSI does not meet the definition of a pollution control facility, and recommends the Commission deny certification.

² Material handling is allowable in the material recovery or alternatives to open field burning parts of the tax credit program.

Part 2 - How the Pollution Control Is Accomplished

Should the Commission determine that the ISFSI (or any distinct portions) does have a pollution control purpose, then the Commission must also determine whether the facility accomplished the pollution control by one of the methods in statute. The statute explicitly provides five categories of pollution control. ORS 468.155(b)(A).

The Department offers the following analysis of several systems and their ability to accomplish the prescribed pollution control even though the Department concludes that the ISFSI does not have a pollution control purpose.

The applicant claimed the facility as an air and water pollution control facility that prevents spills or unauthorized releases. The pollution control facility tax credit statute specifically identifies how pollution control must be accomplished for both air and water pollution control facilities. The applicant claims that the facility accomplishes the pollution control by preventing spills and unauthorized releases as provided in rule.

Air Pollution Control

The air pollution control must be accomplished by disposing of or eliminating air contaminants, air pollution or air contaminant sources. The pollution control must also be accomplished by the use of air cleaning devices.

The Department concludes that the ISFSI does not meet the definition of an air-cleaning device because it does not remove, reduce, or render the air contaminants less noxious prior to discharge to the atmosphere. The radioactive waste is only stored until it can be removed from Oregon and rendered less noxious to Oregonians over time and distance.

Water Pollution Control

Water pollution control must be accomplished by disposing of or eliminating industrial waste. The pollution control must also be accomplished by the use of a treatment works.

Baskets

The 34 PWR and two GTCC sealed metal-baskets serve as a secondary containment for the spent fuel with the spent fuel assemblies serving as primary containment. The spent fuel assemblies will permanently reside in the baskets. The baskets would meet the definition of "disposal" because they are the permanent container for the spent fuel assemblies, though Oregon is not the permanent location for the baskets. The baskets would be considered a "treatment works" because they hold waste.

The Department determined that the baskets would accomplish pollution control as prescribed in statute.

Concrete Storage Casks

The concrete storage casks do not eliminate or dispose of industrial waste and they do not meet the definition of a treatment works. They are not capable of "holding" industrial waste should the primary and secondary containment fail.

Concrete Storage Pad

The concrete storage pad does not eliminate or dispose of industrial waste. The pad does not meet the definition of a treatment works because it does not treat, stabilize or hold wastes as required in the definition of "treatment works."

Spills or Unauthorized Release Prevention

The applicant claims that the sole purpose of the claimed facility is accomplished by detecting, deterring, or preventing spills or unauthorized releases as provided by this rule. [OAR 340-016-0025(2)(g) – 1990] There is no longer any express authority in the tax credit statutes for this particular rule. However, legal counsel has advised the Department that the EQC may have sufficient general rulemaking authority to support such a rule and, further, that agencies must generally presume their own rules to be valid.

Other Tax Credits Issued at Trojan

The EQC certified the following seven facilities located at the Trojan site in Rainier during 1983 and 1984. Staff concludes that the ISFSI or any of its distinct portion are not considered replacement facilities as defined in ORS 468.155(2).

App. No.	Description of Facility	Certified Cost	Percent Allocable
1603	AIR POLLUTION CONTROL: Radioactive emission controls associated with the containment building.	\$13,243,985	100%
1604	WATER POLLUTION CONTROL: A 499' high natural draft cooling tower and a circulating cooling water system.	\$10,355,754	100%
1606	WATER POLLUTION CONTROL: Dechlorination system consisting of 2 sampler pumps, 2 pH sampler pumps, sulfite injection equipment, an instrument panel, piping, valves and instruments.	\$210,778	100%
1638	AIR POLLUTION CONTROL: Radioactive emission controls associated with fuel and auxiliary buildings:	\$4,774,207	100%
1639	WATER POLLUTION CONTROL: A liquid waste radioactivity control system consisting of five subsystems: <ul style="list-style-type: none"> • A clean radioactive waste treatment system • A dirty radioactive waste treatment system • A steam generator blowdown treatment system • A solid radwaste system • A liquid radiation monitoring system. 	\$6,927,850	100%
1675	WATER POLLUTION CONTROL: A water treatment filter backwash solids settling system consisting of: <ul style="list-style-type: none"> • A 70,000 gal reinforced concrete basin • A wet well discharge pumping station with two 5-hp pumps • A sludge collection system and 3-hp pumps • Electrical flow panels, flow recorders, and alarms 	\$628,971	100%
1677	AIR POLLUTION CONTROL: Certain elements of the containment building consist of containment– cleanup re-circulating units, spray system, cooling-water system and isolation valves.	\$7,263,820	100%

Conclusions

Staff concludes that the claimed facility does not meet the definition of a pollution control facility. The Department concludes that staff's recommendation is consistent with statutory provisions and administrative rules related to the pollution control facility tax credit program.

Recommendation for Commission Action

The Department recommends the Commission deny certification of the facility claimed on application number 5009 and as represented in this Agenda Item.

Intended Follow-up Actions

Staff will notify applicant of the Environmental Quality Commission's action by Certified Mail.

Attachments

Attachment A	Review Report – Application 5009
Attachment B	Department Position on PGE letter to Commission
Attachment C	Transcript from November 18, 1999 Commission Briefing
Attachment D	Relevant Citations

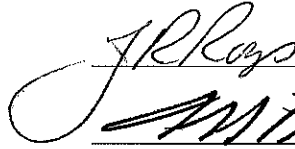
Reference Documents (available upon request)

1. ORS 468.150 through 468.190.
2. OAR 340-016-0005 through 340-016-0050.

Approved:

Section:

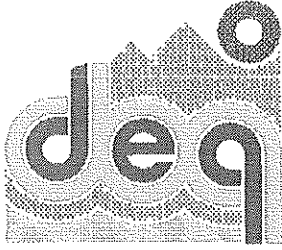
Division:



Report Prepared by: Margaret Vandehey
Phone: (503) 229-6878
Date Prepared: September 1, 1999

Attachment A

Review Report



Tax Credit Review Report

EQC 0009

PRELIMINARY APPLICATION

Director's
Recommendation: **DENY**

Applicant	Portland General Electric
Application No.	5009
<u>Estimated</u> Facility Cost	\$ 55,000,000
<u>Claimed</u> Useful Life	10 years

Pollution Control Facility: Water and Air
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Applicant Identification

The applicant is a C corporation operating an **electric utility company**. The applicant's taxpayer identification number is 93-0256820 and their address is:

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

Facility Identification

The applicant claimed the following facility:

**An Independent Spent Fuel Storage
Installation.**

The applicant is the owner of the facility located at:

**Trojan Nuclear Plant
71760 Columbia River Highway
Rainier, OR 97048**

Technical Information

The claimed facility consists of a vertical dry cask storage system, which will provide temporary storage of spent nuclear fuel assemblies, fuel debris, and radioactive waste materials. Sierra Nuclear Corporation designed the passive TranStor Storage System.

Fission product gamma rays, which are emitted from the spent fuel, are a continuing source of radiation after shutdown of a reactor. The spent fuel assemblies are currently stored in the spent fuel pool. The spent fuel assemblies are about one centimeter in diameter (less than 1/2 inch) and 12 feet long. Each assembly consists of 144 fuel spent fuel pins. Each pin is a zirconium alloy tube sealed at each end and filled with ceramic uranium fuel pellets. If the seal of a pin is broken, water will enter and become contaminated with radioactive materials in the form of fission products; these fission products emit gamma rays, alpha particles, and beta particles. Some of the fission products are gaseous, including krypton and xenon isotopes; therefore they may become airborne in the gaseous space above the spent fuel pool. All of the spent fuel at Trojan has been out of the reactor for over five years and is no longer required to be cooled with water.

The spent fuel pool and supporting plant systems will be dismantled and decontaminated as part of the ongoing decommissioning of the Trojan Nuclear Plant. The dry cask storage system will take the place of the spent fuel pool until the spent fuel assemblies can be transferred to a federally operated disposal site.

The applicant claimed the following major components as part of the pollution control facility.

1. Thirty-four PWR (pressurized water reactor) and two GTCC (greater than class C) sealed metal baskets used to store radioactive materials. The baskets are about 15 feet tall and 5-1/2 feet in diameter. The outside of the basket is made of 3/4-inch thick stainless steel and the internal structures are made of high carbon steel, coated to prevent corrosion. The PWR baskets are capable of storing up to 24 spent fuel assemblies. The GTCC baskets are capable of storing up to 28 individual canisters containing other radioactive waste.
2. A vacuum drying system used to remove water from each basket following loading of radioactive waste. Each PWR basket is loaded with up to 24 spent fuel assemblies in the spent fuel pool and the residual water must be removed.
3. A semi-automatic welding system used to seal weld the baskets. A shield lid and a structural lid are seal-welded in place after the contents are dried.
4. A ventilated concrete storage cask for each basket. Each cask is made of high density concrete about 21 inches thick and provides structural support for the basket. It also provides shielding of the radiation produced by the radioactive materials in the spent fuel.
5. A transfer station and associated transfer equipment. The transfer station is used for basket transfer operations. Lateral and vertical support is provided with the transfer station to prevent a loaded cask from overturning or falling during transfer operations. A transfer cask is used to move a loaded basket from the spent fuel pool to the concrete cask. It is also designed to be used to transfer a basket to a shipping cask, or to a basket overpack. An air pad system is used to move a loaded cask. Air pads are inserted under the cask and inflated with an air compressor. A specially modified vehicle would then be used to move the concrete cask from one location to another.
6. A reinforced concrete storage pad used to support the storage system baskets. The storage pad is 170 foot by 105 foot and 18 inches thick. The concrete casks will be on the pad until the U.S. Government is prepared to take the spent fuel.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this new equipment is **not** to prevent, control or reduce a substantial quantity of air or water pollution. The applicant did not provide evidence that dry storage (ISFSI) would provide a substantial quantity of pollution control over what is provided by the existing wet storage system (spent fuel pool.) The radioactive materials that would be stored in the ISFSI are presently stored in the spent fuel pool, thereby controlling radiation releases. The applicant did not provide evidence that radiation releases result in a substantial quantity of air or water pollution being emitted to the environment from the present storage system; therefore, the ISFSI dry storage would not provide a substantial quantity of air or water pollution prevention, control, or reduction.

The ISFSI would serve purposes other than pollution control such as to facilitate decommissioning.¹ The vacuum drying system; the semi-automatic welding system; the ventilated concrete storage casks; the transfer station and associated transfer equipment; and the reinforced concrete storage pad have purposes other than pollution control or they make an insignificant contribution to the claimed pollution control purpose.

ORS 468.155 (1)(b)(B) The ISFSI does not dispose of or eliminate air contaminants with the use of an air cleaning device as defined in ORS 468A.005.

ORS 468.155 (1)(b)(A) The baskets would dispose of industrial waste with the use of a treatment works as defined in ORS 468B.005. The other systems either do not dispose of or eliminate industrial waste or the control is not accomplished by the use of a treatment works.

OAR-016-0025 (2)(g) The applicant claimed the installation would be used to detect, deter, or prevent spills or unauthorized releases. The applicant did not demonstrate the probability that releases to the atmosphere or spills to waters of the state with the current system is more than infinitesimal.

Timeliness of Application

The application was submitted prior to the completion of construction.

Application Received

5/5/1998

Application Substantially Complete

4/27/2000

Reviewers: Maggie Vandehey, DEQ
SJO Consulting Engineer
Elliot Zais, PhD, DEQ

¹ See Director's Letter 5/17/00 for full discussion.

Attachment B

Department Position on PGE Letter to Commission

Department Position on PGE Letter to Commission dated November 18, 2000

This attachment provides the Department's position on the Portland General Electric Company's letter to the Environmental Quality Commission dated August 16, 2000. This analysis is necessary because the letter provided additional information. The contents of the letter did not change the Department's recommendation to deny certification of application number 5009.

For the first time, the applicant

- provided a description of releases from the spent fuel pool into the atmosphere, and
- described the solid waste functions of the ISFSI.

The applicant also

- compared the ISFSI with the construction of double hulls for petroleum barges; double-walling of underground storage tanks; and the construction of spill and overflow containment basins;
- disagreed with the review of the significant contribution to the pollution control purpose of the major component parts of the ISFSI; and
- stated the Department did not provide evidence to support the claim that cost savings appear to be a significant factor in PGE's decision to move from wet storage to dry storage.

Releases into the Atmosphere

The applicant states that in 1999, 50 curies of radioactive gases and tritium in the form of water vapor were released into the atmosphere above the spent fuel pool. The applicant did not describe how a 50-curie reduction has a significant impact on the environment. The letter did not name the radioactive gases or provide the energy levels associated with each. It did not describe how or if those gases and tritium are harmful to the environment. However, the applicant did provide the perspective that "This is a substantial amount of radioactivity representing 21% of such releases during 1992, the last year of plant operation."

- Radiation, or radioactivity, is not a recognized pollutant and is not regulated by air quality or water quality rules. The biological effect of radiation is a function of how much energy is deposited in a body and on the type of radiation. Types of radiation include gamma-rays, beta-rays, x-rays, naturally occurring alpha particles, and neutrons with various ranges of associated energy levels. Portions of the claimed facility that serve to reduce radiation do not prevent, control or reduce pollution. For instance, the concrete casks reduce radiation levels not radioactive waste.
- Fifty curies could be a lot or a little depending on where it goes, what isotopes are involved, how spread out it is in time and space. Evaporate and releases from the spent fuel pool are tritiated water and the noble gas krypton (Kr-85). Neither of these elements have much biological interaction. If the Nuclear Regulatory Commission has Technical Specification for tritium and Kr-85 and the spent fuel pool is well within such specifications.

- A curie is not a regulated air pollutant or water pollutant; it is a measurement of the rate of radioactive decay. By definition, the radioactivity of one gram of radium is one curie and one curie equals 37 billion (3.7×10^{10}) disintegrations per second. The maximum permissible concentrations in microcuries per cm^3 of air and water of selected radionuclides for occupational exposure (40-hour week) and for exposure to the general public have been established and are regulated by the NRC. Reporting is required.
- Tritium is an insignificant radioactive isotope of hydrogen. It is a pure beta-emitter, it is not concentrated in biological species, and it passes moderately quickly through the human body. The maximum permissible concentrations of tritium is among the highest of any radionuclide. In 1977, the occupational exposure (40-hour week) was 0.1 microcuries per cubic centimeter if in drinking water and 5×10^{-6} microcuries per cubic centimeter in the air being breathed. For comparison, the maximum permissible concentrations for Iodine 131 is 6×10^{-5} microcuries per cubic centimeter if in drinking water and 9×10^{-9} microcuries per cubic centimeter in the air.
- An example of a common use of tritium is its use in exit lights on airplanes with each light having several curies. Kr-85 is a common industrial isotope. An example of its use is gauging devices for measuring the thickness of paper.
- The combination of the tritium and other radioactive isotopes emitted to the atmosphere totaling 50 curies for the year does not mean that the exposure limits for the general public were exceeded. The amount of Kr-85 being emitted above the spent fuel pool is nearly half today of what it was when the plant shut down.
- In 1999, radioactivity above the spent fuel pool represented 21% of such releases occurring during 1992, the last year of plant operation. Lacking additional information, the Department can only assume that the 1992 releases were within the exposure limits for the general public and that 21% of that is well within the exposure limits.

Radioactive Solid Waste as Pollutants

Radioactive solid waste is a recognized pollutant regulated by DEQ. Radioactive solid waste, in the form of ceramic uranium fuel pellets, is now housed in sealed zirconium tubes in the spent fuel pool. The tubes are the primary containment for the uranium fuel pellets while in the spent fuel pool and remain so once the tubes are transferred to the ISFSI.

Emissions to Atmosphere

Radioactive solid waste is not a "particulate matter" as stated in the definition of an air contaminant. It is a solid material, and in its current state, it could not enter the atmosphere any more than a rock. The radiation (not a recognized pollutant) being emitted from the radioactive waste could enter the atmosphere.

Spills to Water

The ceramic uranium fuel pellets would have to come directly in contact with waters of the state before they would be considered a water pollutant. That means the sealed zirconium tubes would have to fail and the spent fuel pool would have to breach its confines before waters of the state could be contaminated.

Comparison of the ISFSI and Spent Fuel Pool

The applicant correctly stated in their August 16, 2000, letter to the Commission that the spent fuel pool did not receive a tax credit. The ISFSI, or any distinct portion, would not replace a previously certified control. These are not the points on which the Department makes the comparison between the ISFSI and the spent fuel pool. The Department makes the comparison because the ISFSI would replace the conditions that currently exist in the properly functioning spent fuel pool AND both systems control the same waste.

The applicant also states that the ISFSI and the spent fuel pool serve fundamentally different purposes. The Department considers that this was true up until the day that PGE discontinued operations at the Trojan Nuclear Plant. However, as of 1992, the spent fuel pool provides for the storage of the spent fuel. Once completed, the ISFSI will provide for the storage of identical spent fuel.

Solid Waste Pollution Control

To be eligible as a solid waste pollution control facility for tax credit purposes, the ISFSI would have to use a material recovery process and that process would have to obtain a useful material from solid waste as defined in ORS 459.005. The ISFSI (or any distinct portion of the ISFSI) does not provide a material recovery process.

The applicant states that the spent fuel pool cleanup system removes 205 cubic feet of radioactive solid waste per year that is buried in a low level radioactive landfill and that the ISFSI would eliminate this. The applicant goes on to explain that the vacuum drying system and the concrete storage casks will be contaminated, and the welding systems will probably be contaminated after their use and would be disposed of accordingly as radioactive waste.

Comparison of ISFSI with Other Applications

The Department does recommend the approval for the double walling of underground storage tanks; the construction of spill and overflow containment basins; and for the construction of double hulls for petroleum barges.

The federal Environmental Protection Agency (EPA) and the Department require secondary containment for underground storage tanks (UST). [40 CFR 280.42] EPA and DEQ also require that liquid hazardous waste stored in aboveground tanks to have secondary containment. [40 CFR 262.34(a)(1)(i)]

EPA or DEQ does not require construction of the double hull of a petroleum barge. However, the sole purpose of the double hull is to provide secondary containment of a petroleum that has a direct path to polluting waters of the state. A breach in the primary and secondary containment of the petroleum hold would contaminate waters of the state with petroleum products because the barge is in the water. The ISFSI is located on the land, not in the water with the baskets providing the secondary containment. In order to contaminate the water, the ceramic uranium fuel pellets would have to breach the primary containment (sealed zirconium tubes) and the secondary containment (baskets.) The radioactive solid waste would then have to be in the rain or by some other physical method, find a path to waters of the state. The applicant did not discuss possible paths or the environmental impact that this would cause.

In this case, the NRC requires design of certain systems to prevent harmful radiation releases in the event of catastrophic failure. The possibility of a flood has not been considered in evaluating the prevention of water pollution for tax credit purposes. Similarly, the Department does not recommend the approval of emergency scrubbers for tax credit purposes. Fire code requires emergency scrubbers on systems that house toxic gases so that in the event of a catastrophic failure the gases would be scrubbed as they were being exhausted from the storage room. Emergency generators and special exhaust fans are required to facilitate this requirement and the Department does not recommend approval of these components for tax credit purposes.

It should be noted that secondary containment for tanks and piping located inside of a building are not recommended for approval because the building would provide the containment. Secondary containment around piping is to protect employees from exposure in the event of a pipe failure are also not recommended for approval.

Cost Savings a Significant Factor

The letter discussed the Review Report where the Department claims that cost savings appear to be a significant factor in PGE's decision to move from wet storage to dry storage. Table 5.1-2 from the Trojan Decommissioning Plan was provided to the Commission on November 18, 1999. It is provided again here.

A footnote to the letter states that "PGE's, anticipated cost savings have decreased significantly since the time it filed its decommissioning plan. Any estimation of cost savings at this point would be purely speculative." The letter did not offer updates to the estimates.

The Department considers that the Commission has the discretion to determine when cost savings are more than incidental; thereby becoming the purpose of the facility.

Table 5.1-2
Decommissioning Cost Estimate for Trojan Nuclear Plant
Itemized Decommissioning Expenditure Schedule
(1997 \$ x 1000) ★

Year	Total Trust Expenditures					Radiological Decommissioning DECON / License Termination	Nonradiological Decommissioning Remediation Activities / Site Restoration	Spent Fuel Management			Financing Activities	
	Total Radiological Decommissioning Expenditures	Total Nonradiological Decommissioning Expenditures	Total Spent Fuel Management Expenditures	Total Financing Activity Expenditures	Total Combined Trust Expenditures			SFP	Dry Storage		Costs for Maintaining Financial Assurance	Costs of Loans
									Spent Fuel Pool O & M	ISFSI Construction & Decommissioning		
1993	0	0	0	0	0							
1994	7,992	0	0	0	7,992	7,992	0		0			
1995	15,837	0	1,102	0	16,939	15,837	0		1,102	0		
1996	8,529	492	3,144	0	12,165	8,529	492		3,144	0		
1997	19,309	45	7,974	0	27,328	19,309	45		7,974	0		
1998	34,297	86	9,703	0	44,086	34,297	86		-9,596	107		
1999	55,029	8,286	26,354	0	89,669	55,029	8,286	10,279	24,644	1,710		
2000	43,324	5,059	12,272	637	61,292	43,324	5,059	7,709	8,612	3,660	238	399
2001	39,168	3,083	3,739	1,462	47,452	39,168	3,083		0	3,739	153	1,309
2002	14,672	1,719	3,736	1,930	22,057	14,672	1,719		0	3,736	55	1,875
2003	1,736	335	3,729	1,977	7,777	1,736	335		0	3,729	15	1,962
2004	0	304	3,718	1,569	5,591		304		0	3,718		1,569
2005	0	304	3,703	1,114	5,121		304		0	3,703		1,114
2006	0	305	3,681	660	4,646		305		0	3,681		660
2007	0	304	3,655	205	4,164		304		0	3,655		205
2008	0	304	3,621	11	3,936		304		0	3,621		11
2009	0	305	3,580	1	3,886		305		0	3,580		1
2010	0	304	3,533	0	3,837		304		0	3,533		
2011	0	304	3,476	0	3,780		304		0	3,476		
2012	0	304	3,476	0	3,780		304		0	3,476		
2013	0	304	3,476	0	3,780		304		0	3,476		
2014	0	304	3,476	0	3,780		304		0	3,476		
2015	0	304	3,476	0	3,780		304		0	3,476		
2016	0	304	3,476	0	3,780		304		0	3,476		
2017	0	304	3,476	0	3,780		304		0	3,476		
2018	0	10,933	10,951	0	21,884		10,933		7,853	3,098		
2019	0	14,105	0	0	14,105		14,105					
2020	0	304	0	0	304		304					
2021	0	304	0	0	304		304					
2022	0	304	0	0	304		304					
2023	0	1,825	0	0	1,825		1,825					
Total	239,893	51,138	132,527	9,566	433,124	239,893	51,138	17,988	62,925	69,602	461	9,105

Attachment C

Transcript

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

WORK SESSION ON:

Portland General Electric
Company's independent spent fuel
storage installation at the
Trojan Nuclear Power Plant.

TRANSCRIPT OF PROCEEDINGS

November 18, 1999

BEFORE:

COMMISSIONERS

MELINDA EDEN, Chair
TONY VAN VLIET
LINDA McMAHAN
MARK REEVE

DIRECTOR:

LANGSTON MARSH

LARRY KNUDSEN
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1 CHAIR EDEN: Good afternoon. This is the regularly
2 scheduled meeting of the Environmental Quality Commission,
3 and we welcome you here.

4 I'm Melinda Eden. To my right are Linda McMahan and
5 Tony Van Vliet, and to my left is Mark Reeve, our newest
6 member. Harvey Bennett, unfortunately, is ill and unable to
7 be with us today. So we are it.

8 And we have convened this afternoon to begin with a
9 work session. On?

10 COMMISSIONER VAN VLIET: Madam Chair, I'd like to
11 make a nomination right now.

12 CHAIR EDEN: Commissioner Van Vliet. That's right,
13 we don't have a chair.

14 COMMISSIONER VAN VLIET: I would like to nominate
15 Melinda Eden to be the chair of the Environmental Quality
16 Commission commencing as soon as possible.

17 COMMISSIONER McMAHAN: Second.

18 CHAIR EDEN: It's been moved and seconded that
19 Melinda Eden be elected chair of the Environmental Quality
20 Commission. Is there any discussion? All those in favor
21 signify by saying aye.

22 (Three aye votes)

23 CHAIR EDEN: Can I vote for myself? Aye.

24 All those opposed. There is no one. So, thank you
25 very much for your confidence that I can run a meeting

1 responsibly, and I will do my best.

2 And now is the time schedule for a work session on
3 Portland General Electric's company's independent spent fuel
4 storage installation at the Trojan Nuclear Power Plant. And
5 Maggie Vandehey is here and --

6 MS. TAYLOR: Chair Eden, maybe I could introduce
7 Maggie Vandehey --

8 CHAIR EDEN: You may.

9 MS. TAYLOR: -- who will be presented the work
10 session report to you along with David Stewart-Smith from
11 the Department of Energy, who is an expert in this arena.
12 And they'll both kind of describe the facility to you. And
13 then Maggie will express to you the questions that the
14 Department will be attempting to answer between now and next
15 spring about the -- whether the facility qualifies for tax
16 credit. And what we'd like from you today, of course, is to
17 provide you with information but also if you have questions
18 of us that you would like us to explore in the interim, we'd
19 like to hear that today.

20 Know that there are members of the company here who
21 would be more than willing to answer questions when our
22 staff has completed their -- their information to you, if
23 you have questions. If you do not, I'm sure they'll be
24 available in the spring when we bring this item back to you.

25 CHAIR EDEN: Okay. Then let's proceed on that basis.

1 I would like to say ahead of time that it is not a time --
2 it's not a public hearing, so it's not a time for that; it's
3 a time for the Department to make its presentation to us,
4 but as Ms. Taylor said, if we have questions, I appreciate
5 that there are company representatives here to assist us.

6 MS. VANDEHEY: Good afternoon, Madam Chair,
7 Commissioners. As Lydia told you, my name's Maggie
8 Vandehey, and I'm Tax Credit Coordinator for the DEQ. Dave
9 Stewart-Smith on my right has timely agreed to be here
10 today. He's the administrator of the Energy Resource
11 Division with the Oregon Office of Energy. Dave is also the
12 Secretary of the Energy Consulting Siting Council.

13 We're here today to talk about Portland General
14 Electric proposed application for preliminary certification.
15 The application is for certification of their independent
16 spent fuel storage installation. PGE refers to it as the
17 ISFSI. Because I have trouble getting that off of my lips
18 I'll be referring to it in tax credit terms as "the
19 facility."

20 PGE submitted the application under the Pollution
21 Control Facility Tax Credit laws. The plant facility is
22 located at the Trojan Nuclear Power Plant site in Ranier.
23 To quote from PGE's application, "The sole purpose of the
24 Trojan ISFSI is to control spent nuclear fuel and to prevent
25 spills or unauthorized releases of radioactive materials to

1 the air, water and adjacent land during interim storage
2 period pending final disposal."

3 PGE estimates the facility will cost \$55 million. As
4 Ms. Taylor told you, at this time, the Department is not
5 prepared to offer a recommendation regarding the eligibility
6 of the facility. We'll do that next spring. Our purpose
7 today is to provide the Commission with an overview of the
8 planned facility, background at the Trojan site, and a
9 discussion of questions that we'll answer before finalizing
10 the preliminary review report.

11 Before I talk about the specifics of the application,
12 a brief chronology may be helpful in understanding why the
13 facility is constructed. In 1976, Trojan Nuclear Power
14 Plant began commercial production. In January of '93, PGE
15 notified the Nuclear Regulatory Commission of their decision
16 to cease operating the power plant. PGE bases this -- based
17 this decision on the uncertainty of plant's reliability, the
18 uncertainty about the cost of operation, particularly as
19 related to the steam generators, and also about the
20 availability of replacement power at a lower cost.

21 Once PGE made their decision to stop operating the
22 nuclear power plant, NRC regulations requires them to
23 completely decommission the plant within 16 years. In 1995,
24 PGE moved four contaminated steam generators and a
25 pressurizer to the regional commercial low level waste

1 disposal site at Hanford.

2 In '96, the NRC and the Oregon Energy Facility Siting
3 Council approved the Trojan decommissioning of the plant.
4 This year, PGE removed the reactor vessel to the disposal
5 site at Hanford. Currently PGE is preparing the Trojan site
6 for unrestricted use. Unrestricted use means that the
7 property could be used for other industrial or recreational
8 purposes. Finally, during the first quarter of the next
9 century, the spent nuclear fuel will be moved to a yet
10 unknown federal repository.

11 In a minute, I'll discuss the scope of the
12 preliminary application with you. I'll also discuss
13 questions that the staff will have to answer before we
14 complete the review. At this time, Dave Stewart-Smith will
15 provide information regarding the independent spent fuel
16 storage installation, dry storage versus wet storage, air or
17 water contaminants, decommissioning of Trojan, and the
18 federal repository.

19 MR. STEWART-SMITH: Thank you, Madam Chair. For the
20 record, my name is David Stewart-Smith, Secretary to the
21 Oregon Energy Facility Siting Council. I'm pleased to be
22 here today. I have some brief prepared notes that I will go
23 over, and I would encourage the Commission to interrupt me
24 at any time, in case I get a bit too oblique or I say
25 something that needs to be clarified.

1 As Maggie mentioned the Trojan plant closed its
2 commercial operations in 1993. Under the rules of the U.S.
3 Nuclear Regulatory Commission they had -- first choice they
4 had to make was whether or not they would put the plant into
5 long-term storage and allow much of the radioactivity to
6 decay, and the Nuclear Regulatory Commission refers to that
7 option as Safe Store. Or whether they should decommission
8 the plant in the near term, and they refer to that option as
9 Decom.

10 Portland General Electric made the case to the NRC
11 and to the Energy Facility Siting Council that, given the
12 specifics in their situation, that immediate dismantlement
13 was an appropriate option. The regulatory agencies agreed,
14 and shortly thereafter PGE began preparations for
15 decommissioning the plant.

16 They are well over halfway done with decommissioning
17 at this point, having sent five large components, the -- the
18 four steam generators and a pressurizer tank, off for
19 disposal at our regional disposal site in 1995. And having
20 sent the reactor vessel itself, without the spent fuel in
21 it, to our regional low level waste disposal site in August
22 of this year.

23 About 10 percent of the nonspent fuel radioactivity
24 was disposed of with the large components: the steam
25 generators and the pressurizer, something less than 10

1 percent. And about 90 percent of the nonspent fuel
2 radioactivity was disposed of with the reactor vessel. The
3 balance of the contamination on the Trojan site is in the
4 form of contaminated concrete, piping, tanks, storage and
5 radioactive waste treatment systems and similar pieces of
6 equipment.

7 Once the site is decontaminated, the site can be
8 released, as Maggie mentioned, for unrestricted use. It
9 doesn't mean that all of the buildings will be gone. It
10 means that what is left will not need to be restricted for
11 reasons of radiation safety.

12 The process of site release is a -- is a complex and
13 detailed one. PGE has broken some new ground in this area,
14 being the first large commercial power plant to undergo
15 decommissioning. There have been several of them a number
16 of years older that that have undergone decommissioning, but
17 this was a very different kind of decommissioning because of
18 the size of the facility, and they will use many different
19 measurements throughout the site and a sophisticated
20 computer model to determine the potential pathway exposures
21 to the public once the site is unrestricted. And based on
22 their measurements and on the computer modeling, the
23 company, along with the regulatory agencies will decide when
24 the site is ready for unrestricted release.

25 Maggie also asked me to talk about the difference

1 between storing spent nuclear fuel in the spent fuel pool,
2 as it is today, and storing it in dry spent fuel casks. Let
3 me explain those a little bit. Since the plant began
4 commercial operation, spent nuclear fuel which comes out of
5 the plant -- an individual fuel bundle stays in the reactor
6 for about -- in Trojan's case for about three years. Every
7 year they had an annual refueling outage at which time about
8 a third of the reactor core was removed, having spent three
9 years in the reactor, and placed in the spent fuel pool.

10 The spent fuel pool is a water cooling system. It
11 has about eight-foot thick foundation built on basaltic
12 bedrock. The plant itself is built on a bedrock outcropping
13 next to the Columbia River. It's got about five-foot thick
14 concrete walls. It maintains about 20 feet of water over --
15 at all times over the top of the spent fuel. The water
16 provides not only cooling capacity, because, as these spent
17 fuel bundles come out of the reactor, their degree of
18 radioactivity is high enough that they generate a great deal
19 of heat, but it also provides for the shielding. You can
20 walk up to the edge of the spent fuel pool, look down
21 through ultra-pure water that is a boric acid solution, and
22 you can see the top of the spent fuel bundles and the racks
23 that hold them.

24 The spent fuel pool has active pumping cooling and
25 purification systems. That's the main -- other than the

1 difference between wet and dry -- that's the main difference
2 between storing spent fuel and spent fuel pool -- I'm going
3 to trip over that phrase, I know I am -- and storing it in
4 dry concrete casks. The spent fuel pool relies on active
5 cooling and maintenance in order to maintain its
6 capabilities. Once the spent fuel is welded into stainless
7 steel cylinders and placed inside concrete silos or concrete
8 casks, it's basically a passive protective and cooling
9 system.

10 Water is a better heat transfer medium than air
11 convection, and as long as the fuel is less than five years
12 out of the reactor, it must be cooled with water. All of
13 the spent fuel at Trojan is greater than five years out of
14 the reactor, having been closed in 1993. So this an
15 appropriate spent fuel storage medium for fuel of this age.

16 The dry casks are massive structures. They provide
17 not only radiation shielding capability with about 21 inches
18 of concrete, high-density concrete as part of the concrete
19 cask, but they provide for a very robust structurally sound
20 storage medium. These concrete casks are placed on a
21 concrete pad that's about 18 inches thick, and, as I recall
22 seeing it before the concrete was poured, I think it has as
23 much rebar in it as it has concrete. And this system is
24 designed with enough mass and enough structural stability to
25 withstand any credible earthquake.

1 The spent fuel pool was also designed to withstand an
2 earthquake, but being open at the top, it was certainly less
3 contained, if you will, than a dry concrete cask system.

4 I want to talk a little bit about air and water
5 pathways of release of radioactive materials. A spent fuel
6 pool is open to the environment. As I mentioned, you can
7 walk up to the edge of it and you can look through the water
8 and you can see the tops of the spent fuel assemblies. And
9 it's housed in an industrial building. There are, because
10 of -- because of the nature of spent nuclear fuel, the
11 temperatures and pressures inherent in a commercial nuclear
12 reactor are such that on the order of one half to one
13 percent of the spent fuel pins that make up a fuel assembly
14 that are sealed when the fuel assembly goes into the reactor
15 become unsealed. That provides a small but a measurable
16 pathway for radioactive materials to be released into the
17 water of the spent fuel pool, hence the radioactive waste
18 treatment systems that are built into that storage material.

19 COMMISSIONER REEVE: Excuse me. Did you pens?

20 MR. STEWART-SMITH: Pins.

21 COMMISSIONER REEVE: Pins.

22 MR. STEWART-SMITH: They're called pins. Each fuel
23 assembly contains 144 pins that are about a centimeter in
24 diameter and about 12 feet long, making up a fuel assembly.
25 held together with brackets. But for a commercial nuclear

1 reactor, the need to maximize surface area to transfer the
2 heat from the fuel to the water surrounding it means you
3 need a lot of small pins rather than one large fuel rod.
4 You'll often hear people talk about nuclear fuel rods.
5 Well, the actual fuel assemblies for a commercial reactor
6 are a 12 by 12 array of about one-centimeter diameter zircon
7 tubes -- excuse me, zirconium alloy tubes filled with
8 ceramic uranium fuel.

9 COMMISSIONER REEVE: Okay, so there -- you said some
10 percentage of them -- of those -- are those the little tubes
11 that actually --

12 MR. STEWART-SMITH: The tubes. Correct.

13 COMMISSIONER REEVE: Some percentage leak or --

14 MR. STEWART-SMITH: One or something less than one
15 percent. They're sealed at each end. They're -- they're
16 spring loaded at each end to keep the fuel pellets
17 themselves held together and held in place, but in fact the
18 seals at the ends of some small percentage of them become
19 unsealed because of -- because of the conditions inherent in
20 the core of a commercial reactor.

21 COMMISSIONER REEVE: Now, if that happens, what --
22 what is it that escapes? Is it actual physically the fuel
23 or is it radiation or what --

24 MR. STEWART-SMITH: It's not the pellets themselves.
25 And certainly there's a great deal of radiation that can

1 escape from the fuel pins, radiation being either high
2 energy photons or particulate alpha particles, beta
3 particles, different kinds of radiation. Some of that can
4 escape from the fuel assemblies themselves.

5 What I'm talking about is a small amount of fission
6 products. These are the -- usually radioactive isotopes
7 left over from an individual atom or, in this case,
8 countless individual atoms of uranium undergoing nuclear
9 fission, becoming two smaller atoms. Some of those are
10 gaseous in nature: Isotopes of krypton and xenon. Many of
11 them -- most of them are not, but in any case, once the seal
12 in the end of one of those spent fuel pools begins to leak,
13 the annular space around -- between the zirconium tubing and
14 the fuel pellets themselves can become filled with water,
15 become contaminated, and a small amount of it can leak out
16 through the leak in the seal at the end of the tube.

17 COMMISSIONER REEVE: Now, during this act that you
18 described -- the current storage is kind of an active system
19 in terms of the water being filtered and whatnot. Is there
20 a system that actually is able to remove that from the
21 water --

22 MR. STEWART-SMITH: Yes.

23 COMMISSIONER REEVE: -- as it circulates?

24 MR. STEWART-SMITH: Yes. There are radioactive waste
25 treatment systems that remove the contamination that is

1 dissolved in the water; also remove the excess heat from
2 that water and transfer it to another system, another
3 industrial heat removal system (indiscernible) in the plant.

4 So those isotopes can be removed. There are,
5 however, as I mentioned, some small amount of those isotopes
6 that are gaseous in nature, and once they're released into
7 that cooling water, the spent fuel pool may become airborne
8 in the gaseous space above the spent fuel pool itself.

9 So there is a pathway, however, vanishingly small it
10 might be. During normal storage of spent fuel for a small
11 amount of radioactive material to be released into the
12 cooling water and into the air surrounding the spent fuel
13 pool all of which is tightly regulated under federal and
14 state rules.

15 CHAIR EDEN: Excuse me, but that creates -- taking
16 the radioactivity out of the water in the pool then creates
17 another repository of --

18 MR. STEWART-SMITH: A more --

19 CHAIR EDEN: -- contamination.

20 MR. STEWART-SMITH: A more concentrated low-level
21 radioactive waste which is in turn disposed of at our
22 regional commercial low-level radioactive waste site.

23 CHAIR EDEN: So it does ultimately become low level
24 through that -- through the systems that --

25 MR. STEWART-SMITH: Correct.

1 CHAIR EDEN: -- pull it out of the water?

2 MR. STEWART-SMITH: Correct.

3 CHAIR EDEN: In the most simple terms.

4 MR. STEWART-SMITH: The spent fuel itself is known as
5 high-level radiation.

6 CHAIR EDEN: Right.

7 MR. STEWART-SMITH: But any resulting contamination
8 or treatment system that works with the cooling water, any
9 radioactive material resulting from that is -- is low level.

10 CHAIR EDEN: Thanks.

11 MR. STEWART-SMITH: As I -- as I mentioned there are
12 small amounts, however vanishingly small, of radioactive
13 material released from the spent fuel pool. In contrast, a
14 -- a dry spent fuel storage system, the fuel has been -- has
15 been vacuum dried and sealed inside a stainless steel
16 container known -- you'll see references to it in some of
17 the material Maggie has supplied you -- known as a basket.
18 For the life of me I don't know why they would could
19 something a basket. But if you see that term, that's what
20 they're talking about.

21 The walls are about three-quarters of an inch thick
22 stainless steel; there's a shielding and a structural lid
23 that are -- that are more massive yet. And these are welded
24 on so that the spent fuel becomes sealed inside this
25 stainless steel cylinder known as a basket, and the

1 atmosphere around it, rather than being atmosphere as is
2 around us, is replaced with an atmosphere of helium. The
3 reason for that is that helium is a very good heat transfer
4 gas, unlike nitrogen which is the bulk of the air around us.

5 So the dry spent fuel storage system is sealed, and
6 even if the spent fuel pool was remarkable effective at --
7 at isolating radioactive materials from the environment, the
8 dry spent fuel storage system theoretically, at least, is
9 probably more effective yet, because of the nature of it
10 being a dry storage medium and being welded shut.

11 In addition, under severe accident conditions,
12 because the dry storage casks are sealed and massive, they
13 should be able to withstand even more external forces, be it
14 earthquake, be it some kind of intentional destructive
15 force. The dry spent fuel storage system is probably more
16 robust yet than the spent fuel pool that is in use at
17 Trojan.

18 Portland General Electric, let me briefly explain
19 what they have proposed. Let me preface that by saying that
20 this system has been -- has been reviewed by the Nuclear
21 Regulatory Commission, has been reviewed by the technical
22 staff at the Oregon Office of Energy, approved by Oregon's
23 Energy Facility Siting Council through a publicly accessible
24 process.

25 The applicant in their tax credit application, I

1 believe, claimed 36 storage baskets to use within the
2 concrete casks to store spent fuel. My understanding is
3 their -- their current plans are to build 34. They -- they
4 needed to leave themselves a little bit of flexibility
5 earlier on in the process, and the first number, some years
6 ago, is 36, but I believe there will be 34 double sealed
7 sealed canisters that serve a rather unique purpose in the
8 American nuclear industry: They are proposed to be both
9 storage baskets and transport baskets. The only difference
10 will be the shielding container that the basket is put into.
11 It'll be stored in these concrete casks on site until the
12 material is taken possession of by the U.S. Department of
13 Energy at which time the transfer system that the company
14 has built on site will be used to transfer the baskets in a
15 shielded condition from the storage cask into a transport
16 cask that will be loaded onto a rail car -- PGE being
17 fortunate to have a rail line running through the middle of
18 their plant site. They have easy access to rail. -- and
19 shipped to wherever the final spent nuclear fuel disposal
20 site will be for the country.

21 The baskets are about 15 feet tall, about five and a
22 half feet in diameter. The outside of the basket is made of
23 stainless steel, as I mentioned, and the internal structures
24 inside the cylinder are made of high carbon steel, coated
25 with a coating to prevent corrosion.

1 Each basket can store up to 24 spent fuel assemblies.
2 That's the assemblies of 144 fuel pins each. And after the
3 basket is loaded with the fuel assemblies, and all that
4 loading happens in the spent fuel pool itself, by the way,
5 so that the spent fuel can never be unshielded. It's much
6 too radioactive to ever be in an unshielded condition. So
7 the loading of the basket happens in the spent fuel pool. A
8 shield lid and a structural lid are welded in place.

9 The applicant has also built a fuel transfer station
10 and transfer cask assemblies. If they are going to
11 decommission the spent fuel pool, which is their intention,
12 once the independent spent fuel storage facility is
13 finished, they will decommission the spent fuel pool. They
14 have to have the ability in the unforeseen chance that there
15 is a leak of one of those baskets to be able to -- or damage
16 to one of the shield containers -- to be able to transfer
17 that basket to an interim shield and then finally into a new
18 shield. So that the transfer station and the transfer cask
19 assemblies are something that the regulatory agencies have
20 insisted beyond site if the spent fuel pool will no longer
21 be there, because it would serve similar purposes.

22 The transfer cask and the -- and the transfer station
23 will also be used when it comes time to ship the fuel off
24 site, transferring these baskets into a shipping cask.

25 When the basket is removed from the transfer cask,

1 it's placed inside the dry spent fuel storage, the massive
2 structure that I described before, the concrete cask, which
3 is seventeen and a half feet tall and eleven feet in
4 diameter. The cask is lined with carbon steel, and the
5 walls are 29 inches thick to provide the massive shielding
6 necessary to contain the spent fuel.

7 The casks will have their own temperature monitoring
8 systems because the easiest way to determine whether or not
9 all is well with this kind of a system is whether or not the
10 temperature is going up. If the temperature goes up, that's
11 some indication that the provision for natural convective
12 cooling is somehow been interfered with, whether it's debris
13 of some kind blowing into the vents at the bottom of the
14 storage cask, preventing air from moving up the channels and
15 out the top, or whatever it may be; that possibility is
16 monitored for.

17 When loaded, these casks weight about 145 tons. They
18 are -- there's an example of a cask over here, and you'll
19 see on one of the examples a -- I believe the one in the
20 middle has an air pallet on the bottom of it. An air pallet
21 is essentially an inflatable heavy rubber circle open at the
22 bottom; it's pressurized and then allows the cask to be
23 repositioned floating on a cushion of air. Strap it to a --
24 to a truck, if you will, and move it around the site
25 wherever they need it with the pressurized air pallets

1 inflated. It really is pretty amazing to see 100 pounds per
2 square inch move 145 tons, but it works.

3 Then the concrete casks are placed on the -- on the
4 storage pad, 170 feet by 105 feet, for its long-term storage
5 until the U.S. Government is prepared to take it.

6 That's pretty much my explanation and presentation on
7 the site. And at this point, I would be happy to answer any
8 questions the Commission would have.

9 CHAIR EDEN: Thank you. Questions or comments from
10 the Commission? Commissioner Van Vliet.

11 COMMISSIONER VAN VLIET: In the very last statement,
12 you said, when the U.S. Government was prepared to take it.

13 MR. STEWART-SMITH: Correct.

14 COMMISSIONER VAN VLIET: Is it -- have they had a
15 site really ready to go to accept these now at all in the
16 future?

17 MR. STEWART-SMITH: No.

18 COMMISSIONER VAN VLIET: They do not?

19 MR. STEWART-SMITH: No.

20 COMMISSIONER VAN VLIET: The Nevada thing still is up
21 in the air?

22 MR. STEWART-SMITH: It is -- the -- the U.S.
23 Department of Energy is preparing an acceptance document for
24 the President's signature. I don't believe that it's
25 actually been signed yet, but the U.S. Department of Energy

1 has made it clear they feel there is no fatal flaw with the
2 site. But the U.S. Nuclear Regulatory Commission must
3 license this site, and site licensing is -- is some years
4 off yet. I think an optimistic estimate of when that site
5 might be available will be sometime after 2012, 2014.

6 COMMISSIONER VAN VLIET: So to use the current Trojan
7 site, what you have to do is develop a series of these to
8 store for a long period of time with guarded --

9 MR. STEWART-SMITH: Right.

10 COMMISSIONER VAN VLIET: -- fence around it and
11 security and everything?

12 MR. STEWART-SMITH: Yes. That is PGE's plan. They
13 could have left the spent fuel in the spent fuel pool.
14 That's a perfectly adequate long-term storage system, but
15 because of its active components, it -- it requires
16 additional staff. It is a more detailed and expensive site
17 to maintain over time, and, as I mentioned the dry spent
18 fuel storage facility is more massive and is sort of
19 inherently passively safe.

20 COMMISSIONER VAN VLIET: The legislature in this last
21 session did not do anything, right, on this issue?

22 MR. STEWART-SMITH: To my knowledge there were --
23 other than -- other than the bill that was in to allow PGE
24 to continue to recover a portion of its investment from the
25 decommissioned plant, this session, I believe there were no

1 bills affecting storage of spent fuel on site.

2 Current state law requires that if spent fuel is
3 stored on site, it must be stored under the auspices of both
4 a license issued by a Nuclear Regulatory Commission and
5 site certified issued by the Oregon Energy Facility Siting
6 Council, (indiscernible), and we'll be maintaining those in
7 the future.

8 COMMISSIONER VAN VLIET: And when the people of the
9 State of Oregon voted to shut Trojan down, was there any
10 provision in that at all as to the responsibility for the
11 cost of the eventual decommissioning?

12 MR. STEWART-SMITH: Well, while there were three
13 votes that I remember, the question of which was whether or
14 not to shut down Trojan, none of them passed. And I don't
15 believe any of them specifically dealt with the monetary
16 issues. They were fairly simple measures that required the
17 closure of the plant. They all were defeated by 60-40
18 percentages or better. So I don't -- I can't quote you
19 chapter and verse on those initiatives --

20 COMMISSIONER VAN VLIET: Okay.

21 MR. STEWART-SMITH: -- but I do not believe that
22 there were any financial --

23 COMMISSIONER VAN VLIET: That's my memory too.

24 MR. STEWART-SMITH: -- components to those. The
25 company may be able to answer that more competently than I

1 can.

2 COMMISSIONER REEVE: What -- just one. You mentioned
3 that there's a decommissioning plan that has been approved?

4 MR. STEWART-SMITH: Correct.

5 COMMISSIONER REEVE: That -- and that was approved by
6 EFSC?

7 MR. STEWART-SMITH: Yes.

8 COMMISSIONER REEVE: Okay. Does the NRC review that,
9 or is that really the State?

10 MR. STEWART-SMITH: The NRC reviewed and approved
11 that plan as well, although under current NRC rules that
12 have been promulgated after that approval, the Nuclear
13 Regulatory Commission has changed their policy so that they
14 no longer require a plan for NRC approval. They have a set
15 of conditions that must be met by a utility with a closed
16 nuclear reactor, and they will inspect against those
17 conditions, but they no longer, for the next plant, for
18 example, that closes will no longer require specific
19 approval of the decommissioning of the plant, is my
20 understanding.

21 COMMISSIONER REEVE: Okay, now, is the plant -- is
22 the plan tied to the site certificate somehow?

23 MR. STEWART-SMITH: Yes. The plan -- the plan
24 recognizes the existence of both state requirements and
25 federal requirements (indiscernible). Most of our

1 requirements for the Trojan plant are in administrative
2 rules. The site certificate itself is a one-page document
3 signed by Governor McCall in 1971 and had no conditions.
4 But it did require that the company comply with all future
5 rules of the (indiscernible).

6 COMMISSIONER REEVE: Okay. So this decommissioning
7 plan, does it require this dry storage?

8 MR. STEWART-SMITH: The decommissioning plan, as put
9 together by the company, said they were going to do that,
10 and the company has held essentially to what they said they
11 were going to do. While there is no regulatory requirement
12 for a dry spent fuel storage facility, either at the state
13 or the federal level, other than tying the company to the
14 commitments they made, the Nuclear Regulatory Commission has
15 made it very clear that their preference for a closed
16 reactor is dry interim storage of spent fuel, rather than an
17 active spent fuel pool storage. They have not made that a
18 mandatory requirement but they've made it clear that that's
19 their strong preference.

20 COMMISSIONER REEVE: Okay, but in terms of the need
21 for the company to meet its obligations to the Office of
22 Energy, does PGE have to move forward and construct this dry
23 storage facility?

24 MR. STEWART-SMITH: They do today because they made
25 the commitment to do it. And we will hold them to their

1 commitment. Save for that, the Energy Facility Siting
2 Council has no requirement for dry spent fuel storage per
3 se.

4 COMMISSIONER REEVE: Per se, but if they were --
5 obviously they could come in and, with a proposal for a
6 modification or amendment or some other type of storage,
7 you'd have to review it --

8 MR. STEWART-SMITH: Correct.

9 COMMISSIONER REEVE: -- but as it stands today,
10 they've committed, and it's an enforceable commitment?

11 MR. STEWART-SMITH: Correct.

12 COMMISSIONER REEVE: Okay. And the criteria under
13 which that plan was approved, I take it they must be -- a
14 number of criteria, a number of factors, public interest,
15 health and safety, all those sorts of things, including
16 water and air pollution?

17 MR. STEWART-SMITH: Correct.

18 COMMISSIONER REEVE: But not solely limited to water
19 and air pollution?

20 MR. STEWART-SMITH: Correct. And those are contained
21 in Condition 26 or OAR Chapter 345, rules of the Siting
22 Council.

23 COMMISSIONER REEVE: Okay.

24 MR. STEWART-SMITH: The Siting Council promulgated
25 criteria by which a decommissioning plan would be reviewed

1 and approved. Then the company submitted the
2 decommissioning plan; that review was done; staff wrote a
3 review of the plan and a recommendation to Council, and then
4 Council did approve the decommissioning plan. By rule
5 (indiscernible).

6 COMMISSIONER REEVE: Thanks.

7 CHAIR EDEN: Do we have any idea, or is appropriate
8 to ask at this point, what the relative cost of the two
9 systems is? Given -- given a finite date which I realize
10 doesn't exist for removal -- final removal of the spent
11 fuel?

12 MR. STEWART-SMITH: The company's decommissioning
13 plan does keep track of both costs of decommissioning and
14 ongoing operation and maintenance costs of both the plant
15 and the independent spent fuel storage installation. And it
16 -- the annual costs of maintaining the spent fuel pool are
17 in that -- in that cost matrix is pegged, I believe, at
18 about \$10.4 million a year. The cost of maintaining the
19 independent spent fuel storage installation is pegged at
20 about \$3.6 million a year. So while there's a higher
21 initial cost, there is some point at which the costs are
22 even and -- and/or, if stored on site long enough, the cost
23 of storage in the spent fuel pool would have been more
24 expensive.

25 CHAIR EDEN: And we as a State have no control move

1 when --

2 MR. STEWART-SMITH: No.

3 CHAIR EDEN: -- the federal facility is going to be
4 ready?

5 MR. STEWART-SMITH: We do not. PGE has estimated
6 that the last of their spent fuel will be off site in year
7 2018. Given U.S. Department of Energy record to meeting
8 their deadlines, that may be optimistic in itself. It seems
9 (indiscernible).

10 COMMISSIONER VAN VLIET: At the time that this fuel
11 is safely stored, the value of that property now becomes
12 both useable as real estate, and has it got any other
13 projected uses at this current time?

14 MR. STEWART-SMITH: There are certainly possible uses
15 for the site. It is currently a site served with a -- an
16 active water right. It's a site with a switchyard and a 500
17 kilovolt power line to it. It has natural gas service on
18 Highway 30 right outside the front gate of the plant. So
19 it's a site that is situated both geographically and
20 electrically, being near the major load centers of the state
21 as an advantageous site for a power plant.

22 The company has considered putting in natural gas
23 combustion turbines on that site. They have not made the
24 decision yet to do that, but I believe it's still an option
25 they are holding open. It is a good site for a power plant.

1 And they certainly -- given the expected load growth over
2 the next 20 years, in order to maintain an healthy
3 electrical transmission system, they would be well served by
4 having electrical resources on the west side of the Cascades
5 rather than the most on the east side of the Cascades with a
6 line -- long -- very long transmission lines.

7 So, it's very possible that that site could be used
8 in the future as a power plant again. The company has also
9 offered to the Department of -- the State Department of
10 Parks to delegate on the order of 500 acres of the 640 or so
11 acre site as a state park which they currently maintain much
12 of it as a state park and wildlife refuge. But they are
13 going to be moving most of their equipment off the site,
14 then they'll looking for somebody else to take over that
15 responsibility.

16 So there are possible multiple uses for the site..
17 But for the area inside the fence, it may be in the future
18 redeveloped into a power plant, probably fueled by natural
19 gas.

20 COMMISSIONER VAN VLIET: That's interesting, because
21 in the '90's -- late '80's and '90's all we heard from the
22 legislature was the abundance of electric power in the
23 Pacific Northwest power grid, and all of a sudden now we're
24 hearing that there's a substantial shortage, which means the
25 advocates who were trying to shut down all the nuclear

1 plants in the world at the same time you're trying to get
2 rid of dams and the hydroelectric part didn't quite have the
3 scenario right as to what our needs were actually going to
4 be as the population increased.

5 So now we're faced with the fact that we not only
6 have to store this material, we no longer have the nuclear
7 plant to provide the power which doesn't give us an option
8 to do anything away with dams, but we'll have to bring
9 additional power plants back on line.

10 MR. STEWART-SMITH: That is correct. There were power
11 surpluses in the Pacific Northwest in the 1980's, but they
12 were fairly well gone by 1992. And given the anticipated
13 restructuring of the electric industry, new power plants
14 will probably come on line as closely as possible to match
15 load growth rather than building large -- very, very large,
16 like Trojan was an 1130 megawatt electric generating station
17 -- that's twice as big -- over twice as big as any power
18 plant left in the state. Most of the plants that are being
19 proposed now are either in the 260 megawatt range or the 500
20 megawatt range. And they'll come on line, you know, in a
21 fashion that the market dictates they can build the plant
22 and begin with a profit and not any time before that.

23 CHAIR EDEN: Other questions or comments? Are there
24 any questions of the company representatives?

25 COMMISSIONER McMAHAN: Madam Chair --

1 MS. VANDEHEY: Madam Chair --

2 CHAIR EDEN: Maggie has a few more comments --

3 COMMISSIONER McMAHAN: Oh, sorry.

4 MS. VANDEHEY: Madam Chair -- Madam Chair, I would
5 like to talk about the scope of the preliminary application
6 review. When the Department reviews applications, whether
7 it be preliminary or final to determine if a facility meets
8 eligibility requirements (indiscernible), first we determine
9 the purpose of the facility. Did DEQ or EPA require this
10 facility? Or is the facility's only purpose for pollution
11 control? If the answer's no to both of these questions, the
12 facility does not meet (indiscernible).

13 Secondly, we determine the purpose of the
14 installation is to prevent, control or reduce a substantial
15 quantity of pollution. If it does not, the facility does
16 not meet the eligibility criteria.

17 Thirdly, we determine if the pollution control is
18 accomplished by one of the methods used listed in the
19 statute. If the pollution control is not accomplished by
20 one of those methods, the facility does not meet the
21 eligibility criteria.

22 These three steps properly describe how the staff
23 will review PGE's preliminary application. Personally,
24 (indiscernible) purpose (indiscernible).

25 Portland General Electric Company submitted their

1 preliminary application a few days before the rules
2 implementing 1995's legislation became effective. The
3 legislation states that the Commission's approval of the
4 preliminary application's prima facie evidence that the
5 facility meets the facility eligibility criteria. The
6 legislation also states that preliminary certification does
7 not ensure that the facility will be (indiscernible).

8 Can staff rely upon the statute alone when there are
9 no (indiscernible) rules. The answer to this question is an
10 important one, because the findings (indiscernible)
11 preliminary application (indiscernible). If staff were to
12 review the preliminary application based upon the statutes
13 alone, the staff would report possible benefits
14 (indiscernible) PGE as a result of installing
15 (indiscernible) facility. Staff would answer questions such
16 as is there a reduced risk of liability to (indiscernible)?
17 Does the facility provide increased health and safety
18 benefits? Are fees, operations and maintenance costs or
19 insurance costs reduced? Is there a reduction in on-site
20 staff; inspections, reporting requirements, and monitoring
21 requirements? Does the site's unrestricted use designation
22 provide any benefits to the applicant? And finally, are
23 these benefits sufficient enough to become the overriding
24 purpose of the facility?

25 If staffs prepares the review, considering the rules

1 in effect at the time that PGE submitted their application,
2 even (indiscernible) those rules did not include a provision
3 for preliminary application. Staff would report on
4 financial benefits that may accrue to the applicant in the
5 final application phase.

6 Before I continue with the preliminary application, I
7 would like to talk a little bit about what would be
8 happening (indiscernible) final application when the
9 Commission grants a preliminary certification. The final
10 application would be -- would be received under the 1998
11 rules, the rules that came into effect just a few days
12 before PGE filed for preliminary application. The rule
13 states that if an applicant builds a facility as planned and
14 approved under the preliminary certification, then the
15 facility meets the definition of a pollution control
16 facility --

17 COMMISSIONER McMAHAN: Say that again, please.

18 MS. VANDEHEY: If the applicant builds the facility
19 as planned and approved under the preliminary application,
20 then the facility meets the definition of a pollution
21 control facility. All that remains to be -- to be performed
22 during the final review is to verify that it was built
23 according to plan and then to the permanent facility
24 (indiscernible), and percentage of the cost allocable to
25 pollution control.

1 Now, I'll continue with the preliminary application
2 process. Staff then determines that the amount of pollution
3 control prevented or eliminated is substantial. Does the
4 installation that PGE claimed on their application control
5 or prevent a substantial quantity of pollution above what
6 (indiscernible) rule currently provides. The staff would
7 ask these questions: Can all systems (indiscernible)
8 determine if they meet eligible (indiscernible) criteria
9 (indiscernible), transfer station, the concrete pads
10 auxiliary systems.

11 If the facility passes the purpose of the of
12 threshold eligibility criteria, the staff will then focus on
13 how the pollution control is accomplished. PGE claims the
14 facility as an air, water, and hazardous waste facility,
15 (indiscernible) focus on the water quality portion
16 (indiscernible). Any facility that qualifies as a water
17 pollution control facility if -- if the pollution control is
18 accomplished by the disposal or elimination of industrial
19 waste and was accomplished by the use of (indiscernible)
20 industrial waste. Tax credit statutes refer to water
21 quality, control loss and (indiscernible). The terms of
22 disposal and elimination are not defined under the water
23 pollution control laws. Industrial waste is defined, and it
24 includes radioactive waste. Treatment (indiscernible) is
25 also defined. It includes facilities used to treat,

1 stabilize or hold waste.

2 In their review, staff will address questions such
3 as: Does this interim storage constitute disposal or
4 (indiscernible) of industrial waste? I also would ask how
5 does PGE's facility compare to other facilities granted
6 certification under the same eligibility criteria? It'll
7 ask how does PGE's facility compare to other facilities
8 (indiscernible) waste, (indiscernible) waste and dispose of
9 that properly. Are their risks similar?

10 During the preliminary application review, staff will
11 determine if the facility is a replacement facility.
12 Legislative history of Senate Bill 112 shows that the
13 purpose of a replacement facility were always to eliminate
14 eligibility for facilities that have already received tax
15 credits.

16 The purpose of the minimum is make sure that the tax
17 credit (indiscernible) and was not (indiscernible). The
18 definition of a replacement facility is not clearly defined,
19 and it's not easy to determine whether a facility is a
20 replacement facility. Staff researched the location of the
21 planned facility, the source of control, the process and
22 (indiscernible) control. These may help us determine if the
23 planned facility (indiscernible).

24 The Commission certified seven pollution control
25 facilities at the Trojan (indiscernible); it was certified

1 between 1983 and 1984 for over \$40 million (indiscernible)
2 costs. None of the previously certified facilities were
3 (indiscernible). They were associated with painting the
4 building, cooling tower, radioactive emissions
5 (indiscernible), and a dechlorination facility. What
6 (indiscernible).

7 Does the facility plan to have PGE on its preliminary
8 application and replace the pollution control facilities
9 previously certified to a fully functioning nuclear power
10 plant? The Oregon legislature has not placed a limit on the
11 amount or the number of tax credits for any one applicant or
12 any one site may receive under its program.

13 Staff will address all of these questions that I've
14 raised today in their review report, and I'll bring that
15 before you again in the spring. PGE representatives will be
16 here to answer any questions at the time, and Dave and I
17 will be glad to answer any questions you may have.

18 CHAIR EDEN: Thank you. At the risk of jumping the
19 gun, is it going back to Dave again --

20 MS. VANDEHEY: It's going back to you.

21 CHAIR EDEN: Okay. Does the Commission have any
22 other questions or comments of staff or the company
23 representatives who are here?

24 COMMISSIONER VAN VLIET: I think the most interesting
25 question about this whole thing is who has the ultimate

1 responsibility at this time for controlling the pollution
2 that has been generated by the plant. Company decision or
3 is does the public still have a large interest in the
4 responsibility of it? How much of it is really entailed in
5 trying to make the site useful again? How much of it has a
6 bearing on future mergers? All of these have some
7 interesting aspects that I think will be interesting to have
8 the company people talk to us about.

9 Whether the Committee wants to entertain that today,
10 it seems to me we have to make a decision right now
11 apparently on the preliminary, is that right?

12 COMMISSIONER McMAHAN: No.

13 MS. VANDEHEY: No.

14 COMMISSIONER VAN VLIET: Don't have to? Okay.

15 MS. VANDEHEY: No, this is a briefing --

16 COMMISSIONER McMAHAN: This is a work session.

17 MS. VANDEHEY: -- for you and the decision on the
18 preliminary will be in the spring, and then subsequently
19 when the facility's completed, you would have the -- it
20 would come to you as an action for a final approval.

21 CHAIR EDEN: I perceive this work session as an
22 opportunity for us to be introduced to some of the issues
23 that we're going to face in the spring. But we don't have
24 to do anything today.

25 Any other questions?

1 COMMISSIONER REEVE: Can I ask a procedural question?
2 Just because you went over it fairly quickly, or at least
3 too quickly for my mind, in terms of when the application
4 was received and when these rules became effective? Is
5 there a question that needs to be resolved, either today or
6 in the spring, about whether we're operating under old rules
7 or new rules?

8 MS. VANDEHEY: We -- we will address that before we
9 bring the fin -- the preliminary application to you. We'll
10 address that in our report to you.

11 COMMISSIONER REEVE: Okay. Do you know -- has staff
12 taken a position, different than the applicant as far as
13 that goes?

14 MS. VANDEHEY: We have not. We have not taken a
15 position until we know all the details.

16 COMMISSIONER REEVE: Okay, has the applicant sort of
17 said we're operating under new or old or do we know?

18 MS. VANDEHEY: We know that they submitted --
19 submitted the preliminary application under the pre-1998
20 rules.

21 COMMISSIONER REEVE: Okay.

22 MS. VANDEHEY: They're looking at the definition of
23 sole purpose under the rules that were at the time, even
24 though those rules would not -- did not address preliminary,
25 (indiscernible) certain (indiscernible).

1 COMMISSIONER REEVE: Would that -- maybe I'm still a
2 little slow on it --

3 MS. VANDEHEY: Okay, they --

4 COMMISSIONER REEVE: Would that make a difference in
5 terms of procedurally how do we -- do we get to a
6 preliminary first and then go to final, or are we -- is the
7 applicant and the DEQ in agreement that this process of
8 coming first to a preliminary --

9 MS. VANDEHEY: We're still exploring that
10 procedurally.

11 MR. KNUDSEN: I think I may be able to answer some of
12 those questions, though. The -- the rules that became
13 effective after the applicant filed allow for the applicant
14 to elect to go under the new rules. Right?

15 MS. VANDEHEY: That's correct.

16 MR. KNUDSEN: And they haven't done so, so that part
17 has been answered. But -- at least today. But that doesn't
18 necessarily or probably likely control the procedures that
19 we're talking about, but it may affect some of the criteria
20 or standards by which you evaluate the application, and
21 that's what we're looking into.

22 COMMISSIONER REEVE: Okay.

23 MS. VANDEHEY: Thank you.

24 COMMISSIONER McMAHAN: And will that include a
25 determination as to whether there's a substantial difference

1 between the definition of sole purpose under the old rules
2 and the new rules?

3 MR. KNUDSEN: Yes.

4 CHAIR EDEN: Anything else from the Commission?

5 Or staff?

6 I think we're finished then with the work session.

7 MS. VANDEHEY: Thank you very much.

8 CHAIR EDEN: Thank you. Appreciate you explaining
9 that all to us. And I look forward to hearing more.

10 (Requested portion concluded)

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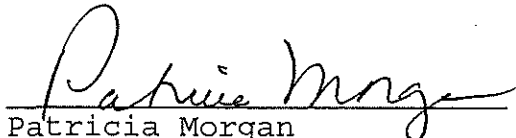
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(A) I am an Official Transcriber for State of Oregon, and an Official Transcriber for the United States Court Administrator;

(B) that I personally transcribed the electronic recording of the proceedings had at the time and place hereinbefore set forth;

(C) that the foregoing pages, consisting of pages 1 through 39, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Oregon City, Oregon this 20th day of January, 2000.


Patricia Morgan
Official Transcriber

Attachment D

Relevant Citations

Citations Relevant to Definition of a Pollution Control Facility
ORS 468.155

468.155 Definitions for ORS 468.155 to 468.190.

(1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

Part 1

Principal Purpose

(A) The principal purpose of such use, erection, construction or installation is to comply 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; or

Sole Purpose

(B) The 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.

Part 2

How Pollution Control Accomplished

ORS 468.155(1)(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

- (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005;
- (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;
- (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;
- (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, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 459A.555; or
- (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

Exclusions from Definition

ORS 468.155(2) "Pollution control facility" or "facility" does not include:

- (a) Air conditioners;
- (b) Septic tanks or other facilities for human waste;
- (c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

Insignificant Contribution

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

- (A) Office buildings and furnishings;
- (B) Parking lots and road improvements;
- (C) Landscaping;
- (D) External lighting;
- (E) Company or related signs; and
- (F) Automobiles;

Replacements

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

- (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or
- (B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility;
- (f) Asbestos abatement; or
- (g) Property installed, constructed or used for cleanup of emergency spills or unauthorized releases, as defined by the commission.

<Formerly 449.605; 1975 c.496 s1; 1977 c.795 s1; 1979 c.802 s 1; 1983 c.637 s1; 1987 c.596 s4; 1989 c.802 s4>

Citations Relevant to Purpose

- Sole Purpose** The 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)
- OAR 340-016 "Sole Purpose" means the exclusive purpose.
0010 (9)¹
- 0025 (1)(b)¹ The sole purpose of the facility 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. In order to meet the definition of sole purpose, the only function or use of the facility must be the control, reduction, or prevention of pollution, or, for the material recovery of solid waste, hazardous waste or used oil. Sole purpose is not applicable where the facility is established in response to the environmental requirements identified in subsection (a) of this section. Other benefits of economic value which result from the facility are not eligible for tax credit and must be eliminated through the return on investment calculation.
- Insignificant Contribution** (d) Any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility including the following specific items...
- ORS 468.155(2)

ORS 468.155 (1)(b)

Citations Relevant to Air Pollution Control

Such prevention, control or reduction required by this subsection shall be accomplished by:

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

**Air Quality
Laws
ORS 468A.005**

There is no definition for “dispose of” or “eliminate” in the air quality rules. The department interprets both words as “to get rid of.”¹

“Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are likely to be injurious to public welfare, to the health of human, plant, or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such areas of the state as shall be affected thereby.

“Air contaminant” means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

“Particulate Matter” means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January 1992).

“Air contamination source” means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

An “air-cleaning device” means any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

¹ *Webster's II New Riverside University Dictionary*

ORS 468.155 (1)(b)

Citations Relevant to Water Pollution Control

Such prevention, control or reduction required by this subsection shall be accomplished by:

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005;

Water Quality There is no definition for “dispose of” or “eliminate” in the air quality rules.
ORS 468B.005 The department interprets both words as “to get rid of.”²

“Water pollution” means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

“Industrial waste” means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

“Treatment works” means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

“Wastes” means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

² *Webster's II New Riverside University Dictionary*

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

3
4 IN THE MATTER OF THE
5 TAX CREDIT APPLICATION OF
6 WILLAMETTE INDUSTRIES, INC.

APPLICATION NO. 4570

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL
ORDER**

7
8 **I. INTRODUCTION/CONTENTS**

9 This order provides final agency disposition of an application for a pollution control facility
10 tax credit by Willamette Industries, Inc. (the company or the applicant). The contents of the
11 order are as follows:

12 II. Findings of Fact/Procedures

13 III. Key Legal Authorities

14 IV. Legal Arguments

15 V. Ultimate Finding of Fact

16 VI. Conclusion of Law

17 VII. Statement of Reasons/Discussion

18 A. Substantial Completion

19 1. The Applicable Law and the EQC's Conclusions

20 2. The Lease

21 3. Placed in Service

22 4. The Dust Control System and Platform Scales

23 B. Consistency of the Interpretation

24 1. Overview on Consistency

25 2. General Findings and Reasoning

26 3. Findings and Reasons for Individual EQC/DEQ Tax Credit Reports

1 C. Other Issues

2 1. Dissenting Staff Opinion

3 VIII. Summary

4 IX. Final Order

5
6 **II. FINDINGS OF FACT/PROCEDURES**

7 1. Applicant Willamette Industries, Inc. constructed the East Multnomah Recycling (EMR)
8 plant. The plant is designed to process (collect, sort and bail) corrugated cardboard, newspaper,
9 mixed waste paper and high-grade office paper. It was the company's intention to lease the plant
10 to an operator.

11 2. On September 27, 1993, Far West Fibers began operating the plant by accepting and
12 processing recycled waste. During October of 1993, it baled approximately 3,500 tons of
13 recycled material. During November, Far West baled approximately 5,000 tons of material.
14 During the period from December 1 to December 21, 1993 Far West baled approximately 3,700
15 tons of recycled material. During calendar year 1994, Far West baled an average of 6,556 tons
16 of recyclable material each month.

17
18 3. On January 13, 1994, Willamette Industries executed a lease with Far West Fibers wherein
19 Far West agreed to operate the plant and pay rent to Willamette Industries. The lease included
20 an effective date of January 1, 1994. The day before, December 31, 1993, was the date that
21 Willamette Industries began to depreciate the plant for income tax purposes.

22
23 4. Some time in March or April of 1994, Willamette Industries completed installation of a dust
24 filtration system and a platform scale at the plant.

25 5. On December 22, 1995, Willamette Industries submitted an application for a pollution control
26 tax credit for the EMR plant. The application was assigned number 4570. The application seeks

1 certification of a facility that has as its sole purpose the reduction of a substantial quantity of
2 solid waste.

3
4 6. The matter first came before the Environmental Quality Commission (EQC or Commission)
5 at its regular meeting on November 21, 1997. The matter was set over, however, at the request
6 of Willamette Industries. It was rescheduled for the Commission's regular meeting on
7 December 11, 1998, but again was set over at the request of the applicant. It was rescheduled for
8 the Commission's regular meeting on November 18, 1999, but the applicant again requested
9 postponement until a later date.

10 7. On December 20, 1999, the Commission considered the application, heard a report and
11 recommendation from the Department of Environmental Quality (DEQ or Department) and legal
12 arguments from Willamette Industries' legal counsel. The Commission deliberated but was
13 unable to make a decision.¹ Consequently, the matter was set over until the Commission's next
14 meeting for further action.

15
16 8. The parties then agreed to postpone further Commission action pending settlement
17 negotiations. When the negotiations did not result in settlement, the matter was placed on the
18 Commission's agenda for its July 14, 2000 meeting at the mutual request of the Willamette
19 Industries and the Department. The Chair established a deadline, which was ultimately extended
20 until June 23, 2000, to submit any additional written material or argument.

21 9. The matter was again heard by the Commission at the July 14 meeting. The Commission
22 considered a recommendation from Department staff and heard arguments from an employee of
23 Willamette Industries and its legal counsel. The Commission also heard legal advice from an
24 assistant attorney general representing the department. The Commission deliberated and voted
25

26 ¹ Commissioner Tony Van Vliet did not participate in this or any subsequent deliberations on this tax credit application.

1 4-0 to reject the application for the certification. The Commission also authorized the Director
2 of the Department of Environmental Quality to execute a final order on its behalf.

3 **III. KEY LEGAL AUTHORITIES**

4 10. The Commission is authorized to issue pollution control tax credit certificates pursuant to
5 ORS 468.155 to 468.190. ORS 468.165(6) provides:

6
7 “The application [for a tax credit certificate] shall be submitted after construction of the facility
8 is substantially completed and the facility is placed in service and within two years after
9 construction of the facility is substantially completed. Failure to file a timely application shall
10 make the facility ineligible for tax credit certification. “ This entire case hinges upon
11 interpretation of the first sentence of this statutory provision and even more specifically the
12 words “substantially completed.”

13
14 11. The administrative rules adopted by the Commission and applicable to this case include a
15 definition of substantial completion. OAR 340-016-0010(11) states: “Substantial Completion”
16 means the completion of erection, installation, modification, or construction of all elements of
17 the facility which are essential to perform its purpose.” The “purpose” referred to here is the
18 pollution control function of the particular facility.

19 12. The term “facility” as used in ORS 468.165(6) and OAR 340-016-0010(11) refers to the
20 pollution control facility as defined in ORS 468.155(1)(a), which is not necessarily co-extensive
21 with the plant. In this instance, the applicant has claimed a material recovery facility. The sole
22 purpose of such a facility is to reduce a “substantial quantity” of solid waste. ORS
23 468.155(1)(a)(B).

24 ///

25 ///

26 ///

1 13. The term "purpose" as used in OAR 340-016-0010(11) refers to the sole or principal
2 pollution control purpose of the facility under ORS 468.155, not the business purpose or other
3 interests of the taxpayer in building the plant or seeking the tax credit certificate.

4 **IV. LEGAL ARGUMENTS**

5 14. The Department recommended rejection of the application based on its conclusion that the
6 pollution control facility was substantially complete on September 27, 1993, more than two years
7 before the date the application was filed. This conclusion was based on the facts showing that
8 large quantities of solid waste were being recovered as of late September, thereby demonstrating
9 that all of the elements essential to reduce a substantial quantity of solid waste had been
10 completed.

11
12 15. Willamette Industries first argued that the facility was not substantially complete until
13 January 1, 1994, the date that the lease became effective and it started depreciating the plant.
14 Most recently, the company argued that the facility was not substantially completed until
15 sometime in March or April of 1994 when a platform scale and a dust control system were
16 installed and operational at the plant.

17 **V. ULTIMATE FINDING OF FACT**

18
19 16. The EMR facility was substantially completed on or about September 27, 1993. Willamette
20 Industries filed its tax credit application on December 22, 1995, which is more than two years
21 after the facility was substantially completed.

22 **VI. CONCLUSION OF LAW**

23
24 17. The Commission finds and concludes that Willamette Industries failed to submit its
25 application within two years after construction of the claimed facility was substantially
26 completed and that the application must therefore be rejected.

1 **VII. STATEMENT OF REASONS/DISCUSSION²**

2 **A. Substantial Completion**

3 **Willamette Industries argued that the facility was not substantially complete until**
4 **January 1, 1994, when the lease with Far West became effective. However, the EMR**
5 **facility was substantially complete in late September 1993, because that is when the facility**
6 **began operating to reduce a substantial quantity of solid waste. The company's arguments**
7 **to the contrary are not supported by the facts or law of this case.**

8 **1. The Applicable Law and the EQC's Conclusion**

9 The statutes and rules governing this case are quite clear and straightforward. As noted
10 above, the applicable statutes require that the application be submitted within two years after
11 construction is substantially completed. ORS 468.164(6). The applicable rules define
12 "substantial completion" as the "completion of erection, installation, modification, or
13 construction of all elements of the facility which are essential to perform its purpose." In this
14 case, the claimed facility is a material recovery facility whose sole purpose must be to reduce "a
15 substantial quantity" of solid waste. ORS 468.155(1)(a)(B). Thus, the EQC concurs with the
16 conclusion of the Attorney General's office: "In sum, a proper interpretation of the statutes and
17 rule in question requires that the EQC ask itself the following question: on what date were all
18 elements of the claimed facility essential to reduce a substantial quantity of solid waste
19 completed?" Letter from Assistant Attorney General Michael B. Huston to Maggie Vandehey,
20 DEQ, dated February 4, 2000, p.3.

21 According to the facts provided by the applicant, Far West Fibers, the lessee, began
22 operating the facility on September 27, 1993. Additional facts clearly demonstrate that even the
23

24 ² ORS 468.170(2) provides in pertinent part: "If the commission rejects an application for certification, the
25 commission shall cause written notice of its action, and a *concise statement of the findings and reasons* therefor, to
26 be sent...to the applicant. (Emphasis added.) At the same time, the number and complexity of Willamette
Industries' arguments require and deserve a thorough response. To achieve both ends, the bold language in this
section provides a summary and concise statement of the EQC's reasons. The language in regular type provides a
more thorough examination of the company's arguments and the EQC's assessment of them.

1 earliest operations by Far West were sizable. In October, approximately 3,500 tons of recyclable
2 material were baled; in November, approximately 5,000 tons; and between December 1st and
3 December 21st, approximately 3,700 tons. In the following year, the facility averaged 6,556 tons
4 each month. Thus, the early operations in 1993, before the key date of December 22, were
5 reducing solid waste at a rate fully 50% of the average monthly capacity. In the EQC's
6 judgment, the reduction of several thousand tons of solid waste per month, at such a high
7 percentage of the total capacity, is clearly a "substantial quantity" of solid waste.

8 For these reasons, the EQC concludes that all elements of the facility essential to reduce a
9 substantial quantity of solid waste were completed as of September 27, 1993, nearly three full
10 months before the key date of December 22. If this is the case, the date of the lease is of
11 minimal significance because the lessee was allowed to undertake major operations well before
12 the lease was executed or effective.

13 The company challenges this conclusion by offering three primary theories why different,
14 and of course later, dates would be legally and factually determinative in this case. We now
15 proceed to consider those three theories and the reasons that the EQC rejects them.

16 **2. The Lease**

17 Although the effective date of a lease may be a relevant consideration, it does not alone
18 constitute substantial completion, either in general or in this particular case. At the outset of this
19 proceeding, the company relied almost entirely on the contention that the leasehold effective
20 date, January 1, 1994, was the date of substantial completion. (In its last submittal, the company
21 does not appear to retain the lease argument, merely mentioning the lease date on the last page,
22 but nonetheless, the EQC will respond to the argument.) Letter from Caroline E. Kuerschner to
23 EQC, dated June 23, 2000, p. 12.

24 It is true that the applicable statute, for this type of pollution control facility does allow
25 either the lessor or the lessee to claim the tax credit. There is nothing, however, that alters the
26 statutory requirement for "substantial completion." As we concluded above, the facility was

1 substantially complete when in late September 1993 Far West, the lessee, began operating the
2 facility and thereby reducing solid waste pollution. The fact that the company and Far West had
3 not yet entered into a lease is of no legal significance in this case. The EQC notes and concurs in
4 the following pertinent advice from the Attorney General:

5 Absent further rulemaking, ... we doubt that a court would sustain a determination
6 by the EQC based on a single factor, such as the date of the leasehold or the date
7 on which a company began to claim depreciation for tax purposes. Letter from
Assistant Attorney General Michael Huston, *supra*, p. 4.

8 This is not to say that a lease is never significant. To the contrary, in many cases
9 the lease is likely to be evidence of the start of productive operations. That is simply not
10 the case here.

11 3. Placed in Service

12 Under ORS 468.165(6), the requirement that the facility be “placed in service” is
13 separate from and in addition to the requirement for substantial completion, and it
14 expressly applies only to determine the starting date for applications, not the final date for
15 applications. At one point, DEQ considered using “placed in service” as the sole means of
16 determining “substantial completion,” but that idea was ultimately rejected.

17 Also earlier in the process, Willamette Industries urged the Commission to conclude that
18 the facility was substantially complete on December 31, 1993, because that was when the facility
19 was placed on the books for depreciation purposes or was “placed in service.” The fatal flaw in
20 the company’s argument is that it relies not on the law—i.e., the statutes and rules—but rather on
21 two documents drafted by DEQ for administrative purposes. The first is a document called
22 “DEQ Pollution Control Facility Tax Credit Application Instructions and Guidelines.” It is made
23 available by mail or computer to possible applicants. It appears that the company is using this
24 document for two legal purposes – first, to support the company’s preferred interpretation of the
25 statute, and second (although this is less clear), to suggest an inconsistency in the agency’s
26

1 interpretation. We deal with the first, interpretation argument here and then the second,
2 consistency argument in VII.B. below.

3 It is equally important to note what the company is *not* arguing. The company is not
4 arguing that it relied upon the DEQ Guidelines when it decided to file, thereby giving rise to an
5 equitable estoppel argument. There could be no such reliance or equitable estoppel, because the
6 DEQ Guidelines in question did not exist at the time that the company decided when to file.

7 The company's entire theory rests on the following two sentences from the Guidelines:
8 For some companies the date of substantial completion *may* be the date that
9 operations began or it may simply be the date of purchase. For others, it *may* be
10 the date the asset was placed on the books or began depreciation. DEQ Pollution
Control Facility Tax Credit Application Instructions and Guidelines at 3
(emphases added).

11 Particularly when examined in context, these sentences simply note that several dates
12 *may* be considered in determining substantial completion. Nothing in these two sentences
13 suggests that any single date is alone sufficient. Even the date that operations began is not alone
14 sufficient. Applicants must further show that the operations were reducing a significant quantity
15 of solid waste.

16 The second document the company relies upon is titled "Topic Discussion: Construction
17 Completed and Placed in Service." This document sought to interpret the following statutory
18 language:

19 "The application shall be submitted after construction of the facility is
20 substantially completed *and the facility is placed in service* and within two years
21 after construction of the facility is substantially completed."
ORS 468.165(6)(emphasis added).

22 The plain language of this statute is clear. It establishes the starting date and final date
23 for tax credit applications. The starting point includes two separate prerequisites – substantial
24 completion *and* placed in service. The final date has only one prerequisite – substantial
25 completion.

26 ///

1 Topic Discussion documents are used by Department staff to encourage debate internally
2 and sometimes with the EQC over a question of interpretation, usually involving a statute or rule.
3 In this case, the Topic Discussion document noted that “placed in service” was a term of art,
4 defined and used by the Internal Revenue Service. The document further noted the similarities
5 between the IRS definition and the EQC’s rule definition of “substantial completion.” This
6 particular Topic Discussion was provided to the EQC, but it was never adopted by the EQC as a
7 rule or otherwise. Thus, it could not have the force of a rule and could not, for example, override
8 the rule definition of “Substantial Completion.” Based in part on legal advice that the document
9 probably conflicted with the applicable statutes and rules, the Department never adopted or
10 implemented the document. It was not published on the website or included in the application
11 packet.

12 For these reasons, the EQC rejects Willamette Industries’ contention that the EMR
13 facility was not substantially complete until it was “placed in service.” The company’s
14 arguments rely upon documents drafted by DEQ long after the facts of this case and for entirely
15 different administrative purposes. Obviously, the company resorts to these documents because
16 the plain language of the statutes and rules in question clearly contradict the company’s position.

17 **4. The Dust Control System and Platform Scales**

18 **The dust control system and platform scales were not essential elements of the**
19 **facility. EMR was operating for pollution control purposes well before their installation in**
20 **April of 1994.**

21 Starting in December 1999, Willamette Industries presented an almost entirely new
22 theory on why its tax credit application was not submitted late. This theory was the focus of the
23 company’s last written submission in this tax credit review process. Letter from Caroline E.
24 Kuerschner, *supra*. The theory suggests that EMR was not substantially complete until March
25 and April 1994, several months after both the effective date of the lease and the date the facility
26

1 was placed in service. The theory uses March and April 1994, because that is when two pieces
2 of equipment, the DCE dust filter system and Toledo platform scales, were installed.

3 As previously discussed at some length, the statutory and rule test for substantial
4 completion is: on what date were all elements of the claimed facility essential to reduce a
5 substantial quantity of solid waste completed? The company's final theory on substantial
6 completion would have the EQC conclude that the date was April 1994, even though according
7 to the company's facts, at least 31,868 tons of recyclable material had been baled.³

8 In this respect, the theory seems to contradict the statute and rule, as well as common
9 sense. To get to the seemingly late date of April 1994, the company puts forward a technical
10 reading of the statute and rules that clearly contravenes the intent and purpose of those laws.
11 Specifically, the company argues that because the rules use the language "*claimed* facility," that
12 allows the applicant to dictate what are "essential" elements of the facility.

13 The EQC respectfully disagrees with this line of argument. A review of the entire
14 context in which the word "claimed" is used readily reveals the function of this adjective: the
15 term "claimed" is used to distinguish a facility that applicant *claims* to be eligible from one that
16 has been adjudged eligible through the review process.

17 With respect to the two elements in question, the proper test is whether they were
18 essential to reduce a substantial quantity of solid waste. The question is not whether the dust
19 filter and scales are desirable elements or even whether they are required by DEQ to control
20 pollution. In this case, the facts show that over 31,000 tons of solid waste were baled before the
21 dust filter and scales were installed. Furthermore, the company has failed to show that the 1994
22 monthly average of 6,556 tons of recyclable material was affected at all by installation of the
23 dust filter and scales.

24
25
26 ³ The figure is reached by adding the amounts baled for October, November and December 1993 – respectively
3,500, 5,000 and 3,700 tons – and the average of 6,556 tons for January, February and March 1994.

1 Given these facts, the Commission must assume that all elements essential to the
2 facility's purpose of reducing solid waste were completed in late September 1993. Any other
3 interpretation would negate the word "substantially" from the statutory phrase "substantially
4 completed." The facility was probably not *completed* until April 1994, but under this statute it
5 was *substantially completed*. The Commission is confident that company officials in charge of
6 compliance with the tax credit statute knew or should have known that it was not safe to rely
7 upon the April 1994 date.

8
9 **B. Consistency of the Interpretation**

10 **The EQC's determination in this case is not inconsistent with an EQC rule, an**
11 **officially stated agency position or a prior agency practice. The DEQ guidelines relied on**
12 **so heavily by the company do not state that a leasehold or any other factor alone establishes**
13 **substantial completion. As to the prior tax credit decisions cited by the company, they do**
14 **not appear to establish any official agency position or practice. Even if they do, those tax**
15 **credit decisions are distinguishable from the application at hand. Finally, even if there is**
16 **some inconsistency between the application at hand and the prior tax credit decisions, the**
17 **EQC's explanation is that the interpretation adopted in this case is more consistent with**
18 **the plain language and clear purpose of the tax credit statute.**

19 **1. Overview on Consistency**

20 According to ORS 468.170(3),

21 "If the applicant is rejected for any reason,...the applicant may
22 appeal from the rejection as provided in ORS 468.110."

23 ORS 468.110 in turn provides for an appeal "in accordance with the provisions of ORS 183.310
24 to 183.550," a cross-reference to Oregon's Administrative Procedures Act. Because neither the
25 tax credit statute nor the implementing rules provide for a contested case proceeding, the EQC's
26 final order would be reviewed in circuit court under ORS 183.484. One of the standards for
judicial review established by ORS 183.484 reads as follows:

1 “The court shall remand the order to the agency if it finds the
2 agency’s exercise of discretion to be:

3 ... (B) Inconsistent with an agency rule, an officially stated
4 agency position, or a prior agency practice, if the inconsistency is
5 not explained by the agency...

6 ORS 183.484(5)(b).

7 As discussed above, the company’s last written submittal included several DEQ Tax
8 Credit Review Reports from prior cases. Referring to these reports, Willamette Industries argues
9 that

10 “...the date a facility is placed into operation is not determinative
11 of the date of substantial completion. That such dates are different
12 and distinct is consistently reflected in the Department’s own tax
13 credit review reports. Moreover, the fact that operations *can* begin
14 *prior* to the date a facility is substantially completed has been
15 relied on by the Department to recommend certification of
16 pollution control facilities.”

17 Letter from Caroline E. Kuerschner, *supra*, p.7 (emphases in
18 original)

19 As noted above, it is not clear whether the company’s argument is based upon the
20 “inconsistency” standard of review under ORS 183.484(5)(b)(B). The company does not cite
21 that statutory provision or any of the case law applying it. Nonetheless, the EQC prefers to
22 assume that the inconsistency standard is at issue and to address it in this order, in two parts.
23 First, the EQC offers its general findings and reasoning on why the EQC’s interpretation is
24 consistent with the agency’s rules and any officially stated agency position or prior agency
25 action. Second, the EQC briefly addresses each of the cited tax credit reports.

26 **2. General Findings and Reasoning**

The question of what constitutes an officially stated agency position or a prior agency
practice ultimately belongs to the courts, but the EQC respectfully offers its judgment. The EQC
finds and concludes that none of the reports relied upon by the company constitutes an officially
stated agency position or a prior agency practice. Again, the EQC’s reasoning for each
document is offered below, but a few general problems with the company’s assertion should be

1 briefly noted. For example, several of the tax credit applications in question *are still pending*. It
2 would seem axiomatic that a tax credit application not yet acted upon by the EQC cannot
3 constitute “an officially stated agency position, or a prior agency practice.” There is sufficient
4 time and opportunity for the EQC’s determination in this case to be considered and incorporated
5 as appropriate in the pending tax credit applications.

6 All of the tax credits cited by the company have an additional problem - - none of them
7 deals expressly with the question of substantial completion, nor offers or adopts any particular
8 interpretation of these words. Thus, it is clear that none of the pending or prior tax credit
9 applications, either separate or together, presents “an officially stated agency position.” The
10 reason for this is also clear: unless DEQ proposed to reject an application as untimely, there
11 would be no specific consideration of the “substantial completion” issue. Obviously, it would be
12 contrary to the applicant’s interests to raise the issue. Moreover, third party participation in
13 pollution control tax credit matters has been extremely rare.

14 Willamette Industries uses the term “practice” in its last submittal, so perhaps it is the
15 company’s position that the interpretation of substantial completion in this case is inconsistent
16 with “a prior agency practice.” ORS 183.484(5)(b)(B). As noted in the quote immediately
17 above, the company relies on several tax credit applications to support the proposition that
18 “operation is not determinative of the date of substantial completion.” Letter from Caroline E.
19 Kuerscher, *supra*, p. 7. Even if the company is correct in this assertion, the argument is
20 misplaced. As discussed at length in part VII.A. above, the legal test under the plain language of
21 the statute and rule is not operation alone, but rather whether all of the elements essential to
22 reduce a substantial quantity of solid waste were operating. Thus, for example, a facility may be
23 operating, but simply not to the point of reducing a substantial quantity of solid waste. It is
24 difficult and sometimes impossible to tell whether such other facts exist in a particular,
25 previously decided tax credit matter. As noted above, the detailed facts involving substantial
26 completion are rarely discussed in a tax credit report unless DEQ has reason to believe that the

1 applicant was late. Further information on each tax credit cited by the company is provided in
2 part B.3. immediately below. For the reasons stated in that subsection and above, the EQC finds
3 and concludes that none of the tax credit cases relied upon by Willamette Industries, either
4 individually or together, constitute “an officially stated agency position, or a prior agency
5 practice.”⁴

6 Should a court conclude otherwise, it is then the agency’s obligation to explain the
7 inconsistency. EQC’s explanation for its interpretation has, of course, already been offered in
8 full in part V.A. As discussed there, the interpretation of substantial completion expressed in this
9 case is more consistent, if not legally compelled, by the plain language of the applicable statutes
10 and rules.

11 We turn now to the individual tax credit reports.

12 **3. Findings and Reasons for Individual EQC/DEQ Tax Credit Reports**

13 The tax credits applications and other documents cited by Willamette Industries are
14 addressed in reverse chronological order.

15 (1) Tax Credit Review Report #5236 (May 1, 2000)

16 Willamette Industries cites this application, #5236, as the first of four examples where the
17 agency has purportedly taken the inconsistent position of using accounting or tax dates, such as
18 the date of depreciation or the “placed in service” date, to determine substantial completion.
19 This line of argument is discussed and rebutted in part VII.A.3. above. Among other reasons
20 discussed there, accounting and tax dates may be considerations, as long as they are not alone
21 determinative of substantial completion.

22 Closer examination of application #5236 reveals that the company’s reliance on this
23 application is especially inappropriate. In that case, DEQ did *not* use the date that the air
24

25 ⁴ The EQC will let the courts determine whether DEQ and the EQC are the same agency for purposes of the
26 inconsistency standard of review. As a matter of policy, the EQC expects that the public generally perceives the two
bodies as one and the same and, for this and other reasons, is concerned that the two bodies act consistently.

1 pollution facility was first placed on the “depreciation ledger,” but rather DEQ used the date
2 when “the applicant’s ledger indicates that 92.4% of the claimed facility was in operational
3 service”. Tax Credit Review Report, p. 2 (emphasis added). The Department also listed the
4 elements of the facility that were in service, clearly including the elements that provided
5 pollution control (e.g., “majority of baghouse installation of piping, truck bins, majority portion
6 of pneumatic converging system.”) *Id.*

7 There is yet another problem with the company’s use of application #5236. As written on
8 the face of the report, application #5236 was “remove[d] from agenda” of the EQC, and at the
9 time of the EQC’s determination and vote in this case, it had not been acted upon by the EQC.
10 Therefore, in the EQC’s judgment, application #5236 does not constitute “an officially stated
11 agency position” or “prior agency practice.”

12 (2) Tax Credit Review Report #5140 (May 1, 2000)

13 The company cites this tax credit review report and several others for the proposition that
14 “the date a facility is placed into operation is not determination of the date of substantial
15 completion.” Letter from Caroline E. Kuerschner, *supra*, p. 7. The company’s argument is
16 misplaced for two reasons. First, at the time of the EQC’s deliberations and vote in this case,
17 application #5140 was still pending and had not been decided by the EQC. Thus, both DEQ’s
18 recommendation and the EQC’s resolution were both unknown at the time of the decision in this
19 case. Therefore, in the EQC’s judgment, there is no officially stated agency position on
20 application #5140.

21 Second, the company’s proposition is true, but it misses the point legally. Operation is
22 *not* the same as substantial completion. Rather, as discussed carefully above, the test of
23 substantial completion is not just any operation, but rather operation of all elements of the
24 claimed facility *essential* to reduce a substantial quantity of solid waste.

25 Tax credit application #5140 deals with an \$18 million dollar organic wastewater
26 pretreatment and treatment system, including a particularly complex fluoride treatment system.

1 Just from the face of the staff report, it should be obvious that such systems typically involve
2 lengthy start-up and trial periods. Therefore, the fact that the facility started operations a year
3 before the construction was substantially complete is neither unusual nor contrary to the EQC's
4 interpretation of substantial completion in this case.

5 (3) Tax Credit Review Report #5105 (May 1, 2000)

6 This application and the following two applications are all cited by the company because
7 the Department recommended "approval of a facility based on the date the facility was placed
8 into operation, *not* the date construction was determined to have been substantially completed."
9 Specifically, the company is referring to the short-hand chronology that DEQ used in these cases.
10 With respect to application #5105, the chronology read as follows:

11

<i>Timeliness of Application</i>	<i>Application Received</i>	10/20/98
The department determined that the application was submitted within the timing requirements of ORS 468.165(6).	<i>Additional Information Requested</i>	2/18/99
	<i>Additional Information Received</i>	4/8/99
	<i>Additional Information Received</i>	11/12/99
	<i>Application Substantially Complete</i>	12/6/99
	<i>Construction Started</i>	10/10/95
	<i>Construction Completed</i>	6/11/96
	<i>Facility Placed into Operation</i>	10/20/96

16

17 Apparently, the company's entire concern rests on the last two entries in this very brief
18 chronology. This makes far too much of too little. As the Department has noted, operation is
19 used by staff as an indicator of when they should make further inquiry about the filing deadline.
20 While operation alone does not equal, substantial completion, it is required as a minimum.
21 Furthermore, operation is pertinent for other policy and legal purposes. For example, failure to
22 continue operation can be a basis for revoking a tax credit certificate. ORS 468.185(1a)
23 (the EQC may order revocation if "[t]he holder of the certificate has failed substantially to
24 operate the facility...")

25 ///

26 ///

1 In short, for all of these reasons, the three applications cited by the company do *not*
2 support the proposition that the Department or this Commission are using operation or service
3 dates as the sole determinative of substantial completion.

4 Finally, it is again noted that application #5105 had not been adopted at the time of the
5 Commission's deliberation and vote in this case. Thus, it is also questionable whether the staff
6 report, which is subject to change, does constitute "an officially stated agency position" or a
7 "prior agency practice."

8 (4) Tax Credit Review Report #5103 (May 1, 2000)

9 See the report immediately above, #5105.

10 (5) Tax Credit Review Report #5047 (September 1999)

11 See report #5105 above. The only pertinent difference is that in this case, the EQC has
12 taken final action on the tax credit application.

13 (6) Tax Credit Review Report #4948 (December 30, 1998)

14 The company's only reference to this tax credit is in a footnote, where the company
15 quotes the following sentence: "The **sole purpose** of the previously listed components is to
16 recycle or directly facilitate the recycling of a substantial quantity [of solid waste]." Letter from
17 Caroline E. Kuerschner, *supra*, p. 2. Application #4948 also involved a waste paper recycling
18 plant, although a far larger and more expensive one.

19 The company cites this report as support for its factual assertion that both the dust filter
20 system and the platform scales would satisfy the sole purpose test. Therefore, it does not appear
21 that application #4948 is part of the company's allegation of inconsistency. In any case, the
22 EQC's position on the dust filter and scales elements is fully set forth in part VII.A.4. above. To
23 the extent that there is any inconsistency requiring an explanation under ORS 183.484(5), the
24 explanation is provided in full there.

25 (7) Tax Credit Review Report #4570 (January 24, 2000)

26 (8) Tax Credit Review Report #4570 (December 8, 1999)

1 (9) Tax Credit Review Report #4570 (September 30, 1997)

2 These three reports are simply earlier staff reports from the application that is the subject
3 of this order. Presumably, these reports were provided because the company quoted passages
4 from these reports and otherwise to facilitate the EQC's consideration of the company's
5 arguments. If the company intended to suggest that these reports constitute officially stated
6 agency positions or a prior agency practice requiring an explanation, the company did not make
7 that clear. Furthermore, as noted on the prior report, to the extent that a court determines that an
8 explanation is required, that explanation is provided by the analysis and discussion of all the
9 issues throughout this order.

10 (10) Tax Credit Review Report #4129 (February 16, 1994)

11 Willamette Industries simply cites application #4129 as another example of its flawed
12 argument that any prior tax credit decision in which substantial completion was later than any
13 operations is contrary to the interpretation set forth in this order. For the reasons discussed
14 above (general analysis and application #4570) and in the tax credit that follows, the company's
15 argument ignores the statutory and rule language that, together, requires completion of all
16 elements essential to reduce a substantial quantity of pollution.

17 Furthermore, the facility in application #4129 is semiconductor wafer processing
18 equipment that controls nitric acid emissions. The staff report discusses problems faced in
19 meeting proposed emission levels, thereby substantially reducing air pollution.

20 (11) Tax Credit Review Report #3979 (September 1, 1993)

21 See application #5140 above. The company simply uses application #3979 as another
22 example of operation preceding substantial completion. As discussed above, there is no
23 inconsistency between that fact and the EQC's position in this case. Operations do not constitute
24 substantial completion until those operations are sufficient to reduce a substantial quantity of
25 pollution. Application #3979 involved two air pollution control facilities, an electrostatic
26 precipitator and a baghouse with a pneumatic waste transport system. Both of these facilities had

1 about a two-month difference between initial operations and substantial completion. No one
2 raised any issue of substantial completion in that application, and thus there was no further
3 exploration of that issue. Absent additional facts, there is simply no inconsistency between the
4 EQC's approval of application #3979 and our interpretation in this case.

5 **C. Other Issues**

6 **1. Dissenting Staff Opinion**

7 **The fact that one DEQ staff member, who has technical expertise in solid waste and**
8 **was asked to review this application, expressed support for the position advocated by the**
9 **company was considered by the EQC but has no particular significance to the ultimate**
10 **decision of the agency. Difference of opinion between staff members is both appropriate**
11 **and common. But the final staff recommendation rests with the agency managers of the**
12 **tax credit program and ultimately the Director, and the final decision rests with the EQC.**

13 Willamette Industries placed great weight, both in oral and written argument, on the fact
14 that William Bree, a staff member with DEQ's solid waste program, expressed support for the
15 company's position at certain stages in the tax credit review process. With all due respect to
16 counsel for the company, time spent on this matter seemed excessive, and only a brief response
17 is in order.

18 Every tax credit application is reviewed by a number of people with diverse expertise,
19 both staff members within the agency and, as appropriate, outside contractors. This review
20 process almost always includes a "technical review" by a staff member in the pollution control
21 program that is related to the facility under review. In this case, the technical review of a
22 material recovery facility was logically assigned to Mr. Bree, a staff member in the solid waste
23 program who has some familiarity with this type of facility. It is not surprising in this case that
24 Mr. Bree's position might favor tax credit certification of the company's EMR facility, given the
25 obvious environmental merit of the facility. The EQC agrees with this positive assessment of the
26

1 EMR facility but, at least on this occasion, does not agree with Mr. Bree's reading of the tax
2 credit law.

3 **VIII. SUMMARY**

4 This case calls for an interpretation of the phrase "substantially completed," which starts
5 the clock running on a two-year deadline for filing a pollution control tax credit application. In
6 making this interpretation, this Commission's function is simply to interpret and apply the
7 inexact words to the facts of this case in a manner that is consistent with the legislative purpose.
8 This is not a case in which the legislature has delegated broad policy making discretion to the
9 Commission.

10 While the pollution control tax credit statute offers generous financial support for eligible
11 facilities, it is strict and unforgiving in the deadlines that it establishes. When the facts show, as
12 they do in this case, that a facility is operating in a manner that is reducing substantial quantities
13 of pollution, the Commission is compelled to conclude that the facility is substantially complete.

14 Nothing in this interpretation will affect diligent applicants. There is simply no reason
15 that the company needed to wait until the last days, a frustration expressed by the company's
16 own tax manager. Even using the company's view of substantial completion, there was still an
17 18 month window in which the company could have applied without any risk of being late.⁵

18 **IX. FINAL ORDER**

19 Willamette Industries' Pollution Control Tax Credit Application No. 4570 is rejected.

20 It is so ordered:

21 Dated this 27th day of September 2000.

22
23 Environmental Quality Commission
24 Langdon Marsh
25 Langdon Marsh, Director
Department of Environmental Quality

26 ⁵ The 18 month period is the approximate difference between March/April of 1994, which the company contends was the date of substantial completion, and September 27, 1995, DEQ's view of when the application was due.

1 NOTICE OF JUDICIAL REVIEW: You are entitled to judicial review of this order. Judicial
2 review is pursuant to the provisions of ORS 468.170(3) and 468.110.

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4 GENS7807

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Commission Action

9/29/00

App. No.	Media	Applicant	Certified Cost	%	Value	Recommendation	Action
4979	Air	Willamette Industries, Inc.				REMOVE	
5159	Water	Deschutes Brewery	\$ 714,103	100%	\$ 357,052	Approve	
5162	Air	Ohka America, Inc.	\$ 509,938	100%	\$ 254,969	Approve	
5163	Water	Ohka America, Inc.	\$ 114,425	100%	\$ 57,213	Approve	
5195	Water	Sabroso Corporation	\$ 65,854	100%	\$ 32,927	Approve	
5196	Noise	Sabroso Corporation	\$ 4,208	100%	\$ 2,104	Approve	
5197	SW	Sabroso Corporation	\$ 32,062	100%	\$ 16,031	Approve	
5198	Water	Sabroso Corporation	\$ 37,557	100%	\$ 18,778	Approve	
5199	SW	Sabroso Corporation	\$ 9,914	100%	\$ 4,957	Approve	
5236	Air	Smurfit Newsprint Corp.				REMOVE	
5297	Air	Synthetech, Inc.	\$ 346,554	100%	\$ 173,277	Approve	
5330	USTs	Guernsey Development, Inc.	\$ 134,312	92%	\$ 61,784	Approve	
5331	Air/Noise	Oregon Steel Mills, Inc.	\$ 96,790	100%	\$ 48,395	Approve	
5345	Water	Van Beek Dairy				REMOVE	
5353	Air	Schrock Cabinet Company	\$ 68,912	100%	\$ 34,456	Approve	
5358	Air	Schrock Cabinet Company	\$ 75,760	100%	\$ 37,880	Approve	
5363	SW	United Disposal Service, Inc.	\$ 128,030	100%	\$ 64,015	Approve	
5384	Air	Ash Grove Cement Co. & Subsidiaries	\$ 307,596	67%	\$ 102,891	Approve	
5386	FB	Oregon Rootstock & Tree Co., Inc.	\$ 148,842	100%	\$ 74,421	Approve	
5388	Air	Foster Auto Parts, Inc.	\$ 1,754	100%	\$ 877	Approve	
5389	Air	U Pull It Tigard, Inc.	\$ 1,754	100%	\$ 877	Approve	
5390	Air	Damascus U Pull It, Inc.	\$ 1,754	100%	\$ 877	Approve	
5391	Air	U Pull It Salem Auto Wrecking, Inc.	\$ 1,754	100%	\$ 877	Approve	
5392	Water	Damascus U Pull It Inc.	\$ 7,295	100%	\$ 3,648	Approve	

**Commission Action
9/29/00**

5393	Water	U Pull It Tigard, Inc.	\$ 8,804	100%	\$ 4,402	Approve	
5394	Water	Foster Auto Parts, Inc.	\$ 10,513	100%	\$ 5,257	Approve	
5395	Water	Foster Auto Parts, Inc.	\$ 45,823	100%	\$ 22,912	Approve	
5419	SW	Newberg Garbage Service, Inc.	\$ 42,810	100%	\$ 21,405	Approve	
5420	SW	Newberg Garbage Service, Inc.	\$ 30,000	100%	\$ 15,000	Approve	
5425	SW	Bend Garbage Company	\$ 215,104	100%	\$ 107,552	Approve	
5429	SW	Newberg Garbage Service, Inc.	\$ 14,918	100%	\$ 7,459	Approve	
5430	SW	Newberg Garbage Service, Inc.	\$ 4,796	100%	\$ 2,398	Approve	
5434	SW	Corvallis Disposal				REMOVE	
5441	Plastics	Denton Plastics, Inc.	\$ 9,000	100%	\$ 4,500	Approve	
5450	SW	American West Leasing	\$ 45,995	100%	\$ 22,998	Approve	
5456	P2-Perc	Midway Cleaners, Inc.	\$ 49,814	100%	\$ 24,907	Approve	
5459	USTs	Devon Oil Company, Inc	\$ 99,099	90%	\$ 44,595	Approve	
5460	USTs	Devon Oil Company, Inc	\$ 124,917	87%	\$ 54,339	Approve	
			TOTAL Approvals		\$ 1,686,027		
5167	Air	Willamette Industries, Inc.				REMOVE	
5276	Water	Teledyne Industries, Inc.	\$ 132,705	100%	\$ 66,353	Deny	→ Remove
5286	Water	Teledyne Industries, Inc.	\$ 22,500	100%	\$ 11,250	Deny	
5299	Water	Willamette Industries, Inc.				REMOVE	
5373	Water	Sanders Forest Products, Inc.	\$ 830,278	100%	\$ 415,139	Deny	→ Remove
Cert.#							
3825		To: Mr.&Mrs Alan Bowdish				Transfer	
3038		To:Floragon Forest Products Mollala, Inc.				Transfer	
4000		To:Floragon Forest Products Mollala, Inc.				Transfer	

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C
September 1, 2000 Meeting

Title: Tax Credit Applications		
Summary: Staff recommends the following actions regarding tax credits:		
	<u><i>Certified Cost</i></u>	<u><i>Value</i></u>
<i>Approve</i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (11 applications)	\$1,955,010	\$926,598
Air/Noise (1 application)	\$96,790	\$48,395
Field Burning (1 application)	\$148,842	\$74,421
Hazardous Waste (1 application)	\$413,470	\$206,735
Noise (1 application)	\$4,208	\$2,104
Solid Waste (9 applications)	\$523,630	\$261,815
USTs (3 applications)	\$358,328	\$160,717
Water (9 applications)	<u>\$1,103,197</u>	<u>\$551,599</u>
<i>Pollution Control Facility Tax Credit (36 applications)</i>	\$4,603,475	\$2,232,383
<i>Pollution Prevention Tax Credit</i>		
Pollution Prevention Tax Credit (1 application)	\$49,814	\$24,907
<i>Reclaimed Plastics Products Tax Credit</i>		
Plastics (1 application)	<u>\$9,000</u>	<u>\$4,500</u>
Approve (38 applications)	\$4,662,289	\$2,261,790
<i>Deny</i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (1 application)	\$38,267	\$19,133
Water (4 applications)	<u>\$1,016,300</u>	<u>\$508,150</u>
Deny (5 applications)	\$1,054,566	\$527,283
Approve issuance of tax credit certificates for the applications presented in Attachment B.		
Deny issuance of tax credit certificates for the applications presented in Attachment C.		
Transfer Certificates as presented in Attachment D.		
<i>Margaret Vandenberg</i>	<i>[Signature]</i>	<i>[Signature]</i>
Report Author	Division Administrator	Director

September 1, 2000

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

Date: September 1, 2000
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Agenda Item C, September 29, 2000, EQC Meeting
Tax Credit Application Consideration

Statement of the Need for Action

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

- All applications are summarized in Attachment A of this staff report.
- Applications recommended for Approval are presented in detail in Attachment B.
- Applications recommended for Denial are presented in detail in Attachment C.
- Certificates presented for transfer are presented in Attachment D.

According to the Commission's direction, this letter calls attention to applications that may require background information not contained in the Review Reports or a discussion of applications where staff needs the Commission's policy direction.

Background APPROVALS: Attachment B

The applications presented for approval in Attachment B:

1. Meet the eligibility requirements for certificate issuance for the Pollution Control Facility Tax Credit, the Reclaimed Plastic Product, and the Pollution Prevention Tax Credit programs.
2. Include two replacement facilities.
3. Do not represent any Preliminary Applications for the Pollution Control Tax Credit Program.
4. Are organized in application number sequence.

Application 5159 – Deschutes Brewery

The Department presented the Deschutes Brewery, Inc. application number 5159 in the May 17, 2000 Staff Report to the Commission. Initially, the applicant did not include a consideration of cost savings on the average annual cash flow worksheet. However, the reviewers identified cost savings due to reduced BOD charges from the City of Bend. The Department recommended that the facility claimed on application number 5159 be approved with zero percent of the facility cost allocated to pollution control based on the inclusion of the cost savings.

Mr. Gary Fish of Deschutes Brewery requested that the Department remove the application for certification of its wastewater treatment application from the May 17, 2000 agenda. Mr. Fish stated that since the time of the original application, he identified additional information that challenged the applicant's original assumptions the applicant had made. The application was removed from the agenda.

The applicant revised the cash flow information based on the actual performance of the claimed facility over the last two years. The result was that the operating costs of the claimed facility were much higher than anticipated. And the performance of the claimed facility was less than anticipated. The reviewers analyzed the performance information in detail and it appeared to reflect the actual operating conditions of the claimed facility. This revised information changed the percentage allocable to pollution control from zero percent to 100% allocable.

Replacement Facilities

The tax credits are not intended to provide ongoing relief. They are intended to provide a one-time incentive for providing an environmental benefit or to reduce the cost of the initial compliance with an environmental regulation. Therefore, replacement or reconstruction of all or any part of a facility that has previously been issued a tax credit certificate are not eligible for a second tax credit with two exceptions.

1. The facility was installation in response to a new DEQ, EPA or a regional air pollution authority requirement; or
2. The original facility was replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Two facilities presented for approval are replacement facilities. They are:

<u>Application Number</u>	<u>Applicant</u>	<u>Eligible Facility Cost</u>
5386	Oregon Rootstock & Tree Co., Inc. dba TRECO	Remaining certificate value
	Van Beek Dairy	Remaining certificate value

When the Commission approves a replacement facility for the remaining certificate value, the original certificate is reissued. The certificate will show the original conditions issue and the new conditions of issue; thereby, allowing the Department of Revenue to easily track the certificates. The actual remaining certificate value is subject to the verification by the Department of Revenue.

Background COMMISSION DENIALS – Attachment C

The applications presented for denial in Attachment C:

1. Do not meet the eligibility requirements for certification according to the pollution control facility, pollution prevention, and the reclaimed plastics tax credit programs.
2. Do not represent any preliminary applications under the pollution control facility tax credit program.
3. Are organized in application number sequence.

Background TRANSFERS – Attachment D

When the Commission approves a certificate transfer they revoke the original certificate as of the date the facility was sold or exchanged. The approval also includes the reissue of the certificate to the new certificate holder. The actual remaining certificate value is subject to the verification by the Department of Revenue. The certificate will be reissued under the same certificate number. The certificate will show both the original conditions of issue and the new conditions of issue; thereby, allowing the Department of Revenue to easily track the certificates. Transfers are pursuant to ORS 315.304 as administered by the Department of Revenue.

The Department recommends the transfer of the following certificate as presented in Attachment E of the Department's Staff Report.

Certificate Number 3825 Alan Bowdish, Inc., requested the transfer of Certificate Number 3825 from Alan Bowdish, Inc. to Mr. and Mrs. Alan Bowdish. The request was accompanied by a Bill of Sale. Staff verified that the facility is currently operating.

Certificate Number 3038
Certificate Number 4000 Jerry L. Lawson, Jr. requested that certificates numbered 3038 and 4000 issued to Avison Wood Specialties be transferred to Floragon Forest Products Mollala, Inc. The request was accompanied by a Bill of Sale.

Background TOPIC DISCUSSION -- Attachment E

The Commission asked the Department to discuss the method for considering cost savings for treatment works for industrial waste. The Commission recognized that cost savings are a subset the return on investment consideration and asked the Department to prepare a Worksession on the topic. The Worksession was postponed until January due to EQC scheduling. However, this agenda item contains treatment works for industrial waste where cost savings are considered. Therefore, staff included a discussion in Attachment E.

Conclusions

The recommendations for action on the attached applications are consistent with statutory provisions and administrative rules related to the pollution control facility and the pollution prevention 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 certification for the tax credit applications as presented in Attachment C of the Department's Staff Report. The Department recommends the Commission transfer the certificate presented in Attachment D of the Staff Report.

Intended Follow-up Actions

Staff will notify applicants of the action taken by the Environmental Quality Commission. The Department will notify applicants by Certified Mail when their facility was denied certification, approved for a lesser facility cost than on the application, or approved for less than 100% allocable to pollution control. Staff will notify Department of Revenue of any Issued, Transferred or Revoked certificates.

Attachments

- A. Summary
- B. Approvals
- C. Denials
- D. Transfers
- E. Topic Discussion


Reference Documents (available upon request)

- 1. ORS 468.150 through 468.190.
- 2. OAR 340-016-0005 through 340-016-0050.
- 3. ORS 468A.095 through 468A.098.
- 4. OAR 340-016-0100 through 340-016-0125.
- 5. ORS 468.451 through OAR 468.491.
- 6. OAR 340-017-0010 through 340-017-0055.

Approved:

Section:

Division:



Report Prepared by: Margaret Vandehey

Phone: (503) 229-6878

Date Prepared: September 1, 2000

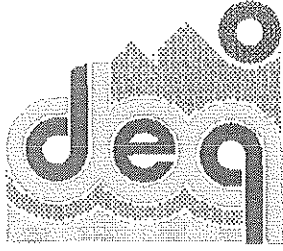
Attachment A

Summary

Application	Action	Media	Applicant	Certified Cos	Percent	Value
4979	Approve	Air	Willamette Industries, Inc.	\$615,050	100%	\$307,525
5159	Approve	Water	Deschutes Brewery	\$714,103	100%	\$357,052
5162	Approve	Air	Ohka America, Inc.	\$509,938	100%	\$254,969
5163	Approve	Water	Ohka America, Inc.	\$114,425	100%	\$57,213
5195	Approve	Water	Sabroso Corporation	\$65,854	100%	\$32,927
5196	Approve	Noise	Sabroso Corporation	\$4,208	100%	\$2,104
5197	Approve	Solid Waste	Sabroso Corporation	\$32,062	100%	\$16,031
5198	Approve	Water	Sabroso Corporation	\$37,557	100%	\$18,778
5199	Approve	Solid Waste	Sabroso Corporation	\$9,914	100%	\$4,957
5236	Approve	Air	Smurfit Newsprint Corp.	\$24,184	100%	\$12,092
5297	Approve	Air	Synthetech, Inc.	\$346,554	100%	\$173,277
5330	Approve	USTs	Guernsey Development, Inc.	\$134,312	92%	\$61,784
5331	Approve	Air/Noise	Oregon Steel Mills, Inc.	\$96,790	100%	\$48,395
5345	Approve	Water	Van Beek Dairy	\$98,823	100%	\$49,412
5353	Approve	Air	Schrock Cabinet Company	\$68,912	100%	\$34,456
5358	Approve	Air	Schrock Cabinet Company	\$75,760	100%	\$37,880
5363	Approve	Solid Waste	United Disposal Service, Inc.	\$128,030	100%	\$64,015
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5386	Approve	Field Burning	Oregon Rootstock & Tree Co., Inc.	\$148,842	100%	\$74,421
5388	Approve	Air	Foster Auto Parts, Inc.	\$1,754	100%	\$877
5389	Approve	Air	U Pull It Tigard, Inc.	\$1,754	100%	\$877
5390	Approve	Air	Damascus U Pull It, Inc.	\$1,754	100%	\$877
5391	Approve	Air	U Pull It Salem Auto Wrecking, Inc.	\$1,754	100%	\$877
5392	Approve	Water	Damascus U Pull It Inc.	\$7,295	100%	\$3,648
5393	Approve	Water	U Pull It Tigard, Inc.	\$8,804	100%	\$4,402
5394	Approve	Water	Foster Auto Parts, Inc.	\$10,513	100%	\$5,257
5395	Approve	Water	Foster Auto Parts, Inc.	\$45,823	100%	\$22,912
5419	Approve	Hazardous Waste	Newberg Garbage Service, Inc.	\$42,810	100%	\$21,405
5420	Approve	Hazardous Waste	Newberg Garbage Service, Inc.	\$30,000	100%	\$15,000
5425	Approve	Solid Waste	Bend Garbage Company	\$215,104	100%	\$107,552
5429	Approve	Solid Waste	Newberg Garbage Service, Inc.	\$14,918	100%	\$7,459
5430	Approve	Solid Waste	Newberg Garbage Service, Inc.	\$4,796	100%	\$2,398
5434	Approve	Hazardous Waste	Corvallis Disposal & Recycling Co	\$413,470	100%	\$206,735
5441	Approve	Plastics	Denton Plastics, Inc.	\$9,000	100%	\$4,500
5450	Approve	Solid Waste	American West Leasing	\$45,995	100%	\$22,998
5456	Approve	Perc	Midway Cleaners, Inc.	\$49,814	100%	\$24,907
5459	Approve	USTs	Devon Oil Company, Inc	\$99,099	90%	\$44,595
5460	Approve	Air	Devon Oil Company, Inc	\$124,917	87%	\$54,339
5167	Deny	Air	Willamette Industries, Inc.	\$38,267	100%	\$19,133
5276	Deny	Water	Teledyne Industries, Inc.	\$132,705	100%	\$66,353
5286	Deny	Water	Teledyne Industries, Inc.	\$22,500	100%	\$11,250
5299	Deny	Water	Willamette Industries, Inc.	\$30,817	100%	\$15,409
5373	Deny	Water	Sanders Forest Products, Inc.	\$830,278	100%	\$415,139

Attachment B

Approvals



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **4979**
Facility Cost **\$615,050**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Air Final Certification

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

Applicant Identification

The applicant is a C corporation operating as a **particleboard manufacturer**. Their taxpayer identification number is 93-0312940. The applicant's address is:

KorPine Division
1300 SW Fifth Avenue, Suite 3800
Portland, OR 97201

Facility Identification

The applicant claimed the following facility:

**A Wellons Electrostatic Precipitator
(ESP)**

The applicant is the owner of the facility located at:

55 SW Division
Bend, OR 97702

Technical Information

The claimed facility consists installation made in Phase I and Phase II:

Phase I: The applicant claimed the following components from September of 1995:

- Installation of computerized combustion controls on boilers #1 and #2 to minimize emissions by improving combustion efficiency. Boiler #1 is fired with either sanderdust or natural gas, boiler #2 with sanderdust with a natrual gas pilot light.
- Installation of ductwork rerouting boiler #1 exhaust to finish dryer #4 and boiler #2 exhaust to finish dryers # 1 & #2, routing emissions through the dryers to the dryer scrubbers,
- Overhaul of the star feeder on boiler #1 to improve collection efficiency of the multiclone.

This installation failed to meet the emission requirements in all operating conditions of applicant's air permit. The maximum emission limit allowed in the air permit for boiler #1 was 0.20 gr/dscf and for boiler #2 was 0.10 gr/dscf.

Phase II: In September of 1996, the applicant completed installation of the Wellons Model #7 electrostatic precipitator (ESP) to control particulate emissions from both boilers when fired on sanderdust. The applicant claimed the Modification of the boiler exhaust ductwork and installation of a new Wellon's #7 dry ESP to control emissions from boiler #1 and boiler #2. The applicant states that emission levels are now less than 0.075 gr/dscf under all firing conditions.

The dry type Wellon ESP has a design inlet gas flow rate of 60,000 acf/min and a rated efficiency of 65%. Exhaust from each boiler is routed through a multiclone to the inlet of the Wellons ESP. Hot exhaust from the ESP is used in cold weather to heat one or more of the final dryers and otherwise is discharged into the atmosphere.

ESPs are considered best available control technology for controlling particulate emissions and opacity.

Eligibility

Phase I

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment and installation** is not to control and reduce a substantial quantity of air pollution because it is not required by the Department or the federal Environmental Protection agency

ORS 468.155 (1)(a)(B) The **sole purpose** of this **new equipment** is **not** to prevent, control, or reduce a substantial quantity of air pollution. The combustion control system's function is to adjust the air to fuel ratio to improve combustion efficiency thereby reducing fuel usage. The boiler exhaust ducting and insulation was installed to reduce energy consumption.

Phase II

ORS 468.155 (1)(a)(A) The **principal purpose** of the **new ESP and installation** is to control and reduce a substantial quantity of air pollution. DEQ imposes the requirement under ACDP #09-0002 issued 10/4/95 and Mutual Agreement Order #AOP-ER-96-017 dated 4/26/96.

Ducting, ancillary equipment and electrical equipment claimed in Phase II were installed for reasons other than to control or reduce air pollution. The primary purposes or the exclusive purposes of these components are not pollution control. (See the Facility Cost section for further discussion.)

ORS 468.155 (1)(b)(B) The ESPs are an air cleaning device, which **controls** air pollution by **disposing** of the **air contaminants**.

Timeliness of Application

Application for Phase I was not submitted within the timing requirements of ORS 468.165 (6). The law states that the application must be submitted within two years after construction is substantially complete. Phase II of the claimed facility meets the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	4/2/98
<i>Additional Information Requested</i>	6/3/98
<i>Additional Information Received</i>	10/13/98
<i>Application Substantially Complete</i>	7/29/99
Phase I <i>Construction Started</i>	5/1/95
<i>Construction Completed</i>	9/1/95
<i>Placed into Operation</i>	9/1/95
Phase II <i>Construction Started</i>	2/12/96
<i>Construction Completed</i>	9/15/96
<i>Placed into Operation</i>	9/16/96

Facility Cost

Claimed Non- Allowable
Allowable

Phase I

Computer Combustion controls

Installed to optimize combustion efficiency and reduce fuel consumption – not pollution control.

Air piping and installation

Western Pneumatics (6/5/95) Fabrication and Installation of the Boiler Exhaust – no reduction in pollution.
Western Pneumatics (9/25/95) Fabrication and Installation of a 36” damper – no reduction in pollution.
Western Pneumatics (7/28/95) Fabrication of Pipe Fittings
E.J. Bartells Co (7/19/95) Insulate hot flue gas duct and steam & condensate piping- no reduction in pollution.

\$ 36,643		\$ 0
	\$ 36,643	
\$ 128,444		\$ 0
	\$ 62,998	
	3,785	
	3,061	
	58,600	\$ 0

Phase II

	Claimed	Non- Allowable	Allowable
Excavation/concrete Doug Thompson, General Contractor (6/19/96) Extra concrete for slab edge and labor Unsubstantiated amount:	\$ 15,265	8,429	6,836
Engineering/environmental testing Unsubstantiated amount:	17,026	17,026	0
ESP equipment and installation Wellons (2/23/96) Equipment & Services for installation of ESP	595,000	0	595,000
Ancillary equipment and installation Ancillary equipment included installing the exhaust ductwork from the boiler to the ESP and hooking up the ESP to the boiler. Pacific Power (9/27/96) Relocation of overhead power lines is ineligible because it provides no pollution control. Unsubstantiated amount:	52,156	20,291 31,865	0
Air piping and installation Air systems included exhausting the two boilers to the ESP and exhausting the ESP to the dryers. Western Pneumatics 6/24/96 Invoice. Fab & Install Conveyor Negative Air Piping, Expansion Joints, and ESP Piping Unsubstantiated amount:	89,118	62,569 26,549	0
Electric supply equipment and installation ESCO Electric Supplies (6/25/96). Eoff Electric Co (9/6/96) Gardner Bender B2000 Cycone Bender Unsubstantiated amount:	44,910	5,152 26,544	13,213
Miscellaneous Supplies - Various Unsubstantiated amount:	3,641	3,641	0
Totals	\$ 982,203	\$ 367,153	\$ 615,050

A certified public accountant's statement was not provided because the claimed costs exceed \$500,000. The reviewers performed the accounting review on behalf of the Department.

Facility Cost Allocable to Pollution Control

Since the facility cost exceeds \$50,000, according to ORS.190 (1) the following factors were used to determine the percentage of the facility cost allocable to pollution control.

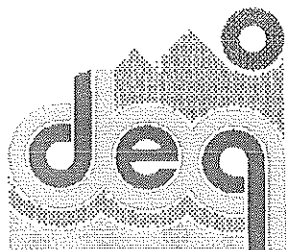
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Previous short-term strategies were attempted but failed. Other ESPs were evaluated, but the Wellons was selected for its capacity to control both boilers and maintain lower emission levels on a long-term basis.
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 applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the Korpine Division plant:

- ACDP 09-0002, issued 10/4/95
- Storm water 1200-Z, issued 11/17/97

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



Tax Credit Review Report

EQC 0009

Director's Recommendation:	APPROVE
Applicant	Deschutes Brewery
Application No.	5159
Facility Cost	\$714,103
Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Identification

Organized as: **C Corporation**
Business: **Brewery**
Taxpayer ID: **93-0972809**

The applicant's address is:

**901 SW Simpson Avenue
Bend, OR 97702**

Facility Identification

The applicant claimed the following facility:

A wastewater treatment system

The applicant is the owner of the facility located at:

**901 SW Simpson Avenue
Bend, OR 97702**

Technical Information

The claimed facility consists of a pump station, a 3,800-gallon emergency containment tank; a 12,000-gallon accumulation tank for normal spillage and wash water; a 33,000-gallon anaerobic reactor; an acid and caustic addition systems; an ISCO composite wastewater sampler; contractor bonus; and the building that houses the system.

The claimed facility was installed to remove biochemical oxygen demand (BOD) and total suspended solids (TSS) from brewery wastewater prior to discharge to the City of Bend's sewer system. BOD is a measurement of the amount of oxygen a treatment plant must supply to break down the organic pollutants (sugars, proteins, yeast, etc) into methane, carbon dioxide, water and biosludge.

The pH of the wastewater is adjusted before entering the anaerobic reactor. The anaerobic reactor reduces the BOD from approximately 8,000 mg/l to less than 200 mg/l. From the reactor, the treated wastewater is discharged through a motorized valve into a 500 gallon holding tank and then to the City of Bend's sewage treatment plant.

Prior to the installation of this facility, Deschutes Brewery was discharging pH-adjusted waste to the city sewer. Their wastewater permit required them to shut their operations down if BOD levels exceeded 611 lbs/day. BOD tests were required to be taken every day. There were several occasions when their facility was required to be shut down. After the new treatment system was installed and running smoothly, the permit limits were not exceeded.

Eligibility

Wastewater Treatment System (pumps, piping, tanks, reactor, pH adjustment system and building)

- ORS 468.155 The **principal purpose** of this **new equipment** is to comply with the applicant's
- (1)(a) Wastewater Discharge Permit number 200-001, issued by the City of Bend. Schedule A, Wastewater Discharge Limits; #2) of the permit sets a limit (that cannot be exceeded) on the amount of BOD, COD, TSS and pH that can be discharged. Schedule C, Compliance Schedule of the applicant's permit, requires the applicant to install a treatment system to reduce BOD and TSS to levels that meet the requirements stated in Schedule A of the permit.
- ORS 468.155 The reduction is accomplished by the **elimination** of **industrial waste** and the
- (1)(b)(A) use of treatment works as defined in ORS 468B.005.

ISCO Wastewater Sampler

- ORS 468.155 The principal purpose of this new equipment is **not** to prevent, control or reduce
- (1)(a)(A) a substantial quantity of water pollution and it is not a requirement of the applicant's Wastewater Discharge Permit, DEQ regulations or federal EPA regulations.
- ORS 468.155 The ISCO wastewater sampler fails the sole purpose requirement because its
- (1)(a)(B) "exclusive" purpose is **not** to prevent, reduce a substantial quantity of water pollution. It's other purposes are:
- To monitor the performance of the reactor.
 - Sample collecting for monthly billing purposes.

Contractor's Bonus

- ORS 468.155 The principal purpose of the contractor's bonus is **not** to prevent, control or
- (1)(a)(A) reduce a substantial quantity of water pollution and it is not a requirement of the applicant's Wastewater Discharge Permit, DEQ regulations or federal EPA regulations.
- ORS 468.155 The contractor's bonus fails the sole purpose requirement because its "exclusive"
- (1)(a)(B) purpose is **not** to prevent, reduce a substantial quantity of water pollution. It's other purpose is:
- To provide a performance based incentive to the contractor .

Timeliness of Application

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

<i>Application Received</i>	02/17/1999
<i>Application Substantially Complete</i>	07/24/2000
<i>Construction Started</i>	03/15/1998
<i>Construction Completed</i>	04/01/1998
<i>Facility Placed into Operation</i>	04/01/1998

Facility Cost

Facility Cost	\$ 752,843
Additional claimed costs	2,855
Wastewater sampler	(1,595)
Contractor Bonus	(40,000)
Eligible Facility Cost	\$ 714,103

The claimed facility cost exceeds \$500,000. Donaca Battleson & Co., L.L.P performed an accounting review on behalf of Deschutes Brewery. The reviewers performed the accounting review on behalf of the Department. Invoices were reviewed and all claimed facility costs were confirmed.

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	Methane gas is produced in the reactor. The production of methane varies widely making it difficult to use for heating. It is currently being burned in a flair. Some spent grains are used for agricultural purposes but are not a revenue source.
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 average annual cash flow was based upon the actual operating costs and performance of the facility in the first two years of production.
ORS 468.190(1)(c) Alternative Methods	The only method considered was to land apply the process effluent. The cost for this alternative was prohibitive.

ORS 468.190(1)(d) Savings or Increase in Costs

The cost savings associated with the reduced BOD a charge from the City of Bend was considered. The cost savings were reduced the amount of the expenditures claimed in the average annual cash flow.

ORS 468.190(1)(e) Other Relevant Factors

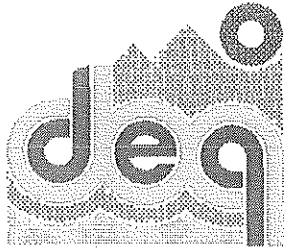
No other relevant factors.

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

Compliance

The applicant states 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
Maggie Vandehey, DEQ



Tax Credit Review Report

DEQ 0009

Director's
Recommendation: **APPROVE**

Applicant	Ohka America, Inc.
Application No.	5162
Facility Cost	\$509,938
Percentage Allocable	100%
Useful Life	5 years

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **C corporation**

Business: **Developer and photoresist
products**

Taxpayer ID: **93-1002264**

The applicant's address is:

**4600 NW Shute Road
Hillsboro, OR 97124**

Facility Identification

The certificate will identify the facility as:

**Acid fume scrubber and thermal
oxidizer**

The facility is located at:

**4600 NW Shute Road
Hillsboro, OR 97124**

Technical Information

The claimed facility includes an acid fume scrubber, process vacuum equipment, and thermal oxidizer.

The acid fume scrubber is manufactured by TFI International. It is a wet scrubber that collects hydrochloric acid fumes from the resin manufacturing process. The scrubber has a five horsepower fan. Scrubbing efficiencies were not available. Normally scrubbers of this type are 90% efficient.

The process vacuum equipment consists of a process vacuum pump manufactured by SIHI, two 350-gallon stainless steel vacuum receiver vessels manufactured by Precision Stainless, seal water heat exchanger, seal water separator tank and process piping.

The thermal oxidizer is manufactured by Durr Industries and is rated for 14,000 scfm. VOC emissions from the photoresist plant, C1 digester and the solvent storage tanks are destroyed in the thermal oxidizer at the rate of 90%. VOC emissions after controls were reported at 1.5 tons in 1997.

The applicant also installed an exhaust fan in the process area.

Eligibility

ORS 468.155 (2)(d) The department considers the following components do not meet the definition of a pollution control facility though the department does understand that these components are necessary for production. The reason that the components do not meet the definition is because they are distinct portions of a pollution control facility that make an insignificant contribution to the pollution control purpose of the facility.

- Ductwork: The exhaust ducting from the process equipment is considered a material conveying system . It does not reduce air pollution
- Two process vacuum receivers and vacuum pump (including hookup) are used in the production of developer resins. The equipment does not contribute to the reduction of air pollution
- Two waste collection vacuum receivers, seal water system and vacuum pump (including hookup) are used in the manufacturing process and do not contribute to the reduction of air pollution
- Stainless steel solvent tanks with steps and nitrogen blanket; This equipment is used in the manufacturing process and does not contribute to the reduction of air pollution
- Reflux tank sight glass and fittings are used in the manufacturing process and does not contribute to the reduction of air pollution
- Steel platform for wastewater pit is provided for safety purposes and does not contribute to the reduction of air pollution
- An Exhaust fan provides the required ventilation air to meet Uniform Mechanical Code requirements and to prevent the buildup of flammable or toxic vapors. The exhaust fan does not prevent, control, or reduce air pollution to the atmosphere
- Piping and other accessories for the thermal oxidizer. It is unknown if the piping contributes to pollution control because applicant did not describe its use of contribution to pollution control either on the application or during the site visit.
- Reservoir and pumps. This process related equipment does not provide any pollution control benefit.

ORS 468.155 Acid Scrubber and Thermal Oxidizer

(1)(a)(A) The **principal purpose** of this **new equipment installation** is to comply with a requirement imposed by the applicants Air Contaminant Discharge Permit, #34-2790 to **control** acid fumes and VOC emissions, which meet the definition of air pollution.

ORS 468.155 (1)(b) The **control** is accomplished by the elimination of air contaminants and the use of a scrubber and a thermal oxidizer, which meets the definition in ORS 468A.005 of an air-cleaning device.

Timeliness of Application

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

<i>Application Received by DEQ</i>	<u>02/19/1999</u>
<i>Application Substantially Complete</i>	<u>06/15/2000</u>
<i>Construction Started</i>	<u>03/18/1996</u>
<i>Construction Completed</i>	<u>03/01/1997</u>
<i>Facility Placed into Operation</i>	<u>03/01/1997</u>

Facility Cost**Claimed Facility Cost**

\$ 858,874

Salvage Value:**(68,459)**

Process Ductwork

Process vacuum receivers and vacuum pumps

Waste vacuum receivers, seal water system and pumps

Stainless steel solvent tanks w/steps and nitrogen blanket

Reflux tank sight glass and fittings

Platform for wastewater pit

Exhaust fan

Unsubstantiated Costs – thermal oxidizer piping and other accessories

Reservoir and pumps

Ineligible**Costs:**

\$ 51,916

3,299

87,469

44,157

25,489

8,308

25,284

27,451

7,104**Total Ineligible Costs****(\$280,477)****Eligible Facility Cost****\$ 509,938**

The claimed facility cost exceeds \$500,000. Deloitte & Touche performed an accounting review on behalf of AGPR. Copies of invoices were requested but not provided. The reviewers performed an accounting review on behalf of the Department. The Construction Document Cost Estimate, prepared by the engineering design firm, was used to substantiate the eligible facility cost.

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 5 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	The applicant did not list any alternative methods.
ORS 468.190(1)(d) Savings or Increase in Costs	Operating costs increase since there was no previous system. They are estimated to be between \$19,000 and \$27,000 per year.

ORS 468.190(1)(e) Other Relevant Factors

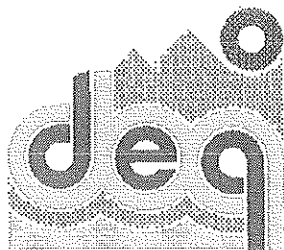
No other relevant factors were provided.

Considering these factors, the percentage allocable to pollution control is 100% of the eligible facility cost.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: Air Contaminant Discharge Permit Number 34-2790, Issued April 6, 1993. Unified Sewerage Agency Permit number: 133-124-1, Expiration Date: 12/15/2002.

Reviewers: Dennis Cartier, Associate, SJO Consulting Engineers
Lois Payne, PE, SJO Consulting Engineers
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Ohka America, Inc.
Application No.	5163
Facility Cost	\$114,425
Percentage Allocable	100%
Useful Life	5 years

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Identification

Organized as: **C corporation**
Business: **Developer of photoresist
products**
Taxpayer ID: **93-1002264**

The applicant's address is:

**4600 NW Shute Road
Hillsboro, OR 97124**

Facility Identification

The certificate will identify the facility as:

Two Sand/carbon Filter Units

The facility is located at:

**4600 NW Shute Road
Hillsboro, OR 97124**

Technical Information

The claimed facility consists of two sand filter units that remove suspended solids from the wastewater. The filter units are skid-mounted and custom made by Bruner Co. The filter units remove suspended solids downstream of the wastewater treatment plant. There is approximately 300 milligrams per liter (mg/l) suspended solids entering the filter and 50 mg/l leaving the filter. The filtered water is discharged to the United Sewerage Agency Public Owned Treatment Works. When the filter reaches maximum capacity and plugs up, the sand is removed and disposed of at a landfill.

Eligibility

- ORS 468.155 The **sole purpose** of the **installed filter units** is to **reduce** a substantial quantity
(1)(a) of water pollution.
- ORS 468.155 The **reduction** is accomplished by the elimination of industrial waste and the use
(1)(b)(A) of treatment works for industrial waste as defined in ORS 468B.005.
- ORS 468.155 The **principal purpose** of the process piping and equipment, fire system,
(1)(a) building components, and mechanical and electrical systems is **not** to comply
with a requirement imposed by the DEQ.

ORS 468.155 (1)(a) The **sole purpose** of the process piping and equipment, fire system, building components, and mechanical and electrical systems is **not** to prevent, control, or reduce a substantial quantity of water pollution. It's other purpose is to meet the requirements of the building code. These items do not prevent, control or reduce water pollution.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). The applicant requested an extension of time to provide additional information.

<i>Application Received by DEQ</i>	02/19/1999
<i>Application Substantially Complete</i>	06/12/2000
<i>Construction Started</i>	03/18/1996
<i>Construction Completed</i>	03/01/1997
<i>Facility Placed into Operation</i>	03/01/1997

Facility Cost

Claimed Facility Cost **\$890,433**

Ineligible Costs:

Process Piping & Equipment	\$390,621
Fire System	204,498
Building Components	135,329
Mechanical & Electrical Systems	45,560

Total Ineligible Costs **\$ 776,008** **(\$ 776,008)**

Eligible Facility Cost **\$ 114,425**

The claimed facility cost exceeds \$500,000. The reviewers performed an accounting review on behalf of the Department. Copies of invoices were requested but not provided. The Construction Document Cost Estimate, prepared by the engineering design firm, was used to substantiate the eligible facility cost. Deloitte & Touche LLP prepared the application on behalf of the applicant.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	The applicant did not list any alternative methods.

ORS 468.190(1)(d) Savings or Increase in Costs

The applicant did not list any savings or additional costs. There were no additional system development charges as a result of this facility. The applicant was not paying a surcharge for suspended solids before the claimed facility was installed; the surcharge applies if there are greater than 400 mg/l of suspended solids being discharged.

ORS 468.190(1)(e) Other Relevant Factors

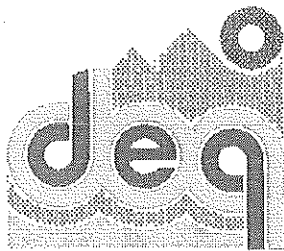
No other relevant factors were provided.

Considering these factors, the percentage allocable to pollution control is 100% of the eligible facility cost.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: Air Contaminant Discharge Permit Number 34-2790, and Unified Sewerage Agency Permit number: 133-124-1.

Reviewers: Dennis Cartier, Associate, SJO Consulting Engineers
Lois Payne, PE, SJO Consulting Engineers
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Sobroso Corporation
Application No.	5195
Facility Cost	\$65,854
Percentage Allocable	100%
Useful Life	5 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

Organized as: **C corporation**
Business: **producer of fruit puree
concentrates.**
Taxpayer ID: **93-0476694**

The applicant's address is:

**P.O.Box 129
Medford, OR 97501**

Facility Identification

The facility is identified as:

Wastewater pH Control System

The applicant is the owner of the facility located at:

**654 S. Grape
Medford, OR 97501**

Technical Information

The claimed facility is a wastewater pH control system consisting of an 8,000-gallon stainless steel spent caustic storage tank, model JVNW; a Madden diaphragm metering pump, model 236C, and a measurement and feedback control system with a Mettler pH metering transmitter, model 2100.

Spent caustic rinse wastewater is routed to the spent caustic tank from various areas in the manufacturing plant. When a sufficient quantity has been accumulated, the wastewater is circulated through the neutralization system. A pH controller measures the wastewater pH and signals the acid/caustic injection system to add the appropriate neutralizing agent. After the wastewater has been neutralized, it continues to be circulated and monitored to ensure the pH is stable. When stability is established, the water is discharged to the municipal public owned treatment works facility.

Eligibility

- ORS 468.155 (1)(a)(A) The **principal purpose** of this **new pH control system installation** is to comply with a requirement imposed by the DEQ and EPA to **control** water pollution. The City of Medford Wastewater Discharge Permit requires the pH range be maintained between 5.5 and 10.0. The installed system maintains the pH within those limits. Previously, plant operations attempted to control pH by timing the discharges to neutralize each other. This method of control was not successful.
- ORS 468.155 (1)(b) The **control** is accomplished by the elimination of industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005.
- ORS 468.155 (1)(a)(A) The principal purpose of the spare parts, core drilling, non-skid floor installation, and maintenance supplies **is not** to comply with a requirement imposed by the DEQ or EPA.
- ORS 468.155 (1)(a)(B) The sole purpose of the spare parts, core drilling, non-skid floor installation, and maintenance supplies **is not** to prevent, control, or reduce a substantial quantity of water pollution. Their other purposes include safety, conveying process materials, and maintenance. The ineligible costs are described in the *Facility Cost* section below.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>4/28/1999</u>
	<i>Application Substantially Complete</i>	<u>6/12/2000</u>
	<i>Construction Started</i>	<u>12/1997</u>
	<i>Construction Completed</i>	<u>10/1998</u>
	<i>Facility Placed into Operation</i>	<u>10/1998</u>

Facility Cost

Claimed Facility Cost		\$75,364
Ineligible Costs:		
Three Pumps (not part of claimed facility)	\$ 4,705	
Spare Parts	742	
Core Drilling (for process piping)	1,108	
Process Stair Removal	717	
Nonskid Floor	1,865	
Supplies	318	
Total Ineligible Costs	<u>\$ 9,455</u>	<u>(9,455)</u>
Eligible Facility Cost		\$ 65,854

The facility cost is greater than \$50,000 but less than \$500,000. The applicant provided copies of invoices substantiating the claimed facility cost and requested a waiver of the independent accounting review. The invoices included costs for numerous components that were not part of the claimed facility and included some items that are not eligible for tax credit certification.

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 5 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	The use of three 6,000-gallon mix tanks in series providing 10 minutes of residence time were considered but required too much floor space.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	None.

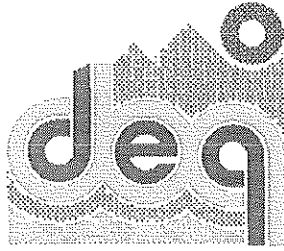
Therefore the percentage of the facility cost allocable to pollution control is 100%.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following permits has been issued to the facility:

- Industrial Waste Discharge Permit 95-M1-2033-0724, re-issued April 1, 2000.
- Storm Water Permit 1200-Z, re-issued April 1, 2000.

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



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Sabroso Corporation
Application No.	5196
Facility Cost	\$4,208
Percentage Allocable	100%
Useful Life	5 years

Pollution Control Facility: Noise Final Certification

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

Applicant Identification

Organized as: **C corporation**
Business: **Producer of fruit puree
concentrates**
Taxpayer ID **93-0476694**

The applicant's address is:

**P.O. Box 129
Medford, OR 97501**

Facility Identification

The facility is identified as:

Stack Noise Dampener

The applicant is the owner of the facility located at:

**660 S. Grape Street
Medford, OR 97501**

Technical Information

The claimed facility consists of two 3-foot sections of 32-inch custom designed insulated stack, fabricated and installed by Western Burner, Inc. The stack sections are made of heat resistant insulation held against the two-foot diameter stack by a stainless steel grid and function as a noise dampener.

Previously, there was no stack noise dampener. The 600 horsepower Clayton Steam boiler is located forty feet from the property line where the noise level measured 69dB. The noise at the property line is reduced between 2 and 6 dB across the operating range of the boiler.

Eligibility

- ORS 468.155 The **sole purpose** of this **new device installation** is to **control** a substantial
(1)(a)(A) quantity of noise pollution.
- ORS 468.155 The control is accomplished by the substantial reduction of noise pollution as
(1)(b) defined by rule of the Environmental Quality Commission.

Timeliness of Application

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

<i>Application Received</i>	<u>4/28/1999</u>
<i>Application Substantially Complete</i>	<u>5/30/2000</u>
<i>Construction Started</i>	<u>1/1998</u>
<i>Construction Completed</i>	<u>10/1998</u>
<i>Facility Placed into Operation</i>	<u>10/1998</u>

Facility Cost

Claimed Cost	<u>\$ 4,208</u>
Eligible Cost	<u>\$ 4,208</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. The applicant ask for a waiver of the independent accounting review and provided a copy of one invoice that substantiated the claimed facility cost.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS.190 (3), the only factor used in determining the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance

The applicant confirmed that it is in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the facility:

Industrial Waste Discharge Permit 95-M1-2033-0724, issued April 1, 2000.

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



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Sabroso Corporation
Application No.	5197
Claimed Facility Cost	\$32,062
Claimed Percentage Allocable	100%
Useful Life	5 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

Organized as: **C corporation**
Business: **producer of fruit puree
concentrates.**
Taxpayer ID **93-0476694**

The applicant's address is:

**P.O. Box 129
Medford, OR 97501**

Facility Identification

The facility is identified as:

Floor Sweeper

The applicant is the owner of the facility located at:

**654 S. Grape Street
Medford, OR 97501**

Technical Information

The claimed facility consists of a Tennant Model 8200 floor sweeper/scrubber, serial number 8200-6029. It is used to remove fruit juices, dirt, and other debris from floors located in outdoor raw material storage lots during the processing season. Sweepings (solids) are disposed of in a landfill.

Prior to the purchase of the sweeper, there was no active removal of debris on the floor in the outdoor operations lots. Fruit juices, dirt and wood particles from fruit bins, and other debris entered the storm sewer system leading to increased total suspended solids (TSS) and biological oxygen demand (BOD) in the stormwater discharge.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment** is to comply with a requirement of the applicant's Storm Water Permit 1200-Z. In a meeting between the DEQ and Sabroso on January 12, 1998, the two parties developed a plan to improve storm water discharges that included the purchase of the sweeper. The continuous schedule of sweeping eliminates the potential for fruit juice and debris to run into the storm water drain.

ORS 468.155 The **prevention** is accomplished by the disposal of industrial waste and the use (1)(b)(B) of treatment works for industrial waste as defined in ORS 468B.005.

Timeliness of Application

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

<i>Application Received</i>	4/28/1999
<i>Application Substantially Complete</i>	6/12/2000
<i>Construction Started</i>	5/1998
<i>Construction Completed</i>	5/1998
<i>Facility Placed into Operation</i>	5/1998

Facility Cost

Facility Cost	\$ 32,062
Eligible Facility Cost	\$ 32,062

The facility cost does not exceed \$50,000. An independent accounting review was not required. The applicant ask for a waiver of the independent accounting review and provided a copy of the invoice that substantiated the claimed facility cost.

Facility Cost Allocable to Pollution Control

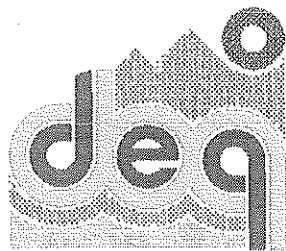
The facility cost does not exceed \$50,000. According to ORS.190 (3), the only factor used in determining the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, 100% of the facility cost is allocable to pollution control.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the facility:

- Industrial Waste Discharge Permit 95-M1-2033-0724, re-issued April 1, 2000.
- Storm Water Permit 1200-Z, re-issued April 1, 2000.

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



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Sabroso Corporation
Application No.	5198
Facility Cost	\$37,557
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

Organized as: **C corporation**
Business: **Producer of fruit puree
concentrates**
Taxpayer ID **93-0476694**

The applicant's address is:

**P.O. Box 129
Medford, OR 97501**

Facility Identification

The facility is identified as:

Containment and Sump System

The applicant is the owner of the facility located at:

**654 S. Grape Street
Medford, OR 97501**

Technical Information

The claimed facility is a containment system including 200 feet of Aco model Aqueduct chemically resistant trench with grating, sump and a sump pump. The system is installed in the floor and provides containment of fruit juices and debris along the new process line and operational area. The system was installed to prevent fruit juices and debris from entering the storm gutter. It collects in the sump, then is pumped to the wastewater pretreatment system.

Prior to the installation of the system, cleanup water, fruit juices and debris left the open staging area or the building through door openings, and entered the stormwater system in the street. A berm system was not installed because it impaired forklift access to the area.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment installation** is to **control** a substantial quantity of water pollution by containing wastewater for pretreatment. The City of Medford Wastewater Discharge Permit imposes this requirement. The 1200-Z Stormwater Discharge Permit, Section 2(b)(i)(5) requires screens, booms, settling ponds, or other methods be employed to eliminate or minimize debris in storm water discharges.

ORS 468.155 (1)(b)(A) The control is accomplished by the elimination of industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005. Treatment works is defined as any plant or other works used for the purpose of treating, stabilizing or **holding wastes**.

Timeliness of Application

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

<i>Application Received</i>	<u>4/28/1999</u>
<i>Application Substantially Complete</i>	<u>6/1/2000</u>
<i>Construction Started</i>	<u>2/1998</u>
<i>Construction Completed</i>	<u>10/1998</u>
<i>Facility Placed into Operation</i>	<u>10/1998</u>

Facility Cost

Facility Cost	<u>\$ 37,557</u>
Eligible Facility Cost	<u>\$ 37,557</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, the applicant provided. The applicant ask for a waiver of the independent accounting review and provided copies of invoices and check stubs to substantiate the claimed facility cost.

Facility Cost Allocable to Pollution Control

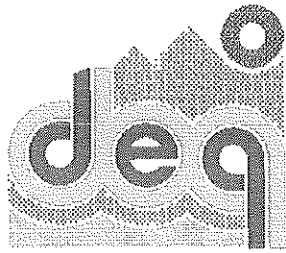
The facility cost does not exceed \$50,000. According to ORS.190 (3), the only factor used in determining the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is 100%.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following permits have been issued to the facility:

Industrial Waste Discharge Permit 95-M1-2033-0724, issued April 1, 2000.

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



Tax Credit Review Report

EQC 0009

Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organization: **C corporation**

Business: **producer of fruit puree
concentrates.**

Taxpayer ID **93-0476694**

The applicant's address is:

**P.O.Box 129
Medford, OR 97501**

Director's
Recommendation: **APPROVE**

Applicant	Sabroso Corporation
Application No.	5199
Facility Cost	\$9,914
Percentage Allocable	100%
Useful Life	5 years

Facility Identification

The facility is identified as:

Hycol Rotary Screen

The applicant is the owner of the facility located at:

**654 S. Grape
Medford, OR 97501**

Technical Information

The claimed facility consists of a Hycol rotary screen device, model RSA 2572, serial 0010351. The screen filters fruit waste solids from wastewater down to 0.033 inches, prior to discharge to the municipal public owned treatment works facility.

The City of Medford wastewater Discharge Permit limits Biochemical Oxygen Demand (BOD) and the Total Suspended Solids (TSS), to a maximum of 3,000 pounds per day each. The installed screen maintains those limits. The Hycol screen replaces a worn screen that allowed solid material to pass through and enter the sanitary sewer system.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment installation** is to **control** a substantial quantity of water pollution by treating wastewater to control BODs and TSSs. The City of Medford Wastewater Discharge Permit imposes this requirement.

ORS 468.155 (1)(b) The control is accomplished by the elimination of industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005.

Timeliness of Application

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

<i>Application Received</i>	<u>4/28/1999</u>
<i>Application Substantially Complete</i>	<u>6/1/2000</u>
<i>Construction Started</i>	<u>12/1997</u>
<i>Construction Completed</i>	<u>10/1998</u>
<i>Facility Placed into Operation</i>	<u>10/1998</u>

Facility Cost

Facility Cost	<u>\$ 9,914</u>
Eligible Facility Cost	<u>\$ 9,914</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, the applicant provided copies of invoices and check stubs substantiating the claimed facility cost.

Facility Cost Allocable to Pollution Control

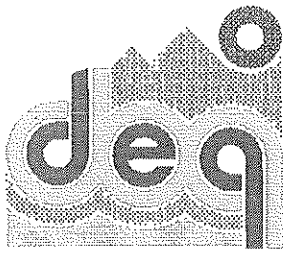
The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following permits has been issued to the facility:

Industrial Waste Discharge Permit 95-M1-2033-0724, April 1, 2000.

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



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Smurfit Newsprint Corporation**
Application No. **5236**
Facility Cost **\$24,184**
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

Organized As: **a C corporation**

Business: **manufacturer of particleboard**

Taxpayer ID: **93-0361650**

Facility Identification

The certificate will identify the facility as:

**An enclosure around truck loading
area.**

The applicant's address is:

**427 Main Street
Oregon City, OR 97045**

The applicant is the owner of the facility located
at:

**1744 Main Street
Sweet Home, OR 97384**

Technical Information

The claimed facility is the installation of two- (2) baghouse dust control systems, the removal of two- (2) cyclones and rearrangement of existing pneumatic conveyor piping, and the installation of two- (2) waste wood truck bins.

Baghouse System: The two-baghouse systems were added to collect the dust-laden air from a number of existing cyclones that are part of an existing pneumatic conveying system. Prior to this installation, these cyclones discharged directly to the atmosphere. The baghouse installations are required to prevent the air borne particulate discharge of the cyclones from becoming airborne and being deposited on the property of others (OAR 340-025-0310). Removal of two- (2) cyclones facilitated and simplified the installation of the baghouse system.

Pneumatic conveying systems: Material collected at the baghouses is conveyed by pneumatic conveying systems to the truck bins.

Two- waste wood truck bins: These bins are used to store waste wood material until a truck load volume is accumulated for shipment off-site. The bins have a bottom opening for discharging materials

into open-topped trailers.

Trailer loading area: The trailer loading area is entirely enclosed with roll-up doors at the entrance and exit openings to the loading area. These doors are closed during the loading process to prevent dust becoming airborne and escaping the plant property. The bin enclosure is solely designed to prevent dust from becoming airborne when the bins are being unloaded.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this **new baghouse installation and truck bin enclosure** is to prevent, control or reduce a substantial quantity of **air pollution**.

The purpose of the **pneumatic conveying systems and the two waste wood truck bins** is not to prevent, control or reduce a substantial quantity of air pollution. Their purposes is to provide for material handling.

ORS 468.155 (1)(b)(B) The control is accomplished by the **elimination of air pollution** and the use of the baghouse which meet the air cleaning device definition in ORS 468A.005. The pneumatic conveying systems and the two waste wood truck bins do not eliminate air pollution with the use of an air cleaning device as defined in ORS 468A.005.

Timeliness of Application

The applicant's records indicate that major portions of the claimed facility were put into operation before the total facility construction was completed in 11/97. Those portions were **not** submitted within the timing requirements of ORS 468.165 (6). The applicant's depreciation ledger indicates that 92.4% of the claimed facility was in operational service more than two years before the Department received the application.

Application Received	7/26/99
Requested additional information	8/30/99
Received information	9/24/99
Requested additional information	10/7/99
Received letter from applicant's attorney w/o requested information	12/8/99
Application Substantially Complete	12/8/99
Construction Started	12/1/95
<u>Claimed</u> Construction Completed (from examination of applicant's ledger)	11/1/97
Majority of baghouse installation and piping, truck bins, major portion of pneumatic conveying system	9/96
Final portion of pneumatic conveying system,	3/97
Enclosure around truck bins	11/97
Placed into Operations (from examination of applicant's depreciation ledger)	
Majority of baghouse installation and piping, truck bins, major portion of pneumatic conveying system,	12/96
Final portion of pneumatic conveying system,	3/97
Enclosure around truck bins	11/97

Cost Facility

The claimed facility cost was greater than \$50,000 but less than \$500,000. Therefore, Ernst & Young LLP performed an accounting review according to Department guidelines on behalf of the applicant. Eligible facility costs represent the expenditures for construction of the enclosures around the waste wood truck bins.

Invoices, as entered in the applicant's accounting ledger, substantiated the cost of the enclosure.

Facility Cost

Claimed cost	\$ 318,325
Portion that missed filing deadline	(\$294,141)
Eligible Facility Cost	<u>\$24,184</u>

The claimed facility cost was greater than \$50,000 but less than \$500,000. Therefore, Ernst & Young LLP performed an accounting review according to Department guidelines on behalf of the applicant. Eligible facility costs represent the expenditures for construction of the enclosures around the waste wood truck bins.

Invoices (as entered in the applicant's accounting ledger) substantiated the cost of the enclosure.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. 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%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	Sale of wood waste collected amounts to about 286 tons/year. This material is sold for \$6.56 /ton delivered. Transportation cost is \$15.73/ton, resulting in a net loss of <\$9.17>/ton. This is included in the increase-in-cost calculation below.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 23 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	Applicant's calculations indicate that the claimed facility increases the manufacturing plant's net annual operating cost by \$19,182 per year.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

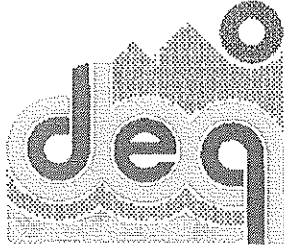
The facility is in compliance with Department rules and statutes and with EQC orders. Other certificates issued to applicant are:

App.No	Description of Facility	Claimed	Percent	Facility Location	Issue
4677	BAG HOUSE	\$245,846	100%	PHILOMATH	6/5/97
4676	Press vent wet scrubbing system installed to control emissions of particulate matter and formaldehyde.	\$366,710	100%	PHILOMATH	6/5/97
4101	ELECTRSTATIC PRECIPITATOR WITH 35 GAS PASSAGES, G-OPZEL TYPE COLLECTORS AND DISCHARGE ELECTRODES	\$3,668,754	100%	NEWBERG	12/10/93
2116	SLUDGE DE-WATERING SYSTEM ORE CITY	\$1,014,833	100%	OREGON CITY	11/4/88
2010	INSTALLATION OF A RADER 88" DIAMETER HIGH EFFICIENCY CYCLONE	\$74,978	100%	PHILOMATH	9/9/88

DEQ permits issued to facility:

Title V Operating Permit, 22-7137, Issued 5/14/98; Expires 7/01/02

Reviewers: Darrel Allison/HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant	Synthetech, Inc.
Application No.	5297
Claimed Facility Cost	\$346,554
Claimed % Allocable	100%
Useful Life	5 years

Pollution Control Facility: Air Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **C corporation**

Business: **producer of amino acid
derivatives which are used by
the pharmaceutical industry.**

Taxpayer ID: **84-0845771**

The applicant's address is:

**1290 Industrial Way
Albany, OR 97321**

Technical Information

The claimed facility consists of:

- 1) Four glycol cooled condensers, two 2,500 gallon solvent holding tanks, three 50 gallon solvent receivers, a Croll-Reynolds Venturi Scrubber and Separator, a Durco Mark III centrifugal pump sized for 90 gpm, and associated piping and controls.
- 2) A baghouse, a New York Blower exhaust fan, size 182, rated for 4,000 cfm and associated exhaust duct.

Process Description

Synthesis of peptide building blocks entails the use of solvents including acetone, methanol, ethanol, isopropanol, butanol, dimethyl sulfoxide, methylene chloride, ethylene dichloride, toluene, 1,4 dioxane, tetrahydrofuran, acetonitrile, methyl t-butyl ether, dimethyl formamide, n-methyl pyrrolidinone and ethyl acetate. The solvents come off of the reactors, transfer vessels, centrifuges, and the dryer in the form of gasses and vapors. The gasses are routed through pipes to water—and/or glycol-cooled condensers, depending on the product. Condensate from the water-cooled

Facility Identification

The certificate will identify the facility as:

**Solvent Recovery Condensers, and a Jet
Venturi Scrubber & Separator System**

The applicant is the owner of the facility located at:

**1290 Industrial Way
Albany, OR 97321**

condensers is returned to the process. The gasses and vapors that did not condense follow one of two paths, depending on the written operating instructions for the process run.

- a) Acid gasses are routed to the venturi scrubber for treatment. Sodium hydroxide is used to neutralize the acid in the scrubber. Exhaust is routed to the atmosphere and the condensate drains into a trench for collection and later shipment to a permitted Transport Station Disposal Facility for fuel blending.
- b) Vapors that do not contain acid gasses are directed to the glycol-cooled condensers for further removal of organic solvents, then released to the atmosphere. The condensate is collected and shipped to a permitted Transport Station Disposal Facility for fuel blending.

The last step of the production process is the removal of residual moisture from the product before shipping. The baghouse filter captures all of the peptide building blocks particulate matter, 10 microns diameter or larger, that comes off of the drying process. At full production capacity (24 hours per day, 365 days per year), the baghouse would remove 7,155 pounds of particulates. In 1999, the system ran approximately 25% of the time and removed 1,789 pounds of particulate.

The claimed facility was installed as part of business expansion. Prior to the expansion, a small capacity scrubber was used for odor control only and there were no controls for particulate. Without the claimed facility, gasses, vapors, and particulate would have been vented directly to the atmosphere. As a result of the installation, 99.84% of gasses and vapors that generated are retained.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment installation** is to comply with a requirement of the applicants air permit to **control** air pollution. The permit requires organic solvent emissions be less than 14.2 tons per year and particulate be less than 0.01 tons per year at the plant.

ORS 468.155 (1)(b)(B) The **control** is accomplished by the elimination of air contaminants 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>10/29/1999</u>
<i>Application Substantially Complete</i>	<u>6/13/2000</u>
<i>Construction Started</i>	<u>6/1/1996</u>
<i>Construction Completed</i>	<u>11/1/1997</u>
<i>Facility Placed into Operation</i>	<u>12/1/1997</u>

Facility Cost

Claimed Cost	<u>\$ 346,554</u>
Eligible Facility Cost	<u>\$ 346,554</u>

The facility cost is greater than \$50,000 but less than \$500,000. Therefore, Arthur Anderson LLP performed an accounting review according to Department guidelines on behalf of the applicant. Copies of invoices and purchases orders were provided which substantiated the eligible facility cost.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000; therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Other alternatives were investigated during the design of the system but were not found to be as cost effective.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs. There is a savings associated with returning the condensate from the water-cooled condensers to the process, however, the water-cooled condensers are not part of the claimed facility.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

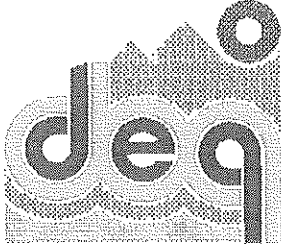
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to the facility:

- Hazardous Waste Generator, ORD085979474, issued 1/12/88,
- Storm Water Permit, 1200Z, issued 7/22/97,
- Industrial Wastewater Discharge Permit, 2834-1, issued 1/1/97, and
- Air Contaminant Discharge Permit, 22-6009, issued 4/1/96.

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers, Inc.
Gordon Chun, SJO Consulting Engineers, Inc.
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

**Pollution Control Facility: USTs
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Applicant Identification

Organized As: **S Corporation**
Business: **Retail Gasoline Station**
Taxpayer ID: **93-1187443**

The applicant's address is:

**P O Box 1730
The Dalles OR 97058**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Director's
Recommendation: **APPROVE**

Applicant **Guernsey Development, Inc.**
Application No. **5330**
Eligible Facility Cost **\$134,312**
Percentage Allocable **92%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**Two doublewall fiberglass/steel
underground storage tanks, doublewall
flexible plastic piping, spill containment
basins, automatic tank gauge system with
interstitial monitoring, sumps and
automatic shutoff valves.**

The applicant is the owner of **DEQ Facility ID
11704** located at:

**Grand Central Travel Stop
Hwy 97 & Interstate 84
Rufus, OR 97050**

Eligibility

- ORS 468.155 The **principal purpose** of this **installation** is to prevent, control or reduce a
 (1)(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>11/29/99</u>
	<i>Application Complete and Ready to Process (with extension)</i>	<u>04/17/00</u>
	<i>Construction Started</i>	<u>07/01/97</u>
	<i>Construction Completed</i>	<u>12/05/97</u>
	<i>Facility Placed into Operation</i>	<u>12/20/97</u>

Facility Cost

	Claimed	\$134,805
Less Ineligible Costs – Portion of tank gauge system not used for pollution control (10%).		(\$493)
	Eligible	<u>\$134,312</u>

The department approved the applicant's waiver of an independent accounting review because invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

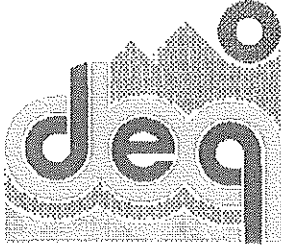
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$10,312. Therefore, **8%** of the eligible facility cost is not allocable to pollution control leaving the remaining **92%** allocable.

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 0009

Director's
Recommendation: **APPROVE**

Applicant **Oregon Steel Mills, Inc.**
Application No. **5331**
Facility Cost **\$96,790**
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

Organized As: **a C corporation**

Business: **manufacturer of steel plates
and coils**

Taxpayer ID: **94-0506370**

The applicant's address is:

**1000 SW Broadway, Suite 2200
Portland, OR 97205-3003**

Facility Identification

The certificate will identify the facility as:

**Combustion Air Fans & Ejector Fan
Noise Enclosure**

The applicant is the owner of the facility located
at:

**14400 N. Rivergate Blvd
Portland, OR 97203**

Technical Information

The applicant's plant on Rivergate Boulevard manufactures steel plates and coils from scrap steel. This pollution control facility is a noise enclosure designed to deaden and reduce the noise radiating from two combustion air fans and the stack ejector fan. These existing fans are installed at the East end of the applicant's plant site near the Willamette River. The fans run during day and night manufacturing operations. Prior to the installation of the claimed facility, the fans produced noise levels objectionable to residents of Sauvies Island (approximately ¼ mile across the Willamette River). The claimed facility is an engineered sheet metal enclosure with interior surfaces coated with acoustic foam-type insulation. Before the installation of this enclosure, the average continuous sound noise level near the source fans was 90dB(A) measured 20 feet from the source. After the installation of the enclosure, the average continuous sound level near the source was 77dB (A).

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation** is to reduce a substantial quantity of noise pollution. The applicant indicated that the facility was not required by any governing agency. However, OAR 340-035-0035(1)(d)(B) and OAR 340-035-0035(3)(b)(B) require that noise levels be less than 80 dB(A) after 10 p.m. measured at the noise sensitive property line.
- ORS 468.155 (1)(b)(C) Such prevention, control or reduction required shall be accomplished by the substantial reduction or elimination of or re-design to eliminate noise pollution or noise emission sources as defined by rule of the Environmental Quality Commission.
- OAR 340-016-0060(4)(f) The facility shall substantially reduce, eliminate or be redesigned to eliminate Or be redesigned to eliminate noise pollution or noise emission sources set forth in OAR 340-035-0005 through OAR 340-035-0100.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>11/29/99</u>
	<i>Construction Started</i>	<u>6/2/97</u>
	<i>Construction Completed</i>	<u>11/18/98</u>
	<i>Facility Placed into Operation</i>	<u>11/18/98</u>

Facility Cost

Facility Cost	<u>\$96,790</u>
Eligible Facility Cost	<u>\$96,790</u>

The facility cost was less than \$500,000; therefore, an independent accounting review was not required. According to OAR 340-016-0070(4)(a), paid invoices supplied by the applicant 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 **100%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Saleable or Usable Commodity	There is no saleable or useable commodity associated with this facility.
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 were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.

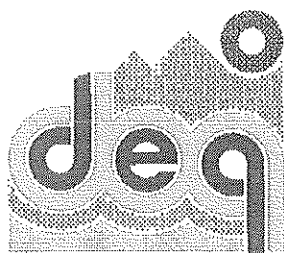
ORS 468.190(1)(d) Savings or Increase in Costs
ORS 468.190(1)(e) Other Relevant Factors

No savings or increase in costs.
No other relevant factors.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders.
DEQ permits issued to facility: NPDES Permit No. 101007 File no. 64905

Reviewers: Darrel Allison, P.E. HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's Recommendation:	APPROVE – Replacement Facility
Applicant	Van Beek Dairy
Application No.	5345
Original Facility Cost	\$98,823
Original 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 Partnership and is operating a **dairy farm**. The applicant's taxpayer identification number is 93-1147363 and their address is:

**26405 McFarland Road
Monroe, OR 97456**

Facility Identification

The certificate will identify the facility as:

Animal Wastewater Storage Pond

The applicant is the owner of the facility of the facility located at:

**26405 McFarland Road
Monroe, OR 97456**

Technical Information

The claimed facility consists of an earthen storage pond that was installed to contain 34 acre-foot (11,078,934 gallons) of animal waste produced at the dairy. The pond is sized for a herd of 1,460 dairy animals and holds wastewater during the rainy season to prevent runoff into Muddy Creek. During the dry season, the sludge is land applied. Prior to installation of this facility, a 20 acre-foot pond existed that overflowed during the rainy season.

Eligibility

- ORS 468.155(2)(e) The claimed facility is a **replacement** facility for a previously certified animal waste system.
- ORS 468.155 (1)(a)(A) The **principal purpose** of the **liquid manure storage pond** is to control a substantial quantity of water pollution. The pond was installed in accordance with the applicants Animal Waste Management Plan 9817-2 and operates under a Confined Animal Feeding Operation (CAFO) Water Pollution Control Facilities 0800 General Permit issued on April 21, 1999 by the DEQ and managed by the Department of Agriculture.
- ORS 468.155 (1)(b)(A) The **prevention** is accomplished by the elimination of industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005.

Timeliness of Application

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

<i>Application Received by DEQ</i>	<u>12/07/1999</u>
<i>Application Substantially Complete</i>	<u>5/11/2000</u>
<i>Construction Started</i>	<u>8/1998</u>
<i>Construction Completed</i>	<u>11/1998</u>
<i>Facility Placed into Operation</i>	<u>1/1999</u>

Facility Cost

Claimed Facility Cost	<u>\$ 98,823</u>
Eligible Facility Cost	<u>\$ 98,823</u>

The facility is eligible for the remaining value of certificate number 2734. The applicant applied for a waiver of the independent accounting review and provided copies of the invoice and canceled checks to substantiate 100% of the claimed facility cost.

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below 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 usable 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 15 years. There is no gross annual revenue associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No other alternatives were investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	There are no savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

Certificate number 2734 was issued on December 13, 1991 for the pre-existing storage pond. The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: CAFO D800/62677-99, expiration date June 2000.

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

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

John Van Beek and
Joanne Van Beek
dba Van Beek Dairy Farm
26405 McFarland Road
Monroe, OR 97456

The applicant owns and operates a dairy farm in Monroe, Oregon.

Application was made for tax credit for a water pollution control facility.

2. Description of Facility

The facility is a manure control facility consisting of one 80 ft x 194 ft x 14 ft earthen settling pond, one 435 ft x 194 ft x 14 ft earthen storage pond, solids separator, 18,240 square foot concrete solids storage area, concrete retaining curbs, pits, irrigation gun, pumps and associated plumbing and electrical system.

Claimed Facility Cost: \$111,713

(The total cost of the facility which the Accountant certified is \$139,713. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$28,000. The applicant's own cash investment in the claimed facility is \$111,713.)

3. Procedural Requirements

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

The facility met the statutory deadline in that construction of the facility was substantially completed on April 1, 1989 and the application for final certification was received December 20, 1990, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement of the confined animal feeding operation (CAFO) General Permit 0800 issued by the Department, to control a substantial quantity of water pollution. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

REPLACED FACILITY

Prior to the installation of the control facility, solid waste were pushed off to an open area at the end of the barns. During the wet months contaminated runoff from the stockpile flow over the fields and into Muddy Creek.

With the construction of the manure control facility, fresh water is used only in the milking parlor. All other areas are cleaned with recycled water from the earthen pond. All runoff from the roofs are diverted away from the waste storage areas. The earthen storage pond has sufficient capacity to contain wastewater during wet weather months and irrigate only during dry weather conditions. The application of manure to land during drier months has greatly reduced contamination of field runoff. The solids separator has also increased the holding capacity of the pond by the removal of solids from the wastewater prior to discharging into the pond.

b. Eligible Cost Findings

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

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

All the solids recovered from the solids separator are reused as bedding in the barns and/or disposed onto the fields with a manure spreader.

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

There is no return on investment for this facility. Prior to the installation of the facility the collected manure was spread on land. The same disposal practice is being implemented after the installation of the control facility.

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

The method chosen is the accepted method for control of manure. This method is the least cost and most effective method of controlling contaminated runoff.

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

There are no savings from the facility.

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: JOHN VAN BEEK and JOANNE VAN BEEK dba VAN BEEK DAIRY FARM 26405 McFarland Rd. Monroe, OR 97456	Location of Pollution Control Facility: 26405 McFarland Rd. Monroe, OR 97456
As: () Lessee (x) Owner	
Description of Pollution Control Facility: Manure control facility consisting of one 80 Ft. x 194 ft. x 14 ft. earthen settling pond, one 435 ft. x 194 ft. x 14 ft. earthen storage pond, solids separator, 18,240 square foot concrete solids storage area, retaining curbs, pits, irrigation gun, pumps and associated plumbing and electrical system.	
Type of Pollution Control Facility: () Air () Noise (x) Water () Solid Waste () Hazardous Waste () Used Oil	
Date Facility was Completed: 4/01/89 Placed into Operation: 4/01/89	
Actual Cost of Pollution Control Facility: \$111,713.00*	
Percent of Actual Cost Properly Allocable to Pollution Control: 100%	

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

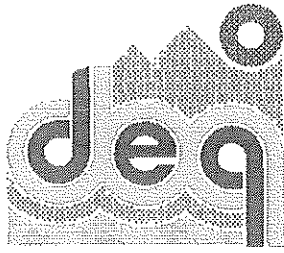
1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

*Of the total facility cost of \$139,713, the USDA reimbursed the applicant \$28,000.

Signed: William W. Wessinger
Title: William W. Wessinger, Chairman

Approved by the Environmental Quality Commission
on the 13th day of December, 1991.



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Schrock Cabinet Company**
Application No. **5353**
Facility Cost **\$60,912**
Percentage Allocable **100.00%**
Useful Life **10years**

Pollution Control Facility: Air Final Certification

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

Applicant Identification

Organized As: **a C corporation**
Business: **manufacturer of wood kitchen
cabinets**
Taxpayer ID: **13-3346717**

The applicant's address is:

**P. O. Box 547
Hillsboro, OR 97123**

Facility Identification

The certificate will identify the facility as:

**Installation of a baghouse on an
existing dust collection system**

The applicant is the owner of the facility located
at:

**600 SW Walnut
Hillsboro, OR 97123**

Technical Information

The claimed facility is the installation of a baghouse dust control system on an existing dust removal fan and piping system. The system replaces a single 90% efficiency cyclone with a 99% efficient baghouse collector. The claimed facility was added to collect and filter the dust-laden air from an existing dust collection system inside the cabinet factory. Prior to this installation the dust collection system was connected to the cyclone which vented directly to atmosphere.

Eligibility

ORS 468.155 (1)(a) The applicant claimed a principal purpose is to comply with regulations or permit conditions but did not provide any documentation supporting that claim. The **sole purpose** of this **new baghouse equipment installation** is to prevent, control or reduce a substantial quantity of **air pollution**. However, The sole purpose of the interconnecting piping and changes to the existing piping systems **is not** to prevent, control or reduce a substantial quantity of air pollution.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). Both the construction completed and the placed in operation date were substantiated.

<i>Application Received</i>	12/22/99
<i>Construction Started</i>	12/18/97
<i>Construction Substantially Completed</i>	01/02/98
<i>Facility Placed into Operation</i>	01/02/98

Facility Cost

Claimed Cost	\$ 71,712
Non-allowable Costs OAR 340-016-0070(3)	(2,800)
Eligible Cost	\$68,912

The claimed facility cost was greater than \$50,000 but less than \$500,000; therefore, an independent accounting review was not required. Pursuant to OAR 340-016-0070(4)(a), paid invoices supplied by the applicant substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The eligible facility cost does not exceed \$50,000. 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%**.

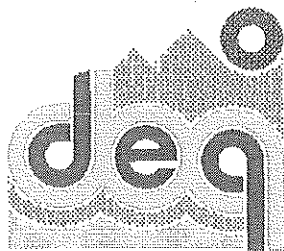
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	None identified.
ORS 468.190(1)(b) Return on Investment	None identified.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	None
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified.

DEQ permits issued to facility: Title V #34-2060, issued 01/13/98; Storm Water #1200-Z, issued 12/29/97

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Pollution Control Facility: Air Final Certification

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

Applicant Identification

Organized As: **a C corporation**
Business: **manufacturer of wood
kitchen cabinets**
Taxpayer ID: **13-3346717**

The applicant's address is:

**P. O. Box 547
Hillsboro, OR 97123**

Director's
Recommendation: **APPROVE**

Applicant **Schrock Cabinet Company**
Application No. **5358**
Facility Cost **\$75,760**
Percentage Allocable **100 %**
Useful Life **10years**

Facility Identification

The certificate will identify the facility as:

Installation of a baghouse

The applicant is the owner of the facility located at:

**550 SE Mill Street
Grants Pass, OR 97526**

Technical Information

The claimed facility is the installation of a baghouse dust control system on an existing dust removal fan and piping system. The system replaces two (2)-90% efficiency cyclones with a 99% efficient baghouse collector. The claimed facility was added to collect and filter the dust-laden air from an existing dust collection system inside the cabinet factory. Prior to this installation the dust collection system was connected to two (2) cyclones which vented directly to atmosphere. Material collected at the baghouses is conveyed by a pneumatic conveying system to an existing waste wood truck bin.

Eligibility

ORS 468.155 (1)(a) The applicant claimed the principal purpose of the baghouse is to comply with regulations or permit conditions but the application did not include any supporting documentation. The **sole purpose** of this **new baghouse installation** is to prevent, control or reduce a substantial quantity of **air pollution**. The sole purpose of the interconnecting piping and changes to the existing piping systems is not to prevent, control or reduce a substantial quantity of air pollution

ORS 468.15(1)(b)(B) The **prevention, control or reduction** is accomplished by the disposal or elimination of air pollution or air contamination sources and the use of **air cleaning devices** as defined in ORS 468A.005. The applicant submitted detailed cost data for all the components claimed. All components claimed are essential to the operation of the equipment and eligible under the statute.

<i>Timeliness of Application</i>	<i>Application Received</i>	01/02/00
The application for the claimed facility was submitted within the timing requirements of ORS 468.165 (6).	<i>Construction Started</i>	09/17/97
	<i>Construction Substantially Completed</i>	01/02/98
	<i>Facility Placed into Operation</i>	01/02/98

Facility Cost

Claimed Facility Cost	\$ 83,766
Ineligible Costs OAR 340-016-0070(3)	
Maintenance Items	<u>(8,006)</u>
Eligible Facility Cost	\$75,760

Paid invoices and cancelled checks substantiated the cost of the facility. It was not necessary for the applicant to make significant alterations to the existing ductwork system in order to install the new baghouse. Maintenance and repair items, header repairs, replacement bags and bag cages were removed because they are ineligible costs.

Facility Cost Allocable to Pollution Control

Since the eligible facility cost exceeds \$50,000, according to ORS 468.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control. The percentage of facility cost allocable to pollution control is **100%**.

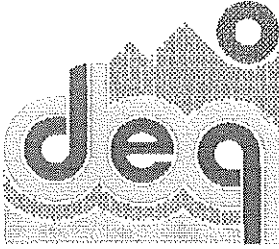
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	None identified.
ORS 468.190(1)(b) Return on Investment	None identified.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	None
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified.

DEQ permits issued to facility: Title V #17-0046, issued 08/05/96; Storm Water #1200-Z, issued 07/27/97

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **United Disposal Service, Inc.**
Application No.: **5363**
Facility Cost: **\$128,030**
Percentage Allocable: **100%**
Useful Life: **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a C corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0625022**

The applicant's address is:

**2215 N. Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**2,360 Schaefer 64 gallon Compost
collection containers**

The applicant is the owner of the facility located
at:

**2215 N. Front Street
Woodburn, OR 97071**

Technical Information

These collection containers will be used to handle source separated yard debris from residential waste collection accounts in Marion County. These containers will be serviced by a dedicated collection truck (not claimed) and the source separated yard debris will be taken to a composting facility where it is converted into a product of real economic value.

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 will be used solely for collecting source separated compostable yard debris.
- OAR 340-16-025(g)(B) **Replacement:** These new containers will be used for existing and expanded yard debris collection service where yard debris collection containers were not provided by the applicant. These new containers do **not** replace any previously certified equipment.

ORS 468.155 (1)(b)(D) These containers are used to collect source separated yard debris and are part of a **material recovery process** that 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>	01/21/00
<i>Application Substantially Complete</i>	01/27/00
<i>Construction Started</i>	08/31/97
<i>Construction Completed</i>	05/22/98
<i>Facility Placed into Operation</i>	07/01/98

Facility Cost

Facility Cost	\$128,030
Eligible Facility Cost	\$128,030

The facility cost exceeds \$50,000. Theodore R. Ahre, CPA provided certification of the cost of the claimed facility. The applicant also provided copies of the invoice and check for purchase of the collection containers.

Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(1), since the facility cost exceeds \$50,000, 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 **100%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	These containers are used to collect source separated yard debris that is subsequently processed into a salable and 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 portion of cost 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	All saving and cost were incorporated into the calculation of the return on investment.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors were considered..

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Ash Grove Cement Co.**
Application No. **5384**
Facility Cost **\$307,596**
Percentage Allocable **67%**
Useful Life **10 years**

**Pollution Control Facility: Air
Final Certification**

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

Applicant Identification

Organized As: **C Corporation**
Business: **Cement Manufacture**
Taxpayer ID: **44-0539214**

The applicant's address is:

**PO Box 25900
Overland Park KS 66225**

Facility Identification

The certificate will identify the facility as:

**Homogenizing Silos Baghouse (RM145BF)
Kiln Feed Baghouse #1 (HO182BF)
Kiln Feed Baghouse #2 (HO190BF)**

The applicant is the owner of the facility
located at:

**33060 Shirrtail Creek Road
Durkee OR 97905-0287**

Technical Information

Ash Grove Cement manufactures portland hydraulic cement at their Durkee Plant. The crushing, firing and processing of raw materials and product at a cement plant creates fine dust with many opportunities to escape, which historically made such plants a major source of fugitive dust. This dust can be controlled by covering and evacuating conveyors and drop points through a baghouse. One baghouse (RM145BF) in this application is on the raw materials storage conveyor while the other two (HO182BF/HO190BF) are on the feed conveyors to the kiln, where the raw materials are fired. The applicant estimates that 6,534 tons of particulate matter will be captured by these three baghouses per year. Because the captured particulate matter is feedstock, any captured particulate can be used by the plant.

The three baghouses in this application are among 15 originally permitted as part of a plant expansion designed to increase production by 68%. Only 9 of those were installed in this phase. Future applications may be filed for the remaining units when installed. Six were installed but not included in

this application either because they were replacement units with insufficient additional cost or were determined by the applicant to have a facility return on investment (roi) which exceeds the national roi standard for the installation year.

The baghouses were manufactured by Fuller/Kovako and are sized appropriately to the requirements.

Eligibility
 ORS 468.15 (1)(a) The **principal purpose** of this **new pollution control device** is to prevent, control or reduce a substantial quantity of air pollution.
 ORS 468.15(1)(b)(B) The **prevention, control or reduction** is accomplished by the disposal or elimination of air pollution or air contamination sources and the use of **air cleaning devices** as defined in ORS 468A.005. The applicant submitted detailed cost data for all the components claimed. All components claimed are essential to the operation of the equipment and eligible under the statute.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). The applicant supplied documentation substantiating the facility construction start and completion dates.

<i>Application Received</i>	02/29/00
<i>Filed Complete and Ready to Process</i>	03/09/00
<i>Additional Information Received</i>	05/19/00
<i>Construction Started</i>	04/01/98
<i>Construction Completed</i>	04/04/98
<i>Facility Placed into Operation</i>	04/04/98

Facility Cost

Facility Cost – RM145BF	\$130,810
– HO182BF	103,810
– HO190BF	72,976
Eligible Facility Cost	\$307,596

Ash Grove Cement applied and DEQ approved waiver of the Independent Accountant’s Statement. The reviewers performed an accounting review on behalf of the department. The applicant thoroughly documented the cost of the facility by accounting for the unit costs from the vendor and contract documents for the pollution control equipment.

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.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	Each of the claimed baghouses recapture feedstock, which is a useable commodity at the plant.
ORS 468.190(1)(b) Return on Investment	The useful life of the three baghouses used in the return on investment calculation is 15 years.

The applicant presented data showing approximately

6,534 tons of useable feedstock/product would be captured by the three baghouses. The annual value of the recovered materials is \$26,825 per year.

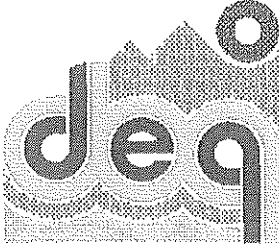
Recovered feedstock was the source of revenue for the claimed facility. As a result, baghouse RM145BF is 100 percent allocable to pollution control; baghouse HO182BF is 72%; and baghouse HO190BF is zero percent allocable. The resulting weighted net percentage allocable to pollution control for the entire project is 66.9%.

ORS 468.190(1)(c) Alternative Methods	The applicant did not investigate alternatives.
ORS 468.190(1)(d) Savings or Increase in Costs	No additional savings were identified.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

The applicant claims the facility is in compliance with Department rules and statutes. The facility operates under ODEQ Air Permit #ADCP 01-0006, issued 03/10/97.

Reviewers: Michael G. Ruby, Ph.D., P.E., Envirometrics, Inc.
Mika Kaplan, Envirometrics, Inc.
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE – Replacement
Facility**

Applicant **Oregon Rootstock & Tree Co.,
Inc. dba TRECO**

Application No. **5386**
Original Facility Cost **\$148,842**
Original Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a C corporation**
Business: **grass seed farm**
Taxpayer ID: **93-0590167**

The applicant's address is:

**10906 Monitor-McKee Road NE
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**Steel storage building 100' x 180' for
straw storage.**

The applicant is the owner of the facility located
at:

**12938 Portland Rd. NE
Gervais, OR 97026**

Technical Information

The applicant claimed an 18,000 square foot, steel framed, grass-straw storage shed. The shed provides clean, dry storage so that the dried straw can be given away throughout the winter months rather than open field burning. The farm operation generates more straw than can be stored.

The applicant owns 820 farm acres with 579 acres of perennial grass seed and zero acres of annual grass seed. The applicant has baled an average of 1500 ton for the last three years. The applicant claims that 579 acres will be removed from burning as a result of this building. The applicant claimed that only 392 acres were removed from burning as a result of the previously certified storage shed.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new building** is to prevent, control or reduce a substantial quantity of air pollution.
- OAR 340-16-025(g)(B) **Replacement:** This facility replaces the storage shed issued certificate number 3626 on July 12, 1996 (application number TC 4597.) Therefore, the applicant is only eligible for the remaining value of the original certificate.
- 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>	3/2/00
<i>Application Substantially Complete</i>	6/26/00
<i>Construction Started</i>	6/1/99
<i>Construction Completed</i>	9/1/99
<i>Facility Placed into Operation</i>	7/1/00

Facility Cost

Facility Cost	\$222,790
Eligible Facility Cost	\$222,790

The facility cost was greater than \$50,000 but less than \$500,000. Invoices accounted for 100% of the claimed costs. Hoots, Weyant & Baker, P.C. performed an accounting review on behalf of the Applicant.

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 **100%** of the remaining value of certificate number 3626.

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

Compliance and Other Tax Credits

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

Application Number	Description of Facility	Certified Cost	Percent Allocable	Certificate	City	Street
3400	PURCHASE FIELD FLAMER	\$7,620	100%	2523	WOODBURN	10906 MONITOR-MCKEE RD. NE
3448	505 NEW HOLLAND BALER/NEW HOLLAND BALE WAGON/CATERPILLAR	\$208,110	77%	2561	WOODBURN	10906 MONITOR-MCKEE RD, NE
3603	FREON RECYCLING EQUIPMENT (CFC)	\$2,251	100%	2700	WOODBURN	10906 MONITOR-MCKEE RD, NE
3735	UPGRADE FACILITY TO MEET EPA REQUIREMENTS (UST)	\$41,789	87%	2854	WOODBURN	10906 MONITOR-MCKEE RD. NE
3736	STORAGE BUILDING FOR STRAW STORAGE	\$53,597	100%	2855	SALEM	7727 54TH AVENUE NE
4597	STORAGE SHED	\$148,842	100%	3626	WOODBURN	10906 MONITOR MCKEE RD, NE

Reviewers: Patty Gentiluamo, ODA
Maggie Vandehey, DEQ

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Oregon Rootstock & Tree Co., Inc.
dba TRECO
10906 Monitor-McKee Road NE
Woodburn, Oregon 97071

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

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

2. Description of Claimed Facility

The facility described in this application is a 110' x 110' x 24' steel framed, grass straw storage building, located at 10906 Monitor-McKee Road NE, Woodburn, Oregon. The land and the buildings are owned by the applicant.

Claimed facility cost: \$148,842
(Accountant's Certification was provided.)

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

The applicant has 392 acres of perennial grass varieties under cultivation. As an alternative to open field burning the applicant invested in straw removal equipment to become self-sufficient in timely straw removal and field treatment.

Storage was required to keep the straw in a usable condition throughout the year or until it was given away. A previously certified (certificate number 2855) grass straw storage building was constructed in late 1991. The applicants grass straw storage needs and that of three neighbors has outgrown the capacity of the original grass straw storage building. The applicants neighbors store 215 acres in applicants straw storage buildings for a total of 615 acres stored. The storage capacity for both buildings is approximately 610 acres.

20,160 square feet of storage / 11 sq'/ton=1,832 tons /3 t/a=610 acres

4. Procedural Requirements

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

Construction of the facility was substantially completed on December 1, 1995. The application for final certification was found to be complete on May 31, 1996. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a usable commodity by providing protection from the elements until the applicant can give it away.

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

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

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

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

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

There is an increase in operating costs of \$2,153 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$148,842, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4597.

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

JB:rc
June 12, 1996

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION CONTROL FACILITY CERTIFICATE

Certificate No: 3626
Date of Issue: 7/12/96
Application No: 4597

ISSUED TO:

Oregon Rootstock & Tree Co., Inc.
dba TRECO
10906 Monitor-McKee Road NE
Woodburn, Oregon 97071

LOCATION OF POLLUTION CONTROL FACILITY:

10906 Monitor-McKee Road NE
Woodburn

ATTENTION: Brent D. Smith

AS: LESSEE OWNER INDIV PARTNER CORP NON-PROFIT CO-OP
 Excise Ad Valorem

DESCRIPTION OF POLLUTION CONTROL FACILITY:

110'x 110'x 24' steel frame, grass straw storage building

TYPE OF POLLUTION CONTROL FACILITY:

AIR NOISE WATER SOLID WASTE HAZARDOUS WASTE USED OIL

DATE FACILITY COMPLETED: 12/1/95

PLACED INTO OPERATION: 12/1/95

ACTUAL COST OF POLLUTION CONTROL FACILITY: \$148,842.00

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL: 100%

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed:  (Henry Lorenzen, Chairman)

Approved by the Environmental Quality Commission on the 12th day of July, 1996.



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Foster Auto Parts, Inc.**
Application No. **5388**
Facility Cost **\$1,754**
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

Organized As: **an S corporation**
Business: **Auto wrecking business**
Taxpayer ID: **93-0510648**

The applicant's address is:

**U Pull It Portland
10355 SE Foster Rd.
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

**Robinair, Model 34134A, Freon
Recovery & Recycling Machine, S/N
017640**

The applicant is the owner of the facility located
at:

**6241 SE 111th
Portland, OR 97266**

Technical Information

The Robinair, Model 34134A, Freon Recovery and Recycling system controls air contaminants by recovering R-134a refrigerant during the dismantling of automobiles, instead of discharging the refrigerants to the atmosphere. The system is self-contained and includes a refrigerant/oil separator and filter/drier that removes water and particulate from the recovered refrigerant.

At the present time, the applicant does not have a market to recycle the refrigerant and gives it to their air conditioning vendor. The oil that is removed from the refrigerant is combined with the facility's other used oil for recycling by Spencer Environmental.

Eligibility

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a
 (1)(a) substantial quantity of air pollution.
- ORS 468.155 The pollution control is accomplished by the disposal or elimination of or
 (1)(b)(B) redesign to eliminate air contamination sources and the use of air cleaning
 devices as defined in ORS 468A.005

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>3/7/00</u>
	<i>Application Substantially Complete</i>	<u>3/27/00</u>
	<i>Construction Started</i>	<u>7/99</u>
	<i>Construction Completed</i>	<u>7/99</u>
	<i>Facility Placed into Operation</i>	<u>7/99</u>

Facility Cost

Facility Cost	<u>\$1,754</u>
Eligible Facility Cost	<u>\$1,754</u>

An invoice and cancelled check substantiated the cost of the facility.

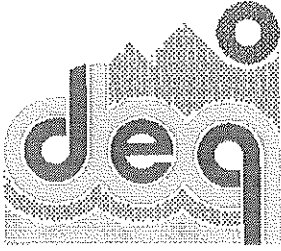
Facility Cost Allocable to Pollution Control

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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
 Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **U Pull It Tigard, Inc.**
Application No. **5389**
Facility Cost **\$1,754**
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

Organized As: **an S corporation**

Business: **auto wrecking business**

Taxpayer ID: **93-1090239**

The applicant's address is:

**10355 SE Foster Rd.
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

**Robinair, Model 34134A, Freon
Recovery & Recycling Machine, S/N
017641.**

The applicant is the owner of the facility located
at:

**19135 SW Pacific Hwy.
Sherwood, OR 97140**

Technical Information

The Robinair, Model 34134A, Freon Recovery and Recycling system controls air contaminants by recovering R-134a refrigerant during the dismantling of automobiles, instead of discharging the refrigerants to the atmosphere. The system is self-contained and includes a refrigerant/oil separator and filter/drier that removes water and particulates from the recovered refrigerant.

At the present time, the applicant does not have a market to recycle the refrigerant and gives it to their air conditioning vendor. The oil that is removed from the refrigerant is combined with the facility's other used oil for recycling by Spencer Environmental.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of air pollution.
- ORS 468.155 (1)(b)(B) The pollution control is accomplished by the disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

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

<i>Application Received</i>	<u>3/7/00</u>
<i>Application Substantially Complete</i>	<u>3/27/00</u>
<i>Construction Started</i>	<u>6/99</u>
<i>Construction Completed</i>	<u>6/99</u>
<i>Facility Placed into Operation</i>	<u>6/99</u>

Facility Cost

Facility Cost	<u>\$1,754</u>
Eligible Facility Cost	<u>\$1,754</u>

An invoice and canceled check 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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Damascus U Pull It, Inc.**
Application No. **5390**
Facility Cost **\$1,754**
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

Organized As: **an S corporation**
Business: **auto wrecking business**
Taxpayer ID: **93-0667967**

The applicant's address is:

**10355 SE Foster Rd
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

**Robinair, Model 34134A, Freon
Recovery & Recycling Machine, S/N
017296**

The applicant is the owner of the facility located
at:

**19510 SE Sunnyside Rd.
Boring, OR 97009**

Technical Information

The Robinair, Model 34134A, Freon Recovery and Recycling system controls air contaminants by recovering R-134a refrigerant during the dismantling of automobiles, instead of discharging the refrigerants to the atmosphere. The system is self-contained and includes a refrigerant/oil separator and filter/drier that removes water and particulates from the recovered refrigerant.

At the present time, the applicant does not have a market to recycle the refrigerant and gives it to their air conditioning vendor. The oil that is removed from the refrigerant is combined with the facility's other used oil for recycling by Spencer Environmental.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of air pollution.
- ORS 468.155 (1)(b)(B) The pollution control is accomplished by the disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

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

<i>Application Received</i>	<u>3/7/00</u>
<i>Application Substantially Complete</i>	<u>3/27/00</u>
<i>Construction Started</i>	<u>7/99</u>
<i>Construction Completed</i>	<u>7/99</u>
<i>Facility Placed into Operation</i>	<u>7/99</u>

Facility Cost

Facility Cost	<u>\$1,754</u>
Eligible Facility Cost	<u>\$1,754</u>

An invoice and canceled check substantiated the cost of the facility.

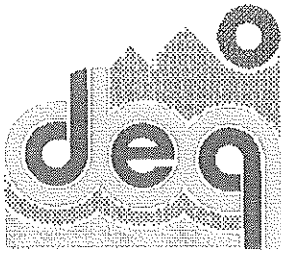
Facility Cost Allocable to Pollution Control

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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **U Pull It Salem Auto
Wrecking, Inc.**

Application No. **5391**
Facility Cost **\$1,754.00**
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

Organized As: **an S corporation**
Business: **auto wrecking business**
Taxpayer ID: **91-1785335**

The applicant's address is:

**10355 SE Foster Rd.
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

**Robinair, Model 34134A, Freon
Recovery & Recycling Machine, S/N
017631**

The applicant is the owner of the facility located
at:

**10355 SE Foster Rd.
Portland, OR 97266**

Technical Information

The Robinair, Model 34134A, Freon Recovery and Recycling system controls air contaminants by recovering R-134a refrigerant during the dismantling of automobiles, instead of discharging the refrigerants to the atmosphere. The system is self-contained and includes a refrigerant/oil separator and filter/drier that removes water and particulates from the recovered refrigerant.

At the present time, the applicant does not have a market to recycle the refrigerant and gives it to their air conditioning vendor. The oil that is removed from the refrigerant is combined with the facility's other used oil for recycling by Spencer Environmental.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of air pollution.
- ORS 468.155 (1)(b)(B) The pollution control is accomplished by disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005

Timeliness of Application

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

<i>Application Received</i>	<u>3/7/00</u>
<i>Application Substantially Complete</i>	<u>3/27/00</u>
<i>Construction Started</i>	<u>7/99</u>
<i>Construction Completed</i>	<u>7/99</u>
<i>Facility Placed into Operation</i>	<u>7/99</u>

Facility Cost

Facility Cost	<u>\$1,754</u>
Eligible Facility Cost	<u>\$1,754</u>

An invoice and a copy of a cancelled check 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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Damascus U Pull It Inc.**
Application No. **5392**
Facility Cost **\$7,295.00**
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

Organized As: **an S corporation**
Business: **Auto wrecking business**
Taxpayer ID: **93-0667967**

The applicant's address is:

**10355 SE Foster Rd
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

Concrete containment pad

The applicant is the owner of the facility located at:

**19510 SE Sunnyside Rd.
Boring, OR 97009**

Technical Information

The claimed facility consists of a concrete pad for the car crushing equipment. During the crushing operation, any residual gasoline, oil, grease and anti-freeze are squeezed out of the cars. The pad provides a level base for the crushing equipment so that the integral drains slope to a low point where the residual fluids can be collected. A disposable, absorbent blanket is placed on the pad to absorb and contain any fluids that leak from the crushing equipment.

The collected fluids are taken to the dismantling shop, where they are processed through the wash-water recycling system. Metro Chem collects the disposable blankets for processing by Oil Refining Company.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new structure** is to prevent, control or reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The pollution control will be accomplished by the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005

Timeliness of Application

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

<i>Application Received</i>	<u>3/7/00</u>
<i>Application Substantially Complete</i>	<u>3/27/00</u>
<i>Construction Started</i>	<u>6/98</u>
<i>Construction Completed</i>	<u>6/98</u>
<i>Facility Placed into Operation</i>	<u>9/3/98</u>

Facility Cost

Facility Cost	<u>\$7,295</u>
Eligible Facility Cost	<u>\$7,295</u>

An invoice and a copy of a cancelled check 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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **U Pull It Tigard, Inc.**
Application No. **5393**
Facility Cost **\$8,804**
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

Organized As: **an S corporation**
Business: **auto wrecking business**
Taxpayer ID: **93-1090239**

The applicant's address is:

**10355 SE Foster Rd
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

Concrete containment pad

The applicant is the owner of the facility located at:

**19135 SW Pacific Hwy
Sherwood, OR 97140**

Technical Information

The claimed facility consists of a concrete pad for the car crushing equipment. During the crushing operation, any residual gasoline, oil, grease and anti-freeze are squeezed out of the cars. The pad provides a level base for the crushing equipment so that the integral drains slope to a low point where the residual fluids can be collected. A disposable, absorbent blanket is placed on the pad to absorb and contain any fluids that leak from the crushing equipment.

The collected fluids are taken to the dismantling shop, where they are processed through the wash-water recycling system. Metro Chem collects the disposable blankets for processing by Oil Refining Company.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new structure** is to prevent, control or reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The pollution control is accomplished by the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005
- 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>3/7/00</u>
	<i>Application Substantially Complete</i>	<u>3/27/00</u>
	<i>Construction Started</i>	<u>9/1/98</u>
	<i>Construction Completed</i>	<u>10/3/98</u>
	<i>Facility Placed into Operation</i>	<u>11/2/98</u>

Facility Cost

Facility Cost	<u>\$8,804</u>
Eligible Facility Cost	<u>\$8,804</u>

An invoice and a copy of a check 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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Foster Auto Parts, Inc.**
Application No. **5394**
Facility Cost **\$10,513.00**
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

Organized As: **an S corporation**
Business: **Auto wrecking business**
Taxpayer ID: **93-0510648**

The applicant's address is:

**10355 SE Foster Rd
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

Concrete containment pad

The applicant is the owner of the facility located
at:

**10355 SE Foster Rd
Portland, OR 97266**

Technical Information

The claimed facility consists of a concrete pad for the car crushing equipment. During the crushing operation, any residual gasoline, oil, grease and anti-freeze are squeezed out of the cars. The pad provides a level base for the crushing equipment so that the integral drains slope to a low point where the residual fluids can be collected. A disposable, absorbent blanket is placed on the pad to absorb and contain any fluids that leak from the crushing equipment.

The collected fluids are taken to the dismantling shop, where they are processed through the wash-water recycling system. Metro Chem collects the disposable blankets for processing by Oil Refining Company.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new structure** is to prevent, control or reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The pollution control is accomplished by the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005
- 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>3/7/00</u>
<i>Application Substantially Complete</i>	<u>3/27/00</u>
<i>Construction Started</i>	<u>12/98</u>
<i>Construction Completed</i>	<u>12/98</u>
<i>Facility Placed into Operation</i>	<u>1/99</u>

Facility Cost

Facility Cost	<u>\$10,513</u>
Eligible Facility Cost	<u>\$10,513</u>

Invoices and 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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Foster Auto Parts, Inc.**
Application No. **5395**
Facility Cost **\$45,823**
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

Organized As: **an S corporation**
Business: **auto wrecking business**
Taxpayer ID: **93-0510648**

The applicant's address is:

**10355 SE Foster Rd.
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

**Closed loop wash water treatment
system**

The applicant is the owner of the facility located
at:

**10355 SE Foster Rd.
Portland, OR 97266**

Technical Information

The claimed facility consists of modifications to the dismantling shop in order to collect, treat, and recycle wash-water and to capture fluids that could escape during the dismantling of vehicles. The main components are a gravity oil/water separator and a Delta 1500A-Wash-Water Recycling System, manufactured by Landa Water Cleaning Systems, S/N W0397-1474. The Delta 1500A system is a complete, skid mounted system that removes oil, solids, and organics from the wash-water.

The treated water is recycled as feed to the shop pressure washer (not claimed.) Any excess treated water is discharged to the sewer. The oil that is removed from the wash-water is combined with the facility's other used oil for recycling by Spencer Environmental.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment installation** is to prevent, control or reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The water pollution control is accomplished by the disposal or elimination of industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005
- OAR-016-0025 (2)(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	<u>3/20/00</u>
<i>Additional Information Requested</i>	<u>4/10/00</u>
<i>Additional Information Received</i>	<u>4/17/00</u>
<i>Application Substantially Complete</i>	<u>4/17/00</u>
<i>Construction Started</i>	<u>4/97</u>
<i>Construction Completed</i>	<u>10/99</u>
<i>Facility Placed into Operation</i>	<u>10/99</u>

Facility Cost

Claimed Cost	<u>\$45,823</u>
Eligible Facility Cost	<u>\$45,823</u>

Invoices and canceled checks substantiated the cost of the facility.

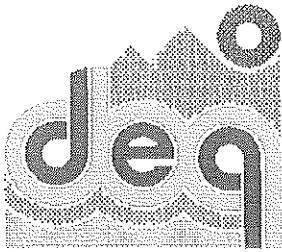
Facility Cost Allocable to Pollution Control

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. The percentage of time the facility is used for pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Bill Carson, P.E., Carson Engineering
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **Newberg Garbage Services, Inc.**
Application No.: **5419**
Facility Cost: **\$42,810**
Percentage Allocable: **100%**
Useful Life: **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a S corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0625804**

The applicant's address is:

**P O Box 1000
Newberg, Oregon 97132**

Facility Identification

The certificate will identify the facility as:

**One recycling collection trailer with
twelve compartments and four cart
tipper; two hundred seventy five 65
gallon collection carts; and one
thousand one hundred in office paper
collection bins.**

The applicant is the owner of the facility located
at:

**2904 Wynooski Road
Newberg, Oregon 97132**

Technical Information

This equipment is used to collect recyclable materials from commercial on-route collection service customers in the city of Newberg. The recyclable materials are collected and delivered to a processing facility where they are sorted and subsequently sent to a recycling mills where they are converted into products of real economic value.

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 equipment is used for collecting source separated recyclable material.

- OAR 340-16-025(g)(B) **Replacement:** This equipment is used to provide a new and expanded service. This equipment did not replace any other collection containers or equipment so there is no salvage value associated with them. The new equipment did **not** replace any previously certified equipment.
- ORS 468.155 (1)(b)(D) This trailer and containers used to collect source separated recyclable material and are part of a **material recovery process** that 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>05/30/2000</u>
	<i>Application Substantially Complete</i>	<u>06/14/2000</u>
	<i>Construction Started</i>	<u>11/01/1998</u>
	<i>Construction Completed</i>	<u>03/01/1999</u>
	<i>Facility Placed into Operation</i>	<u>03/01/1999</u>

Facility Cost

Facility Cost	\$43,269
Insignificant Contribution - ORS 468.155(2)(d)	
Radio	(\$459)
Eligible Facility Cost	<u>\$42,810</u>

The facility cost does not exceed \$50,000. The applicant provided copies of the invoices for the claimed equipment.

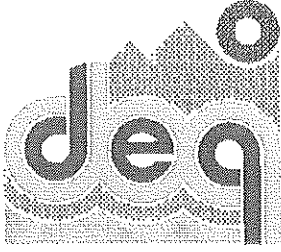
Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(3), since the facility cost does not exceed \$50,000, the only factor used in determining the portion of the claimed facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **Newberg Garbage Services, Inc.**
Application No.: **5420**
Facility Cost: **\$30,000**
Percentage Allocable: **100%**
Useful Life: **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a S corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0625804** The applicant's
address is:

**P O Box 1000
Newberg, Oregon 97132**

Facility Identification

The certificate will identify the facility as:

**One 1999 Hino recycling collection
truck, serial number
JHBFA4JC5X1S10077**

The applicant is the owner of the facility located
at:

**2904 Wynooski Road
Newberg, Oregon 97132**

Technical Information

This truck is used to collect recyclable materials from commercial on-route collection service customers in the city of Newberg. The recyclable materials are collected and delivered to a processing facility where they are sorted and subsequently sent to a recycling mills where they are converted into products of real economic value.

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 truck is used for collecting source separated recyclable material.
- OAR 340-16-025(g)(B) **Replacement:** This truck is used to provide a new and expanded service. This truck did not replace any other vehicle so there is no salvage value associated with it. The new truck did **not** replace any previously certified equipment.

ORS 468.155 This truck is used to collect source separated recyclable material and are part of a
(1)(b)(D) **material recovery process** that 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>05/30/2000</u>
<i>Application Substantially Complete</i>	<u>06/14/2000</u>
<i>Construction Started</i>	<u>07/01/1998</u>
<i>Construction Completed</i>	<u>03/01/1999</u>
<i>Facility Placed into Operation</i>	<u>03/01/1999</u>

Facility Cost

Facility Cost	<u>\$30,000</u>
Eligible Facility Cost	<u>\$30,000</u>

The facility cost does not exceed \$50,000. The applicant provided copies of invoices for the purchase of this truck..

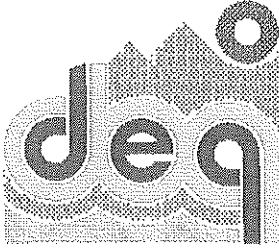
Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(3), since the facility cost does not exceed \$50,000, the only factor used in determining the portion of the claimed facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant **Bend Garbage & Recycling Co.**
Application No. **5425**
Facility Cost **\$215,104**
Percentage Allocable **100%**
Useful Life **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a S corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0890916**

The applicant's address is:

**PO Box 504
Bend, Oregon 07709**

Facility Identification

The certificate will identify the facility as:

**One new 1999 Volvo model WX64,
serial # 4V2DC2HE6YN245109 with
Wittke front loader body, serial
number WFL40YD99272; 110
cardboard recycling collection
containers, and 2016 curbside
collection containers.**

The applicant is the owner of the facility located
at:

**61480 Parrell Road
Bend, Oregon 97702**

Technical Information

This truck and containers are used to provide recycling collection service to both residential and commercial customers in the City of Bend and Deschutes County..

Eligibility

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

- OAR 340-16-025(g)(B) **Replacement:** This new truck and containers are used for a new service and did not replace an existing vehicle or containers. This truck does not replace and equipment which has previously received tax credit.
- 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. The recyclable material collected from customers is subsequently transported to end use marketed where it is remanufactured into a new products.

Timeliness of Application

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

<i>Application Received</i>	<u>06/28/2000</u>
<i>Application Substantially Complete</i>	<u>07/21/2000</u>
<i>Construction Started</i>	<u>07/14/1998</u>
<i>Construction Completed</i>	<u>11/11/1999</u>
<i>Facility Placed into Operation</i>	<u>12/01/1999</u>

Facility Cost

Facility Cost	<u>\$215,104</u>
Eligible Facility Cost	<u>\$215,104</u>

The facility cost exceeds \$500,000. The applicant requested a waiver of the independent accountant's certification. The applicant provided copies of the invoices for purchase of the truck, and containers.

Facility Cost Allocable to Pollution Control

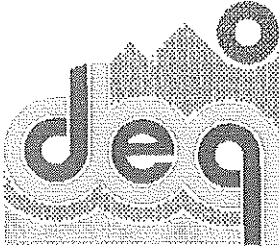
The facility cost exceeds \$50,000. According to ORS 468.190(1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **100%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	This truck and containers are used to collect recyclable material that is subsequently processed into a salable and 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 portion of cost 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 and Other Tax Credits

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

Reviewers: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **Newberg Garbage Services, Inc.**
Application No.: **5429**
Facility Cost: **\$14,918**
Percentage Allocable: **100%**
Useful Life: **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a S corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0625804**

The applicant's address is:

**P O Box 1000
Newberg, Oregon 97132**

Facility Identification

The certificate will identify the facility as:

**One 29 yard dropbox, serial number
10774; two Model A sheds, serial
numbers 157679 & 157680; and
Twenty eight 2 yard rear load
containers, serial numbers 164521-
164546, 165486-165491, and 156799-
156808**

The applicant is the owner of the facility located
at:

**2904 Wynooski Road
Newberg, Oregon 97132**

Technical Information

These containers are used to collect and store recyclable materials delivered by the public to the recycling center in the city of Newberg. The recyclable materials are received, stored, and subsequently sent to a recycling mills where they are converted into products of real economic value.

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 storage and collection containers are used for source separated recyclable material.

- OAR 340-16-025(g)(B) **Replacement:** These containers are used to provide a new and expanded service. These containers did not replace any other equipment so there is no salvage value associated with them. These new containers did **not** replace any previously certified equipment.
- ORS 468.155 (1)(b)(D) These containers are used to collect and store source separated recyclable material and are part of a **material recovery process** that obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>07/05/2000</u>
<i>Application Substantially Complete</i>	<u>07/21/2000</u>
<i>Construction Started</i>	<u>07/01/1998</u>
<i>Construction Completed</i>	<u>04/01/2000</u>
<i>Facility Placed into Operation</i>	<u>04/01/2000</u>

Facility Cost

Facility Cost	<u>\$14,918</u>
Eligible Facility Cost	<u>\$14,918</u>

The facility cost does not exceed \$50,000. The applicant provided copies of invoices for the purchase of these containers.

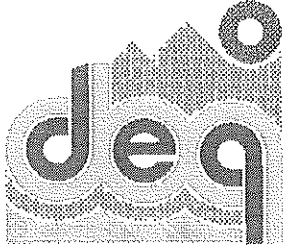
Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(3), since the facility cost does not exceed \$50,000, the only factor used in determining the portion of the claimed facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **Newberg Garbage Services, Inc.**
Application No.: **5430**
Facility Cost: **\$4,796**
Percentage Allocable: **100%**
Useful Life: **5 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **an S corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0625804**

The applicant's address is:

**P O Box 1000
Newberg, Oregon 97132**

Facility Identification

The certificate will identify the facility as:

**One thousand 14 gallon recycling
collection bins**

The applicant is the owner of the facility located
at:

**2904 Wynooski Road
Newberg, Oregon 97132**

Technical Information

These bins are used to collect recyclable materials from residential on-route collection service customers in the city of Newberg. The recyclable materials are collected and delivered to a processing facility where they are sorted and subsequently sent to a recycling mills where they are converted into products of real economic value.

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 bins are used for collecting source separated recyclable material.
- OAR 340-16-025(g)(B) **Replacement:** These bins are used to provide a new and expanded service. These bins did not replace any other equipment so there is no salvage value

associated with them. The new bins did **not** replace any previously certified equipment.
 ORS 468.155 These containers are used to collect source separated recyclable material and are
 (1)(b)(D) part of a **material recovery process** that 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>	07/05/2000
<i>Application Substantially Complete</i>	07/21/2000
<i>Construction Started</i>	09/01/1998
<i>Construction Completed</i>	11/01/1999
<i>Facility Placed into Operation</i>	11/01/1999

Facility Cost

Facility Cost	\$4,796
Eligible Facility Cost	\$4,796

The facility cost does not exceed \$50,000. The applicant provided copies of invoices for the purchase of these bins.

Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(3), since the facility cost does not exceed \$50,000, the only factor used in determining the portion of the claimed facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **APPROVE**

Applicant: **Corvallis Disposal & Recycling Co.**
Application No.: **5434**
Facility Cost: **\$413,470**
Percentage Allocable: **100%**
Useful Life: **7 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a C corporation**
Business: **Solid waste collection and
recycling facility**
Taxpayer ID: **93-0422468**

The applicant's address is:

**P O Box 1
Corvallis, OR 97339**

Facility Identification

The certificate will identify the facility as:

**Four Freightliner Model # FL70
trucks, serial numbers:**

1FV6HBA1YHB588,

1FV6HBA1YHB589,

1FV6HBA1YHB590,

1FV6HBA1YHB591

**and four Labrie Expert 2000 bodies,
serial numbers**

**CL99101NNK, CL99101NNS, CL99101NGI,
CL99101NGD**

The applicant is the owner of the facility located
at:

**110 NE Walnut Blvd.
Corvallis, OR**

Technical Information

These trucks are used solely to collect co-mingled source separated recyclable materials from residential and commercial on-route collection service customers in the city of Corvallis and Benton County. The recyclables are collected and delivered to a processing facility where they are further sorted and subsequently sent to recycling mills where they are converted into products of real economic value.

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 trucks are used solely for collecting source separated recyclable material.
- OAR 340-16-025(g)(B) **Replacement:** These truck replace five old recycling collection trucks. Their salvage value of \$104,500 has been subtracted for the full purchase prices of the new trucks. The old collection trucks did not have tax credit certification from the Commission..
- ORS 468.155 (1)(b)(D) These trucks are used to collect source separated recyclable material and is part of a **material recovery process** that obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>07/20/00</u>
<i>Application Substantially Complete</i>	<u>07/27/00</u>
<i>Construction Started</i>	<u>01/10/99</u>
<i>Construction Completed</i>	<u>01/14/00</u>
<i>Facility Placed into Operation</i>	<u>01/17/00</u>

Facility Cost

Facility Cost	\$517,970
Salvage Value	(\$104,500)
Eligible Facility Cost	\$413,470

The facility cost exceeds \$50,000. The applicant requested a waiver of the independent accountant's certification. The applicant provided copies of the invoices for purchase of the trucks and the salvage value of the old trucks.

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 **100%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	These trucks are used to collect recyclable material that is subsequently processed into a salable and useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. The calculated average annual cash flow is negative therefore the percentage

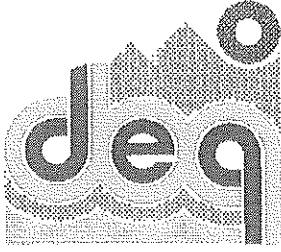
ORS 468.190(1)(c) Alternative Methods
ORS 468.190(1)(d) Savings or Increase in Costs
ORS 468.190(1)(e) Other Relevant Factors

return on investment is 0%. The portion of
cost allocable to pollution control is 100%.
No alternative investigated.
No savings or increase in costs.
No other relevant factors.

Compliance and Other Tax Credits

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

Reviewer: William R Bree



Director's
Recommendation: **APPROVE**
Applicant **Denton Plastics Inc.**
Application No. **5441**
Facility Cost **\$9,000**
Percentage Allocable **100%**
Useful Life **5 years**

Tax Credit Review Report

EQC 0009

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized As: **a corporation**

Business: **Plastic recycling company**

Taxpayer ID: **93-0852298**

The applicant's address is: **4427 NE 158th
Portland, Oregon 97230**

Facility Identification

The certificate will identify the facility as:

**Two 48' van trailers, serial numbers
1UYV52508EC188701 and
BLT640916**

The applicant is the owner of the facility located
at:

**4427 NE 158th
Portland, Oregon 97230**

Technical Information

These trailers are used in to collect scrap plastic that is subsequently recycled.

Eligibility

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

Timeliness of Application

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

<i>Preliminary Application Received</i>	03/10/2000
<i>Preliminary approval granted</i>	30/10/2000
<i>Date of investment</i>	03/28/2000
<i>Final application received</i>	07/28/2000
<i>Application substantially complete</i>	08/04/2000

Facility Cost

Claimed Facility Cost	\$9,000
Ineligible Costs	
Eligible Facility Cost	\$9,000

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.

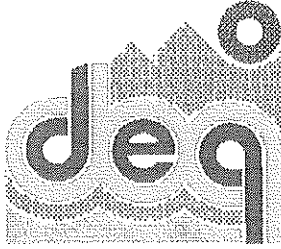
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, 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 0009

Director's
Recommendation: **APPROVE**

Applicant: **American West Leasing, Inc.**
Application No.: **5450**
Facility Cost: **\$45,995**
Percentage Allocable: **100%**
Useful Life: **7 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a S corporation**

Business: **A leasing company providing
service to a solid waste
collection and recycling facility**

Taxpayer ID: **93-1121440**

The applicant's address is:

**P O Box 472
Bend, Oregon 97709**

Facility Identification

The certificate will identify the facility as:

**One 1987 Volvo recycling collection
truck, serial number
1WXDCHMDOHU304644; one
collection trailer; and four collection
bins for the trailer**

The applicant is the owner of the facility located
at:

**1300 SE Wilson Ave.
Bend, Oregon 97702**

Technical Information

This truck and trailer are used to collect recyclable materials from commercial on-route collection service customers in the city of Bend and Deschutes County. The recyclable materials are collected and delivered to a processing facility where they are sorted and subsequently sent to a recycling mills where they are converted into products of real economic value.

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 truck and trailer are used for collecting source separated recyclable material.

OAR 340-16- **Replacement:** This truck is used to provide a new and expanded service. This

- 025(g)(B) truck did not replace any other vehicle so there is no salvage value associated with it. The new truck did **not** replace any previously certified equipment.
- ORS 468.155 This truck and trailers are used to collect source separated recyclable material and are part of a **material recovery process** that 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>	08/09/2000
<i>Application Substantially Complete</i>	08/09/2000
<i>Construction Started</i>	08/15/1998
<i>Construction Completed</i>	11/03/1998
<i>Facility Placed into Operation</i>	11/03/1998

Facility Cost

Facility Cost	<u>\$45,995</u>
Eligible Facility Cost	<u>\$45,995</u>

The facility cost does not exceed \$50,000. The applicant provided copies of invoices for the purchase of this truck and trailer.

Facility Cost Allocable to Pollution Control

In accordance with ORS 468.190(3), since the facility cost does not exceed \$50,000, the only factor used in determining the portion of the claimed facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewer: William R Bree

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT
POLLUTION PREVENTION PILOT PROGRAM

1. Applicant Mailing Address

Midway Cleaners, Inc. Same
12024 SE Sunnyside Road
Clackamas, Oregon 97015

The applicant owns and operates a dry-cleaning shop located at 12024 SE Sunnyside Road Clackamas, Oregon.

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

2. Description of Facility

The claimed facility is a Hydro Carbon dry-cleaning machine which was installed in lieu of a perchloroethylene (perc) dry-cleaning machine. The new machine uses Exxon DF 2000 solvent instead of perc and will gradually phase out the use of perc at the facility.

Claimed Facility Cost: \$ 49,814

3. Procedural Requirements

The facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The facility met all regulatory deadlines in that:

Installation of the pollution prevention facility was substantially completed on August 20, 1999. The application for final certification was received by the Department on August 15, 2000, within one year of installation of the facility. The application was found to be complete when processed on August 22, 2000.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because it meets the requirement of avoiding the substantive requirements of the National Emission Standard for Hazardous Air Pollutants (NESHAP), specifically 40 CFR 63.320 to 63.325 national perchloroethylene air emissions standard for dry cleaning facilities.

The new dry-cleaning facility was installed between January 1, 1996 and December 31, 1999.

The facility does not qualify for a pollution control tax credit under ORS 468.165 and 468.170.

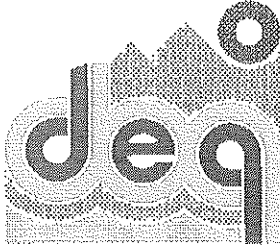
- (2) The owner installed equipment which resulted in the use of less than 140 gallons of perchloroethylene per year and in-turn qualifies as an area source under the NESHAP.
- (3) The dry cleaning facility is registered under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants.

5. Summation

- a. The pollution prevention facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that it meets the definition of a pollution prevention facility for this pilot program.
- c. The applicant indicated that the tax credit program was a determining factor in installing this equipment.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Prevention Facility Certificate bearing the cost of \$ 49,814 be issued for the facility claimed in Tax Credit Application No. 5456.



Tax Credit Review Report

EQC 0009

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **C Corporation**

Business: **Retail Gas Station**

Taxpayer ID: **93-0771776**

The applicant's address is:

P O Box 8

Heppner OR 97836

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Director's

Recommendation: **APPROVE**

Applicant **Devin Oil Co. , Inc.**

Application No. **5459**

Eligible Facility Cost **\$99,099**

Percentage Allocable **90%**

Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Two doublewall fiberglass underground storage tanks (one has two compartments), doublewall fiberglass piping, spill containment basins, automatic tank gauge system, turbine leak detectors, overfill alarm, sumps, monitoring wells and automatic shutoff valves.

The applicant is the owner of **DEQ Facility ID 3027** located at:

Heppner Chevron Food Mart

329 North Main

Heppner, OR 97836

Eligibility

ORS 468.155 The **principal purpose** of this **installation** is to prevent, control or reduce a
 (1)(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>08/22/00</u>
	<i>Application Complete and Ready to Process</i>	<u>08/22/00</u>
	<i>Construction Started</i>	<u>11/01/98</u>
	<i>Construction Completed</i>	<u>03/01/99</u>
	<i>Facility Placed into Operation</i>	<u>03/01/99</u>

Facility Cost

	Claimed	\$99,752
Less Ineligible Costs – Portion of tank gauge system not used for pollution control (10%).		(\$653)
	Eligible	<u>\$99,099</u>

The department approved the applicant's waiver of an independent accounting review because 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 following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$10,027. Therefore, **10%** of the eligible facility cost is not allocable to pollution control leaving the remaining **90%** allocable.

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 0009

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **C Corporation**

Business: **Retail Gas Station & Cardlock**

Taxpayer ID: **93-0771776**

The applicant's address is:

P O Box 8

Heppner OR 97836

Facility Identification

The certificate will identify the facility as:

Two doublewall fiberglass/steel underground storage tanks (one has two compartments), doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, turbine leak detectors, overfill alarm, sumps and automatic shutoff valves.

The applicant is the owner of **DEQ Facility ID 244** located at:

Boardman Chevron Food Mart

101 North Main

Boardman, OR 97818

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Director's

Recommendation: **APPROVE**

Applicant

Devin Oil Co. , Inc.

Application No.

5460

Eligible Facility Cost

\$124,254

Percentage Allocable

87%

Useful Life

10 years

Eligibility

ORS 468.155 The **principal purpose** of this **installation** is to prevent, control or reduce a
 (1)(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>	08/22/00
<i>Application Complete and Ready to Process</i>	08/22/00
<i>Construction Started</i>	11/01/98
<i>Construction Completed</i>	03/01/99
<i>Facility Placed into Operation</i>	03/01/99

Facility Cost

	Claimed	\$124,917
Less Ineligible Costs – Portion of tank gauge system not used for pollution control (10%).		(\$663)
	Eligible	\$124,254

The department approved the applicant's waiver of an independent accounting review because 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 following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$15,794. Therefore, **13%** of the eligible facility cost is not allocable to pollution control leaving the remaining **87%** allocable.

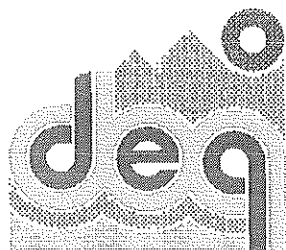
Compliance and Other Tax Credits

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

Attachment C

Denials



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **DENY – Insignificant
Contribution**

Applicant	Willamette Industries, Inc.
Application No.	5167
<u>Claimed</u> Facility Cost	\$38,267
<u>Claimed</u> 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

Organized as: **C corporation**
Business: **softwood veneer and plywood
manufacturer and planing
mill**
Taxpayer ID **93-0312940**

The applicant's address is:

**Dalles Division
1300 SW Fifth Ave., Suite 3800
Portland, OR 97201**

Facility Identification

The applicant claimed the following facility:

**One 1991 Pelican three-wheel sweeper, s/n
P715D**

The applicant is the owner of the facility located
at:

**1551 S.E. Lyle Street
Dallas, OR 97338**

Technical Information

The claimed facility consists of a 1991 Pelican three-wheel sweeper, s/n P715D, which is used to clean the vehicular areas of the plant site. The applicant claims the new sweeper allows a continuous schedule of dust and debris removal as well as immediate clean-up after emptying bins. The applicant also claims the volume of airborne fugitives and contamination of stormwater runoff has been minimized.

Eligibility

ORS 468.155 (2)(d) The definition of a pollution control facility excludes any distinct portion that makes an insignificant contribution to principal or sole purpose of the facility. The Department considers that the sweeper makes an **insignificant contribution** to air pollution prevention, control or reduction. The applicant did not provide evidence that more than an insignificant amount of debris that the sweeper removes could be blown off of the site. Sweepers inherently have the potential to cause fine particulate matter to become airborne.

ORS 468.155 (1)(a)(A) The applicant claims the **principal purpose** of this **new equipment** is to comply with a requirement imposed by the DEQ to prevent, control or reduce air pollution. The applicant claims their new Title V permit requires that road dust and debris not be allowed to accumulate on the property or to leave the property.

OAR 340-016-0060 (2)(a) “The principal purpose of the facility is the most important or primary purpose of the facility. Each facility shall have only one principal purpose...” The Department veivs the most important and the primary purpose of the sweeper is to maintain a clean work environment as part of general maintenance practices required at the site not pollution control. The Department agrees with the applicant that a continuous schedule of sweeping minimizes the volume of wood debris and dirt in and around the plant.

The applicant’s Title V permit, page 5 of 28, section 4, states that reasonable precautions must be taken to "prevent particulate matter from becoming airborne in accordance with OAR 340-021-0060 (2b)”.

- Section 4.b. includes treating and/or cleaning vehicular areas of the plant site under the control of the permittee as needed; and
- OAR 340-021-0060 (2b) lists various types of surfaces and includes the application of asphalt, oil, water, or other suitable chemicals on the surface to control dust and debris.

ORS 468.155 (1)(a)(B) The **sole purpose** of the facility is **not** to control, prevent or reduce a substantial quantity of air pollution. The main purpose for the sweeper is to clean up spilled or accumulated debris. The quantity of pollution prevented by sweeping is not a **substantial** quantity.

OAR 340-016 -0070(3)(p) Ineligible costs include but are not limited to maintenance, operation, or repair of a facility, including spare parts. The Department considers this sweeper is maintenance equipment.

Timeliness of Application

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

<i>Application Received</i>	<u>2/25/99</u>
<i>Application Substantially Complete</i>	<u>7/19/99</u>
<i>Construction Started</i>	<u>5/21/98</u>
<i>Construction Completed</i>	<u>5/31/98</u>
<i>Facility Placed into Operation</i>	<u>5/31/98</u>

Facility Cost

Claimed Cost	\$ 38,267
Ineligible Costs: OAR 340-016-0070(3)(p)	<u>(\$38,267)</u>
Eligible Cost	\$0

Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the only factor that would have been used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The applicant submitted an affidavit stating that the sweeper would be used 100% of the time for pollution control.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to the Willamette Industries Dallas Division site:

Title V permit #27-0177, issued 10/1/98
NPDES 1200-Z issued 11/17/97.

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



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **DENY – Ineligible Facility
Untimely Submittal**

Applicant **Teledyne Industries, Inc.**

Application No. **5276**

Claimed Facility Cost **\$132,705**

Claimed Percentage Allocable **100%**

Useful Life **5 years**

Pollution Control Facility: Water Final Certification

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

Applicant Identification

The applicant is a C corporation operating as a zirconium, hafnium, tantalum, titanium, and niobium production plant. The applicant's taxpayer identification number is 95-23-16679-WA and their address is:

**1600 N.E. Old Salem Road
Albany, Oregon 97321-0460**

Facility Identification

The applicant claimed the following facility:

Hafnium Pickle Slab

The applicant is the owner of the facility located at:

**1600 N.E. Old Salem Road
Albany, Oregon 97321-0460**

Technical Information

The claimed facility consists of the following:

- 3,250 square feet concrete Hafnium Pickle Slab, 14 inches thick;
- A concrete sump, catch basin, trenches, FRP liner, six foot by six foot four inch thick steel knock-out plate, and mats;
- Chem proof permaflex epoxy coating, 1/8 inch thick; and a
- Acid washing transfer system consisting of: acid storage tanks, Penn Valley model 2" double-disc pump, and piping.

The facility is used to chemically clean production equipment after each Hafnium reduction process run. Reduction vessels (crucibles and retorts) and hafnium/zirconium crystal bars are chemically cleaned with hydrochloric acid. The acid washing transfer system pumps acid back and forth between two crucibles to remove metal impurities before the crucible is returned back to production for the next batch of hafnium. The applicant claims the pad is designed to capture, contain, and divert all wastewater to the central wastewater treatment system. The steel knock-out plate and mats are designed to protect the slab and coating from damage that results from the vessels being placed directly on the slab.

Prior to installation of the concrete slab, an asphalt slab was used. The asphalt, being a weaker material, was subject to breakage from the heavy vessels and equipment. This could potentially allow spilled material containing metal ions and acids to penetrate the barrier and contaminate the soil and groundwater. Before the acid transfer system, employees poured acid manually into the vessels which might have resulted in losses due to spillage. The applicant claims the environmental impact has been substantially reduced as a result of the claimed facility installation.

Eligibility

- ORS 468.155 (1)(a)(A) The principal purpose of this new equipment is not to prevent, control, or reduce a substantial quantity of water pollution because it is not required by the Department or the federal Environmental Protection Agency.
- ORS 468.155 (1)(a)(B) This facility is not used exclusively for pollution control; therefore the **sole purpose** of this **new equipment** is **not** to prevent, control, or reduce a substantial quantity of water pollution.

The epoxy coated Hafnium Pickle Slab functions as a processing area that happens to be located outside. The key purpose of the Hafnium Pickle Slab is to provide an area to chemically remove metal impurities from process vessels before they are moved to the next step of the production process. The steel plate, mats and epoxy coating reduce physical damage to the concrete slab caused by the handling of the heavy process vessels. The Hafnium Pickle Slab was installed to meet the requirements of the Uniform Fire Code for spill control and secondary containment of hazardous liquids. The Uniform Fire Code, Article 80, Section 8004.3.4.1.1 and 8004.3.4.1.2 require spill control in outdoor locations where hazardous liquids are dispensed or used.

The acid transfer system is a material handling process used to pump acid between two crucibles and the applicant claims it eliminates employees from using buckets that could cause spillage. The trenches and catch basins serve as a material handling system to transport the waste material to the wastewater treatment facility. The claimed facility is essential for the production of hafnium.

- ORS.468.155. (1)(b)(A) The facility does not dispose of or eliminate industrial waste with the use of treatment works for industrial waste as defined in ORS 468B.005. The claimed facility does not eliminate industrial wastes through any sort of treatment process.

Disposal (system) means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems.

Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Timeliness of Application

The department's records show the application was submitted two days after the date the applicant claimed construction was completed; thereby missing the filing requirements in ORS 468.165 (6). The applicant signed the application on 10/5/99. Invoices show

<i>Application Received</i>	<u>10/12/1999</u>
<i>Application Substantially Complete</i>	<u>1/6/2000</u>
<i>Construction Started</i>	<u>08/01/1997</u>
<i>Construction Completed</i>	<u>10/10/1997</u>
<i>Facility Placed into Operation</i>	<u>10/15/1997</u>

the applicant was buying a small number of fittings and claiming plant labor around 10/20/97. The applicant stated that construction started in 8/97 but they claimed invoices dated back to mid 1995.

Facility Cost

Facility Cost	\$ 132,705
Ineligible Costs	<u>(132,705)</u>
Eligible Facility Cost	\$ 0

The claimed facility cost is greater than \$50,000 but less than \$500,000, therefore, Moss Adams, LLP performed an accounting review on behalf of the applicant and according to Department guidelines. The department did not perform an accounting review.

Facility Cost Allocable to Pollution Control

The facility is not eligible; therefore the percentage allocable to pollution control is 0%.

Compliance and Other Tax Credits

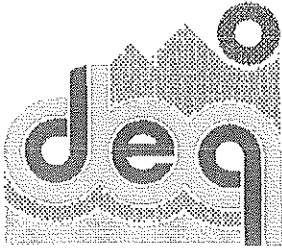
The applicant claims the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to the site:

Waste discharge #87645, issued 9/30/98

Stormwater # 1200-Z: 87645, issued 10/13/97

Title V # 22-0547, issued 9/19/98

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



Tax Credit Review Report

EQC 0009

Pollution Control Facility: Water

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is the parent company of Oremet-Wah Chang. The applicant operates a zirconium, hafnium, tantalum, titanium and niobium production plant. Their taxpayer identification number is 95-23-16679-WA and the address of the production plant is:

**1600 NE Old Salem Road
Albany, OR 97321-0460**

Director's
Recommendation:

**DENY
Ineligible Facility**

Applicant	Teledyne Industries, Inc.
Application No.	5286
<u>Claimed</u> Facility Cost	\$22,500
<u>Claimed</u> Percentage Allocable	100%
Useful Life	5 years

Facility Identification

The certificate will identify the facility as:

CyaChem Cyanide Analyzer (Model 2020)

The applicant is the owner of the facility located at:

**1600 NE Old Salem Road
Albany, OR 97321-0460**

Technical Information

The claimed water pollution control facility consists of a CyaChem Model 2020 On-Line Cyanide Analyzer. The facility continuously detects cyanide levels in the zirconium, hafnium, tantalum, titanium, and niobium production plant effluent waste stream.

The facility replaces the previous cyanide detection method of sampling and laboratory analysis of the waste stream. On average, there was a 12 hour lag between the sampling and analytical results, thus upset conditions that would generate cyanide in the production waste stream could not be detected in time for corrective action to be taken. The bulk of the cyanide-containing wastewater would be discharged into the waste stream. The new facility samples and analyzes cyanide every 10-15 minutes and relays data to a Rosemount monitoring and alarm system. If excessive levels of cyanide are detected, the facility triggers an audio and visual alarm at the control system terminal, notifying a technician to take immediate corrective action. In the additional information received on December 10, 1999, Oremet-Wah Chang committed to install an additional control loop through which a technician will be notified of the alarm via cell phone.

Eligibility

- ORS 468.155 (1)(a)(B) The **sole purpose** of this **new device** is to **prevent** and **reduce** a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The analyzer does not have a feedback loop that reduces or eliminates industrial waste with the use of treatment works for industrial waste as defined in ORS 468B.005. Therefore, the facility does not meet the eligibility requirement.

Timeliness of Application

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

<i>Application Received</i>	11/12/99
<i>Additional Information Requested</i>	11/22/99
<i>Additional Information Received</i>	12/10/99
<i>Application Substantially Complete</i>	12/10/99
<i>Construction Started</i>	3/31/99
<i>Construction Completed</i>	6/29/99
<i>Facility Placed into Operation</i>	10/8/99

Facility Cost

Claimed cost	\$ 22,500
Insignificant contribution	(22,500)
Eligible Cost	0

All of the costs above are actual amounts invoiced. None are allocated or estimated. No ineligible costs were submitted. Envirometrics did not perform an accounting review.

Facility Cost Allocable to Pollution Control

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

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. No gross annual revenues are associated with this facility; therefore there is zero return on the investment.
ORS 468.190(1)(c) Alternative Methods	The applicant identified no alternatives.
ORS 468.190(1)(d) Savings or Increase in Costs	There are no savings from the facility.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance/Other Tax Credits

The applicant claims the facility is in compliance with Department rules and statutes.

Reviewers: Mika Kaplan, Envirometrics, Inc.
Michael G. Ruby, Ph.D., P.E., Envirometrics, Inc.



Tax Credit Review Report

EQC 0009

Director's
Recommendation: **DENY**

Applicant	Willamette Industries, Inc.
Application No.	5299
<u>Claimed Facility Cost</u>	\$30,817
<u>Claimed % Allocable</u>	100%
Useful Life	7 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

The applicant is a C corporation operating as a **wood products manufacturing plant**. 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:

Forklift Maintenance Building

The applicant is the owner of the facility of the facility located at:

**2550 Progress Way
Woodburn, OR 97071**

Technical Information

The claimed facility consists of a new building addition in the forklift maintenance area. It is a Varco building, 24 feet wide by 48 feet long, with V-rib walls, 26-gage panel-rib roofing, and reinforced concrete support piers. The applicant claims the function of the building is to minimize exposure of potential oil spills and leaks to the stormwater drains.

Eligibility

- ORS 468.155 (2)(d) The definition of a pollution control facility excludes any distinct portion that makes an insignificant contribution to principal or sole purpose of the facility. Minor spills of oil from vehicle repairs are considered insignificant. The quantity of pollution prevented by constructing this building is estimated to be one quart per year. The Department considers that the building housing vehicle repairs make an insignificant contribution to water pollution control.
- ORS 468.155 (1)(a)(A) The applicant claims the **principal purpose** of this **new addition** is to comply with the DEQ requirements to prevent storm water pollution.

OAR 340-016-0060 (2)(a) The principal purpose of the facility is the most important or primary purpose of the facility. The Department considers that the most important and primary purpose of the building is to provide shelter for the equipment and maintenance personnel while performing maintenance on the equipment.

Willamette Industries' NPDES 1200-Z Storm Water Discharge Permit, Section 2(b)(i)(2) requires oil/water separators, booms, skimmers or other methods be employed to eliminate or minimize oil and grease contamination of storm water discharges.

The NPDES 1200-Z Storm Water Discharge Permit, Section 2(b)(i)(7) does not require covering vehicle maintenance activities to prevent exposure of storm water to potential pollutants. The 1200-Z permit requires the applicant to protect the off-site surface waters from pollution. Oil water separators, Lynch style catch basins, and detention ponds provide this type of pollution reduction.

ORS 468.155 (1)(a)(B) The **sole purpose** of the facility is **not** to control, prevent or reduce a **substantial quantity** of water pollution. Other purposes for the building are to provide shelter for the equipment and maintenance personnel while performing maintenance on the equipment.

Timeliness of Application

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

<i>Application Received</i>	<u>11/1/99</u>
<i>Application Substantially Complete</i>	<u>12/14/99</u>
<i>Construction Started</i>	<u>7/10/98</u>
<i>Construction Completed</i>	<u>12/31/98</u>
<i>Facility Placed into Operation</i>	<u>12/31/98</u>

Facility Cost

Claimed Facility Cost	\$ 30,817
Ineligible Amount	- 30,817
Eligible Facility Cost	<u>\$ 0</u>

The claimed facility cost does not exceed \$50,000. An accountant's statement was provided by the applicant and copies of invoices were provided which substantiated the claimed facility cost.

Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the only factor that would have been used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control.

Compliance

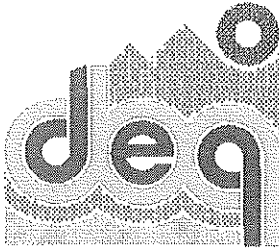
The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to facility: NPDES Storm Water Discharge #1200-Z, issued 7/22/97

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

Date: May 26, 2000
To: Maggie Vandehey
From: Maureen Weathers
Subject: Woodburn Stormwater Protection -- App #5299

As follow up to our discussion May 24th, here's our response. Let me know if you need additional information. Thanks.

The principal purpose of the Stormwater Protection facility (slab and cover) is to provide sheltered containment for oil spills or leaks resulting from maintenance activity, not to provide shelter for the equipment and personnel, as suggested in the review report. If it weren't for the stormwater regulations, we would have continued to perform rolling stock maintenance in the uncovered, asphalt-paved area. In order to contain leaks and spills, a containment facility was necessary to keep rainwater from flushing the pollutants into the stormwater drains. This new facility allows us to have a dry area where the spills can be cleaned up and disposed of without contaminating groundwater.



Tax Credit Review Report

EQC 0009

Director's
Action:

**Deny – Ineligible Facility
Noncompliance**

Applicant

Sanders Forest Products, Inc.

Application No.

5373

Claimed Facility Cost

\$830,278

Claimed Percentage Allocable

100%

Useful Life

10 years

Pollution Control Facility Tax Credit: Water Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0150

Applicant Identification

Organized As: **S Corporation**

Business: **Dimension Lumber Sawmill**

Taxpayer ID: **93-0944446**

The applicant's address is:

PO Box 169

Molalla, OR 97038

Facility Identification

The certificate will identify the facility as:

**Asphalt paving of the log deck and log
yard.**

The applicant is the owner of the facility located
at:

**RSG Forest Products-Molalla Division
PO Box 169**

Molalla, OR 97038

Technical Information

The claimed facility is asphalt paving, two drainage pipes, and an open drainage swale. The applicant paved a log deck and a log yard where most of the log equipment movement and log storage now occurs. Paving allows the applicant to more easily keep the log deck free of bark and wood debris. This was intended reduce low pH materials found in the organic by-products of log yards. According to NPDES permit materials, the stormwater runoff is directed to an existing open-field stilling pond then to an oil-water separator, and eventually to an irrigation ditch. No changes were made to these elements and they are not part of the claimed facility.

Prior to paving, bark and wood debris accumulated and decomposed on the log deck and yard. A combination of wet weather conditions and equipment traffic provided the opportunity for this muddy, decomposing debris (including pollutants such as tannic acids and lignins) to mix with storm water runoff; thereby becoming industrial waste.

Eligibility

- ORS 468.155 For a facility to be a principal purpose it must be installed to comply with a requirement imposed by the Department or the federal Environmental Protection Agency to **prevent, control or reduce water pollution.**
- (1)(a)(A)

The applicant claimed the **principal purpose** of the **installation** was to comply with a requirement imposed by the Department, specifically “to minimize or correct any adverse impact on the environment ... resulting from noncompliance with this [NPDES] permit”. Storm runoff is the largest source of wastewater at the plant.

Paving the log yard and log deck flow increased during storm events and the existing settling pond and oil water separators did not have the capacity to handle the excess. This is evidenced by post-paving Discharge Monitoring Reports showing that the source exceeded permit limits and increased the acidity of the discharge to the drainage ditch. With the current capacity of the treatment works, the Department does not consider that the paving prevents, controls or reduces water pollution.

- ORS 468.155 Log Deck Paving: The **paving** is used in conjunction with a pre-existing (1)(b)(A) **treatment works for industrial waste** as defined in ORS 468B.005

- ORS 468.155 Road Improvements are specifically excluded from eligibility as a “pollution (2)(d)(B) control facility” because they are a distinct portion that makes an insignificant contribution to the principal purpose of the facility.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). The applicant’s response to the request for additional information reiterated and amplified the material presented in the application. The response did not include the additional information requested.	<i>Application Received</i>	2/07/00
	<i>Construction Started</i>	8/01/99
	<i>Construction Completed</i>	9/01/99
	<i>Facility Placed into Operation</i>	10/01/99

Facility Cost

Claimed Cost	\$830,278
Non-Allowable Costs – 20' by 100' roadway	(\$ 16,194)
Potentially Eligible Facility Cost	\$814,184

The applicant did not provide the Statement of Facility Cost as required at ORS 340-016-0070 (4). Staff did not complete the accounting review because the application was not complete.

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below would be 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 evidence was provided of disposal or use of any salable or useable commodity of net positive value recovered from the facility.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. The facility was claimed to show no gross annual revenues.
ORS 468.190(1)(c) Alternative Methods	No alternatives were considered.
ORS 468.190(1)(d) Savings or Increase in Costs	No documentation was provided of savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No documentation was provided regarding other relevant factors.

The percentage allocable was not reviewed because the applicant did not provide the Statement of Facility Cost as required at ORS 340-016-0070 (4).

Compliance and Other Tax Credits

The applicant is operating under DEQ NPDES Permit #100929, issued 7/10/92 and Air Contaminant Discharge Permit #03-1791, issued 12/06/94. DMR submitted 3/31/00 showed the facility exceeded the allowed discharge limits for oil and grease. The applicant is required to submit quarterly monitoring reports. They have not submitted their April-June report.

No other tax credits have been applied for on any portion of the existing or enlarged facility.

Reviewers: Mika Kaplan, Envirometrics, Inc.
 Michael G. Ruby, Ph.D., P.E., Envirometrics, Inc.
 Maggie Vandehey, DEQ

Attachment D

Transfers

STATE OF OREGON
 DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION CONTROL FACILITY CERTIFICATE

Certificate No: 3038
 Date of Issue: 3/5/93
 Application No: T-3912

ISSUED TO: Avison Wood Specialties, Inc.
 P.O. Box 419
 Molalla, OR 97038

LOCATION OF POLLUTION CONTROL FACILITY:
 500 E. 5th St.
 Molalla, OR

AS: LESSEE OWNER INDIV PARTNER CORP NON-PROFIT CO-OP

DESCRIPTION OF POLLUTION CONTROL FACILITY:

Pneumatic sawdust collection system, collection hoods, blowpipes, fan, and cyclone collector.

TYPE OF POLLUTION CONTROL FACILITY:

AIR NOISE WATER SOLID WASTE HAZARDOUS WASTE USED OIL

DATE FACILITY COMPLETED: 6/30/91

PLACED INTO OPERATION: 7/01/91

ACTUAL COST OF POLLUTION CONTROL FACILITY: \$26,148.00

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL: 100%

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed: William W. Wessinger (William W. Wessinger, Chairman)

Approved by the Environmental Quality Commission on the 5th day of March, 1993.

CERTIFICATE TRANSFER

From:

To:

Signed: _____ (William W. Wessinger, Chairman)

Approved by the Environmental Quality Commission on the ___ day of _____, 1993.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION CONTROL FACILITY CERTIFICATE

Certificate No: **4000**
Date of Issue: 09/17/1998
Application No: 5044

ISSUED TO: **Avison Wood Specialties, Inc.**

PO Box 419
Molalla, OR 97038

ATTENTION: Theil Bruce, Sec. Treas.

LOCATION OF POLLUTION CONTROL FACILITY:

14000 SW Molalla Ave.
Molalla, OR 97038

Operating as the owner of the facility. A C corporation.

DESCRIPTION OF POLLUTION CONTROL FACILITY: **A baghouse manufactured by Fabric Filters Air Systems, Inc. Model # 144-10TRLOD, serial number 5290.**

TYPE OF POLLUTION CONTROL FACILITY: Air

DATE FACILITY COMPLETED: 07/28/1998 PLACED INTO OPERATION:

ACTUAL COST OF POLLUTION CONTROL FACILITY: **\$67,819.91**

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL: **100%**

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility [ORS 315.324(12) and ORS 315.356(4) and (5)].

Signed: Carol Whipple (Carol Whipple, Chair)

Approved by the Environmental Quality Commission on 09/17/1998.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION CONTROL FACILITY CERTIFICATE

Certificate No: **3825**
Date of Issue: 11/21/1997
Application No: 4822

ISSUED TO Alan Bowdish, Inc.
Westside Chevron
PO Box 1349
Lake Oswego, OR 97035

LOCATION OF POLLUTION CONTROL FACILITY:

17830 SW Lower Boones Ferry Rd.
Lake Oswego, OR 97035

ATTENTION: Alan Bowdish, President

AS A C Corporation () Excise () Ad Valorem

DESCRIPTION OF POLLUTION CONTROL FACILITY: New Tanks, Piping and Pollution Control Equipment.

TYPE OF POLLUTION CONTROL FACILITY: USTs

DATE FACILITY COMPLETED: 09/30/1995 PLACED INTO OPERATION: 09/30/1995

ACTUAL COST OF POLLUTION CONTROL FACILITY: \$143,521.00

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL: 87%

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE. Any portion of the facility described herein is not eligible to receive tax credit certification as an energy conservation facility or a reclaimed plastic facility [ORS 315.324(12) and ORS 315.356(4) and (5)].

Signed:  (Henry Lorenzen, Chairman)

Approved by the Environmental Quality Commission on 11/21/1997.

Attachment E
Topic Discussion

DRAFT

PERCENTAGE ALLOCABLE:

Treatment Works for Industrial Waste

This guidance document expresses the Department's interpretation of statute.

- Audience** This guidance is intended for:
- Applications with facility costs that exceed \$50,000;
 - Applicants claiming treatment works for industrial waste as a water pollution control facility; and
 - Reviewers of applications claiming treatment works for industrial waste as a water pollution control.

Purpose of Discussion This guidance provides information about how the factors listed in ORS 468.190(1) are considered when the claimed facility is a treatment works for industrial waste.

468.190(1)

In relevant part, ORS 468.190(1) directs the Environmental Quality Commission to consider certain factors when determining the portion of costs properly allocable to the prevention, control or reduction of water pollution for facilities that otherwise qualify for certification under ORS 468.170.

The relevant factors for facilities that control industrial waste with the use of a treatment works are:

- (a) Any material recovered from the waste stream that has an economic value.
- (b) The estimated annual percent return on the investment in the facility.
- (c) Alternative methods, equipment and costs for achieving the same pollution control objective.
- (d) Related savings or increase in costs which occur or may occur as a result of the installation of the facility.
- (e) Any other factors relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of water pollution.

Problem Many applicants claiming facilities located in an area served by a publicly owned treatment works (POTW) do not include the cost savings associated with their choice to install a treatment works rather than discharge to the POTW. Many applicants do not identify the POTW as an alternative to achieving the same pollution control objective as the claimed facility. These applicants are required to do both.

Background Generally, industrial wastewater can be discharged to POTWs, to streams or it can be applied to land. Each one of these methods usually requires some form of pretreatment. The Oregon Department of Environmental Quality (DEQ) and possibly the federal Environmental Protection Agency (EPA) require permits for industrial users to discharge to streams or land.

POTWs and Industrial Customers DEQ and EPA require POTWs to obtain permits for discharges to the waters of the state. The POTWs, in turn, requires that industrial customers meet established discharge limits through a permit system. POTWs charge industrial customer for this service through the following types of charges.

Connection Charge When a new industrial facility connects to a POTW there is typically an associated one-time fee commonly called a connection charge or a system development charge. The fee is based on an estimated average daily or monthly flow of the new facility. Each POTW establishes its own connection charge rate. Revenue from the connection charge is used to fund projects that increase the treatment capacity of the POTW.

Monthly Flow Charge POTWs also charge the industrial user a sewer service fee based on the actual amount of wastewater discharge.

Loading Charge Sometimes POTWs charge for each pound of Biological Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and Total Suspended Solids (TSS). The revenue is used to cover the cost of treating this material. POTWs generally do not have a limit on the amount of these materials that can be

discharged, but most will charge if a predetermined level is reached or exceeded.

**Sampling of
POTW Charges**

The following table provides a sampling of the charges associated with connecting to various sewer systems and the monthly flow charge related to the volume of wastewater generated.

The information in the table is based upon a new industrial facility that generates 500,000 gallons per day of wastewater. The monthly flow charge does not include loading charges for wastewater containing COD, BOD or TSS.

POTW Owner	Connection Charge	Monthly Flow Charge
Portland	\$3,954,545	\$68,362
Hillsboro	\$1,840,000	\$35,836
Gresham	\$3,800,000	\$16,203
Eugene	\$982,000	\$48,150
Bend	Charge based on # of employees. City not sure how they would handle a high flow industry.	\$27,072*
Clackamas County	Fee assessed by building size.	\$27,072*
Medford	\$975,000	\$6,600
Klamath Falls	\$1,707,650	\$16,200

* This is not an error.
Sample date: July 30, 2000

Discharge to Stream or Land Application The industrial customer that discharges its wastewater directly into a stream or applies it to land does not incur POTW charges. However, they do incur charges associated with their NPDES permit. The NPDES permit contains the discharge limits for the facility.

NPDES Application Fee DEQ charges \$31,450 to large industrial user for processing the NPDES permit application.

Compliance Fee DEQ charges industrial users an annual compliance fee of \$9,420.

Factors to Consider

The applicant must include the following considerations:

- If the facility is located in an area with no POTW or where the POTW would not accept the discharge under any conditions then cost savings associated with POTW charges are not pertinent.
- If the applicant recovers a material of real economic benefit from the industrial waste as a result of the claimed facility then the market value of that material must be included as part of the annual income on the average annual cash flow worksheet.
- If the applicant avoids or receives a reduced one-time connection charge as a result of the claimed facility then the charge must be subtracted from the estimated expenditures for the first year of operations on the average annual cash flow worksheet.
- If the applicant does not incur POTW charges because the facility discharges its wastewater directly to a stream or applies it to land then the avoided POTW charges must be subtracted from the estimated expenditures on the average annual cash flow worksheet.

- If the applicant discharges its wastewater directly to a stream or applies it to land then the NPDES permit fee may be included as an expenditure in the first year on the average annual cash flow worksheet.
- If the applicant discharges its wastewater directly into a stream or applies it to land then the compliance fee may be claimed as an expenditure each year of the estimated average annual cash flow.

Date: February 1, 2000
To: Jim Aden
From: Maureen Weathers
Subject: DEQ Tax Credit Application #4979 - KorPine Boiler Stack Gas/ESP

Following are my comments on the review report recommendations made by Lois Payne regarding the Korpine ESP project. Maggie has agreed to consider additional information before this goes to the EQC. At a meeting with Dennis Cartier and Lois Payne, I had agreed to provide additional information about the timing of the project; determine which portions of Phase I were utilized in Phase II; and to provide invoices for the unsubstantiated amounts. Please let me know if additional information or clarification is necessary.

1. **Timing:**
Testing in 6/94 revealed non-compliance; DEQ requested short and long-term compliance plan
Intent to construct signed 4/10/95 says start 5/1/95 and complete 9/1/95 = long term compliance plan
Testing in September revealed inability to meet emissions limits, resulted in MAO for ESP installation.
Intent to construct for ESP was signed 6/20/96; commence 2/12/96; to complete 10/30/96
2. **Components in Phase I utilized in Phase II:**
All control equipment in Phase I was utilized in Phase II to control the ESP, so that controls for the ESP were not required to be purchased separately. These controls are essential to the operation of the pollution control facility. The Phase I air piping (fabrication and installation) was not a required component of the ESP.
3. **Non-allowable**
The relocation of the power pole was essential to the installation of the ESP and is, under both generally accepted accounting principles and tax accounting rules, a cost of the ESP not a separately identifiable asset.
The equipment in Phase II to exhaust the boilers to the ESP and the ESP to the dryers are essential components to this pollution control facility and should be deemed eligible.
4. **Unsubstantiated**
The accounting review substantiated that these costs were included in the spending for this project. The on-site inspection by the reviewing engineer substantiated the components for this facility. Additional copies of invoices pertaining to this project are provided with this memo. I believe this should resolve the unsubstantiated issue in its entirety.

Memo

To: Environmental Quality Commission

From: Wayne C Thomas, Administrator, Chemical Demilitarization Program

CC: Langdon Marsh, Director
Lydia Taylor, Deputy Director

Date: September 27, 2000

Re: Chemical Demilitarization Program Status – September 2000

DEQ Item No. 00-1281 (92)

WCT 9/27/00

**Umatilla
Chemical Agent
Disposal Facility
HW Permit**

The Hazardous Waste Storage and Treatment Permit (HW Permit) for the Umatilla Chemical Agent Disposal Facility (UMCDF) was issued in February 1997. As of September 25, 2000 the Department has received 95 permit modifications of which 72 were designated as Class 1 modifications, 18 as Class 2 modifications, and 5 as Class 3 modifications. Class 3 permit modifications are the most significant modifications and involve complex regulatory, engineering design and/or policy issues. The Department has reviewed and approved 78 of the permit modifications and two have been denied.

Class 3 permit modifications require Environmental Quality Commission (EQC) review and approval or denial. The EQC has previously approved one Class 3 modification to add Raytheon to the HW Permit. The attached list (Attachment A) itemizes four current Class 3 permit modification requests, all of which have been received by the Department and are in various stages of review and processing.

The Class 3 permit modifications are:

- Storage of UMCDF secondary wastes in "J" Block
- Secondary Waste Compliance Schedule
- Incorporation of 40 CFR Air Emissions Standards
- Dunnage Incinerator and Associated Pollution Abatement System Improvements

The Department is currently reviewing each of these modifications and will provide documents to the EQC upon request and/or upon completion of staff review. These Class 3 permit modification requests must be addressed prior to the facility beginning thermal operations (test burns), scheduled to begin October 2001.

The Department updates the hard copies of UMCD HW Permit on a quarterly basis. Change pages are mailed or hand-delivered to 24 "control copy" holders of the document. Recently, we have reached agreement with the Permittee to implement a more active management plan for the information repositories located in local libraries.

**Umatilla
Chemical Depot
Permit Status**

On February 29, 2000 the Umatilla Chemical Depot (UMCD) submitted a RCRA Part B Permit Application for the storage of hazardous wastes. This Application is for the storage of waste chemical munitions (M-55 rockets and leaking munitions) and other hazardous wastes generated by day-to-day operations at UMCD.

During our review of the Storage Permit Application we identified a number of environmental issues that raised serious concerns. These issues include the design and operation of the storage igloos and the frequency of the monitoring being conducted. The Department identified these concerns in a Notice of Deficiency (NOD) (Parts 1 and 2, issued April 28 and June 2, 2000, respectively) to which the Army responded on July 31, 2000.

Under the existing regulatory program the Department regulates only the storage of chemical agents that the Army has declared as hazardous waste (under RCRA rules, it is the generator of the hazardous material that makes the determination whether or not the material is a "waste"). At UMCD only the M-55 rockets and leaker munitions (17 percent of the stockpile) have been declared waste. The remaining chemical weapons stockpile is managed under Army regulations in accordance with the Military Munitions Rule (as adopted by Oregon). Although a number of the necessary improvements in igloo controls and monitoring requirements can be implemented through specific Storage Permit conditions based on existing regulatory authorities, some of the needed measures may be facilitated by, or require, changes in the applicable regulations.

We have concluded that bringing all stockpiled chemical weapons under regulatory authority is necessary for the enforcement of an adequate level of protection of human health and the environment. The Department has commenced a rule-making process that will allow the State to regulate all chemical warfare agents within Oregon as hazardous waste.

A schedule for the rule-making has been developed and is included here as Attachment B. Following the public comment period on the proposed rule we will present the draft rule to the EQC in March 2001. We have encouraged the US Army to work with us as the draft rule is developed and meetings are being scheduled in the next few weeks.

**Inspection
Program and
Compliance
Status**

The Department has implemented a rigorous inspection program at both UMCD and UMCD. Quarterly inspections are conducted at UMCD with a focus on specific operational areas, with one annual inspection of the entire facility conducted jointly with US EPA. In September 2000 we conducted an inspection of the "K" Block chemical agent-related waste storage area. No violations were identified.

At UMCDF we conduct weekly compliance inspections of the construction site. Additionally, system-specific engineering inspections are conducted as part of our assessment that what is being constructed is in accordance with the design that has been permitted by the EQC. These inspections are vital for the Department's future work in review and acceptance of the Independent Engineer's Facility Construction Certification.

Since 1997 the Department has issued two Notices of Non-Compliance to UMCD and six to UMCDF.

**Secondary
Wastes**

The Army submitted a Class 3 Permit Modification Request on June 27 to add a Secondary Waste Compliance Schedule to the HW Permit. A public information meeting was held on July 18, 2000 and the 60-day public comment period ended on August 28, 2000. Two written public comments were received (one from Morrow County and one from the Confederated Tribes of the Umatilla Indian Reservation).

The Secondary Waste (SW) Compliance Schedule Permit Modification Request proposes changes to the Permit to allow the Permittees to initiate surrogate operations without installation of the Dunnage Incinerator. The Compliance Schedule as proposed requires the Permittees to demonstrate progress on the development of secondary waste treatment technologies by submitting quarterly reports and Permit Modification Requests to the Department.

The proposed SW Compliance Schedule does not fulfill the expectations of the Department nor the EQC. This Permit Modification Request is significantly incomplete and additional information from the Permittee is necessary to reach a tentative decision on this Permit Modification Request and proceed with the final phase of the decision-making process. A tentative decision to deny this Permit Modification Request was considered, but it was thought that an attempt to resolve the deficiencies with the Permittee should probably be tried first. The Department will be issuing a Notice of Deficiency requiring the submittal of additional information from the Permittee by mid to late November.

**Post Trial Burn
Health Risk
Assessment**

The Department continues to monitor activities of various agencies reviewing the Airborne Exposure Limits currently in use for the various chemical agents. Ecology and Environment, the Department's risk assessment contractor, attended a meeting in August in Atlanta, Georgia sponsored by the Centers for Disease Control (CDC). CDC organized the meeting to provide a forum for several panels of experts to discuss whether revisions to worker and/or general population agent exposure limits are needed. The CDC will publish any proposed revisions to the exposure limits in the Federal Register and provide an opportunity for public comment.

The Department has begun preparations to form an Advisory Group to provide input to the Department for the Post Trial Burn Risk Assessment Workplan. The Department will be inviting a variety of stakeholder agencies to participate in the Advisory Group. The first meeting of the group will probably be held after the first of the year.

Public Outreach

In 2000 the Department embarked on an ambitious public outreach effort with public meetings to provide basic information to the public on the design and operation of the UMCDF. Our first meeting was in June 2000, followed by another in September. These meetings will occur about quarterly and have been well received by the limited number of public who attend. Our intention is to continue these meetings into the start of the facility operations and perhaps longer. Our next public meeting will be held in Hermiston on October 11, 2000. This particular meeting was scheduled to provide information specifically on the May 8 chemical agent release at the Tooele facility.

Staff have developed numerous fact sheets and presentations and these have been translated into Spanish to respond to the needs of a minority community in the Hermiston area. In addition, we have been working closely with the Army Outreach office in Hermiston to develop poster boards and displays of the incineration technology, permitting process, and other aspects of the Chemical Demilitarization Program. The Department is very appreciative of the outstanding assistance that has been offered by the staff of the Army's Outreach Office, especially in the production of large poster boards.

In early October the CDP webpage will go online to provide the public the opportunity to search our database for scanned documents and a variety of other information. We expect that this availability will make our program more transparent to the public and continue to build on the confidence the community has in DEQ.

Miscellaneous

One technical issue the EQC should be aware of concerns the requirement that the Army demonstrate compliance with permit emission standards "upstream" of each furnace's Pollution Abatement System Carbon Filter System (PFS). The Army has advised the Department that this was discovered only recently to be a very challenging requirement. The original UMCDF design provides working space and access for flue gas emissions testing at the common stack (downstream of the PFS). The significant negative pressures and limited working space in and around the furnace ducts upstream of the PFS potentially impact the ability to conduct emissions testing in that location. The Army has met with us several times to evaluate options and we have advised that changing this requirement is not an option.

The Department is ready to sign a Memorandum of Agreement (MOA) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The MOA is consistent with the intent of the Governor's Executive order and formalizes communication and information exchange between the Department and the CTUIR.

Attachment A

CURRENT UMCDF CLASS 3 PERMIT MODIFICATION REQUESTS

UMCDF-00-004-WAST(3) " Permitted Storage in J-Block"

Submitted: February 29, 2000

Basic Description/Purpose: Revise UMCDF HW Permit to include additional permitted storage capacity (igloos at the Umatilla Chemical Depot) for the anticipated quantities of UMCDF secondary waste generation, which will need to be stored until it can be appropriately treated prior to disposal.

Initial Public Informational Meeting: April 4, 2000

Initial Public Comment Period: February 29, 2000 to May 1, 2000

Public Comments Received: Confederated Tribes of the Umatilla Indian Reservation (CTUIR); Morrow County; GASP. et al.

Summary of Public Comments: Some of the more significant issues/concerns raised in the submitted comments related to the amount of requested additional storage capacity, the adequacy of igloos to store the proposed waste streams, the duration of expected storage, the storage of liquid waste, the additional risk associated with additional storage of agent-contaminated waste, and the lack of adequate detail to support the proposed changes.

Current Status: Department issued Notice of Deficiency 6/7/00. Received Permittee Response on 8/7/00. Permittee Response currently being reviewed. A 2nd Notice of Deficiency is expected in mid to late October.

Initial Department Feedback: The original submittal was significantly lacking in pertinent details necessary for a complete review and evaluation. An initial review of the Permittee's NOD response (a detailed review is not yet complete) indicates a significant improvement in the level of detail provided to support the proposed changes. In general, the Department agrees that there will be a need for additional permitted storage capacity for UMCDF's agent-contaminated secondary waste streams awaiting final treatment. It is expected that all issues and concerns will be eventually resolved and revised draft Permit language will be prepared for public comment and eventually Commission consideration.

Estimated Date for EQC Decision: Spring 2001

UMCDF-00-016-WAST(3) "Secondary Waste Compliance Schedule"

Submitted: June 27, 2000

Basic Description/Purpose: Revise UMCDF HW Permit to provide a clear, defensible and enforceable path forward for identifying, developing and implementing appropriate treatment technologies for all secondary waste streams generated at UMCDF and UMCD, while allowing the Army to proceed forth with trial burns and surrogate operations.

Initial Public Informational Meeting: July 18, 2000

Initial Public Comment Period: June 27, 2000 to August 28, 2000

Public Comments Received: CTUIR, Morrow County

Summary of Public Comments: Some of the more significant issues/concerns raised in the submitted comments related to the lack of "teeth" in the proposed compliance schedule, the lack of a final decision on the Dunnage Incinerator (DUN) before start of hazardous waste operations, the failure to determine the criteria to measure whether waste is "agent-free" prior to consideration of this proposal, the large quantities of wood to be processed, uncertainties in the proposed technologies (e.g., the Carbon Micronization System for carbon disposal or the use of the Metal Parts Furnace to treat halogenated plastics), a lack of developed evaluation criteria for the new technologies, and the lack of a fallback plan if the technologies under consideration don't work.

Current Status: Department will issue a Notice of Deficiency by the end of September or the first week of October. Permittee Response will be due mid to late November 2000.

Initial Department Feedback: Based on this submittal, the Department is not encouraged about the chances for success of the compliance schedule approach to resolve secondary waste management issues. The submittal is significantly lacking in detail and firm commitments to keep the evaluation process moving forward and reaching a final decision. Major improvements in the proposal will need to be achieved through the Notice of Deficiency process in order for the Department to support the Permittee's proposal and proceed forward with drafting revised Permit language for consideration by the public and by the Commission.

Estimated Date for EQC Decision: Late Spring to Summer 2001

UMCDF-00-022-MISC(3) "Incorporation of 40 CFR 264 Air Emission Standards"

Submitted: September 19, 2000

Basic Description/Purpose: Revise the UMCDF HW Permit and RCRA Part B Permit Application to implement changes bringing the Facility into compliance with the organic air emission standards of 40 CFR 264.1050 through 264.1091 (Subparts BB and CC).

Initial Public Informational Meeting: October 17, 2000

Initial Public Comment Period: September 19, 2000 to November 20, 2000

Public Comments Received: None yet

Summary of Public Comments: N/A

Current Status: Submittal received last week and assigned to appropriate Department staff for review.

Initial Department Feedback: None yet. The Department has had ongoing discussions with the Permittee during the development of this submittal and does not expect any significant surprises. This Permit Modification Request is being processed by the Department in parallel with an identical Permit Application to EPA, Region X for a Subpart BB/CC "mini permit." This is necessary because the Department has not yet been authorized to administer this portion of the federal RCRA program. It is expected that both the EPA Subpart BB/CC Permit language and the revised UMCDF HW Permit language will be identical.

Estimated Date for EQC Decision: Summer to Fall 2001 at the earliest.

UMCDF-00-021-DUN(3) "Dunnage Incinerator and Associated PAS Improvements"

Submitted: September 19, 2000

Basic Description/Purpose: Revise the UMCDF HW Permit and RCRA Part B Permit Application to reflect the recently updated and re-designed Dunnage Incinerator. The decision on whether to actually install the Dunnage Incinerator is proposed to be addressed as part of the approach outlined in the Secondary Waste Compliance Schedule Class 3 Permit Modification Request UMCDF-00-016-WAST(3).

Initial Public Informational Meeting: October 24, 2000

Initial Public Comment Period: September 19, 2000 to November 20, 2000

Public Comments Received: None yet

Summary of Public Comments: N/A

Current Status: Submittal received last week and assigned to appropriate Department staff for review.

Initial Department Feedback: None yet.

Estimated Date for EQC Decision: Summer to Fall 2001 at the earliest.

Attachment B

CHEMICAL MUNITIONS MANAGEMENT RULEMAKING

SUMMARY FOR THE ENVIRONMENTAL QUALITY COMMISSION
SEPTEMBER 27, 2000

PROJECT TASKS	COMPLETION DATE
1. Hearing Authorization Topic Form Due to Office of Director	10/23/00
2. Hearing Authorization Topic Review Meeting (Division Administrator Meeting)	10/31/00
3. Draft Public Information/Proposed Rulemaking Package Issued for Internal DEQ Review	11/2/00
4. Internal DEQ Review Completed, Comments Submitted to Author of Rulemaking Package	11/9/00
5. All Approval Signatures, including Director's, Obtained on Hearing Authorization Clearance Form	11/13/00
6. Notice of Public Hearing Sent to Secretary of State for Publication in Bulletin (by 15 th of month or last work day prior at latest)	11/14/00
7. Send Public Information/Proposed Rulemaking Package to All Interested Parties and Applicable DEQ Mailing Lists (at least 28 days prior to scheduled public hearing)	11/17/00
8. Notice of Public Hearing Published in Secretary of State's Bulletin (on 1 st of month)	12/1/00
9. Hold Public Hearing on Proposed Rulemaking (at least 14 days after publication of notice in Bulletin)	1/4/01
10. Closure of Public Hearing Record/Comment Period (3-7 days after Public Hearing)	1/10/01
11. EQC Agenda Item (Rule Adoption) Topic Review Form Due to Office of Director	1/22/01
12. EQC Agenda Item Topic Review Meeting (Division Administrator Meeting)	1/30/01
13. Draft EQC Staff Report Issued for Internal DEQ Review	2/2/01
14. Internal DEQ Review Completed, Comments Submitted to Author of Rulemaking Package	2/9/01
15. Final, Approved EQC Staff Report Sent to EQC Members and Other Interested Parties	2/16/01
16. Present Proposed Rules to EQC for Adoption	3/9/01

Dates for DA and EQC Meetings are those listed on the standard DEQ schedules for rulemaking hearing authorization and preparation of EQC agenda items.

This schedule provides what is thought to be adequate up-front preparation, development and coordination time to achieve a quality proposed rulemaking package that addresses the Department's concerns on this issue. Final rule adoption is achieved in a reasonable timeframe (approx. 6 months) and there is additional flexibility to manage the public involvement aspects and timeframes of the process over the holiday season without short-changing public comment opportunities.

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8
 9 For Petitioners

10
 11 IN THE STATE OF OREGON
 12 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

13
 14 NORTHWEST ENVIRONMENTAL)
 DEFENSE CENTER, an Oregon non-profit) Memo in Response to Smurfit Newsprint's
 corporation; WILLAMETTE) Motion to Dismiss Petition for
 15 RIVERKEEPER, an Oregon non-profit) Reconsideration of the Department of
 corporation; OREGON STATE PUBLIC) Environmental Quality's Notice of
 16 INTEREST RESEARCH GROUP, an Oregon) Assessment of Civil Penalty Against Smurfit
 non-profit corporation; OREGON CHAPTER) Newsprint Corporation, WQ/I-NWR-00-0068,
 17 OF THE SIERRA CLUB, an Oregon non-) Pursuant to OAR 137-004-0080 and ORS
 profit corporation; OREGON) 183.484
 18 ENVIRONMENTAL COUNCIL, an Oregon)
 non-profit corporation;)
 19)
 20 Petitioners,)
 21)
 22 v.)
 23 OREGON DEPARTMENT OF)
 ENVIRONMENTAL QUALITY, a)
 Department of the State of Oregon)
 24)
 Respondent.)
 25

1 **I. Introduction**

2 Contrary to the arguments of Smurfit Newsprint Corporation ("Smurfit") and those
3 expressed to the Petitioners by the counsel for the Environmental Quality Commission
4 ("EQC"), Petitioners believe that the EQC does have authority to consider Petitioner's request
5 for reconsideration of DEQ's Notice of Assessment and Civil Penalty ("Notice") and should,
6 as a matter of policy, use this authority to correct the Department of Environmental Quality's
7 ("DEQ") application of the Self Disclosure Policy ("SDP") to fines assessed against Smurfit.
8 Petitioners believe that the issue of how DEQ applies the SDP is critically important.
9 Petitioners regret the short time period that Commissioners will have to consider this response,
10 but Petitioner received Smurfit's motion on Monday, September 25th and have only had
11 approximately two days to respond. While Petitioners believe that the EQC does have
12 jurisdiction to hear this petition, if the EQC decides that it does not have such authority,
13 Petitioners request that the EQC schedule a public hearing at the next possible EQC meeting
14 on the issue of how the SDP will be applied. Specifically of concern to Petitioners is that the
15 EQC articulate a policy statement in regards to the issue of who within a regulated entity must
16 have knowledge in order to trigger the SDP's ten-day reporting timeline.

18 **II. The EQC Does Have the Authority to Consider the Petition**

19 Smurfit contends that Petitioners have improperly brought this petition and that such a
20 petition can only be heard by the DEQ itself. Smurfit alleges that this is supported by OAR
21 137-004-0080, which covers reconsideration of orders from non-contested cases, and states
22 that, "(1) A person entitled to judicial review under ORS 183.484 of a final order in other than
23 a contested case may file a petition for reconsideration of a final order in other than a contested
24 case with the agency within 60 calendar days after the date of the order." (Emphasis added).
25

1 Smurfit argues that, "The phrase 'the agency' when read in context with 'the order' plainly
2 indicates that the Petition must be filed with 'the agency' that actually issued the order."
3 Motion to Dismiss at 5. The meaning of "file," however, is specifically defined in EQC's
4 regulations in a manner that does not support that Petitioners can only ask DEQ to reconsider
5 Smurfit's penalty notice.

6 OAR 340-011-005(4) defines "Filing" to mean, "receipt in the office of the Director or
7 other office of the Department." OAR 340-011-0005 (4) further states that, "Such filing is
8 adequate where filing is required of any document with regard to any matter before the
9 Commission, Department or Director, except a claim of personal liability.
10

11 Because counsel for NEDC personally filed the petition for reconsideration in the
12 office of the Director located on the 10th floor of DEQ's offices at 811 SW 6th Ave. in Portland
13 and a receipt for the petition was stamped with a "Department of Environmental Quality"
14 stamp dated August 25, 2000, Petitioners believe that the petition was filed under the meaning
15 required by OAR 340-011-0005 (4) and OAR 137 004-0080.

16 Smurfit's also argues that the EQC lacks authority to hear a petition for reconsideration
17 of a DEQ penalty assessment. There is no question that the primary authority to issue fines
18 and assess penalties has been given to DEQ. That does not mean, however, that EQC has
19 relinquished all authority to determine whether DEQ's application of fines is consistent the
20 regulatory and statutory requirements that govern the assessment of such fines.
21

22 Even Smurfit effectively acknowledges that the EQC has the authority to review
23 DEQ's assessment of fines resulting from contested cases. Smurfit cites to no statutory or
24 regulatory language, however, that supports the proposition that EQC's review authority is
25 limited to reviewing contested cases. Absent such a restriction, there is nothing that prohibits

1 the EQC from considering non-contested cases under the authority provided by OAR 137-004-
2 0080.

3 **III. The Petition for Reconsideration is Reviewable by the EQC**

4 Consistent with ORS 183.484 and OAR 137-004-0080 Petitioners are allowed to
5 petition for reconsideration to EQC because Petitioners are entitled to judicial review under
6 ORS 183.484 and the Notice is a final order from a non-contested case.

7 ***A. Petitioners Have Standing that Allows Judicial Review***

8 Contrary to Smurfit's allegation that Petitioners would not have standing and therefore
9 would not be entitled to judicial review, the precedent setting nature of DEQ's application of
10 the SDP in this case and the resulting effect on Oregon's water quality create standing for
11 Petitioners' groups. While Petitioners would be happy to provide a more detailed argument in
12 support of their standing, it is not possible to do so within the short time frame that this issue
13 was raised.
14

15 Petitioners, however, believe that if the EQC decides to hear the petition for
16 reconsideration they will be more than capable of showing standing at that point. If Petitioners
17 were not able to show standing then the EQC could then decide to dismiss the petition. There
18 are multiple interests of the Petitioners, however, that would be harmed if DEQ's application
19 of the SDP to Smurfit's fine are allowed to stand. For example, Petitioners' groups are
20 organized in part to ensure the protection of water quality in the Willamette River and believe
21 that DEQ's implementation of the SDP in this case will substantially increases the likelihood
22 that illegal water pollution will occur and not be reported. This would harm Petitioners and
23 their members since it would frustrate Petitioners' daily efforts to combat illegal water
24 pollution in the Willamette River. It would also further reduce populations of aquatic species,
25

1 such as threatened salmonids, that Petitioners' groups are committed to preserving for their
2 members' recreational, aesthetic, religious and scientific interests.

3 Additionally, representatives of at least one of Petitioners' groups played an important
4 role in the development and adoption of the SDP with the understanding that it would be
5 applied in a manner that would not promote ignorance and inaction within the management of
6 regulated entities as to pollution control violations. If DEQ is allowed to establish the
7 precedent that it will apply the SDP as it has in Smurfit's case, this could damage the
8 credibility of the Petitioner's group with the public and have related effects on the organization
9 as a whole.

10 ***B. The Notice is a Final Order from a Non-contested Case***

11 Contrary to Smurfit's allegation, DEQ's Notice of Assessment of Civil Penalty was a
12 final order from a non-contested case and was not an informal disposition of a contested case.
13 If Smurfit so desired, it could have requested a contested case hearing under ORS 183.090(3)
14 but it did not. Accordingly, DEQ did not treat the issue of applying the SDP to Smurfit's fine
15 with the formalities required of a contested case and therefore the final order did not result
16 from a contested case.
17

18 Smurfit asserts that DEQ's Notice to Smurfit at issue here is "governed" by "entirely
19 separate rules that squarely precludes" reconsideration by the EQC. Motion to Dismiss at 6.
20 Smurfit cites to the language in ORS 183.090(1) which states "except as otherwise provided by
21 law, an agency may only impose a civil penalty as provided in this section." While Smurfit
22 emphasizes the word "only" in this requirement, it glosses over what Petitioners believe to be
23 the more important phrase "except as otherwise provided by law."
24
25

1 Because ORS 183.484 (and OAR 137-004-0080(1), which implements ORS 183.484)
 2 does permit an agency to reconsider orders in non-contested cases, this is another avenue that
 3 is "otherwise provided by law" that permits the EQC to hear a petition for reconsideration in
 4 that process, thus imposing a civil penalty.¹

5 Smurfit also argues that the review provisions (ORS 183.090 (3)-(5)) "specifically
 6 provide that the *only* means to obtain review is to make written application for a contested case
 7 hearing..." Motion to Dismiss at 6. ORS 183.090(3)-(5), however, is clear that this is the *only*
 8 avenue for review available to "[t]he person to whom the notice is addressed..." Because
 9 DEQ's notice of penalty assessment was clearly not addressed to the Petitioners, Petitioners
 10 were not required or even permitted to request a contested case hearing. Although ORS
 11 183.090 restricts review procedures for entities being fined, it does not similarly limit
 12 Petitioners' right to use other legally available avenues to seek review of DEQ's application of
 13 the SDP. Again, this is supported by ORS 183.090(1), which explicitly permits the EQC to
 14 use mechanisms "otherwise provided by law" in assessing civil penalties. OAR 137-004-0080
 15 is one of those avenues that is "otherwise provided by law" and the petition for reconsideration
 16 is therefore reviewable by EQC.

18 IV. Conclusion


19 For the reasons above and those expressed in the petition submitted to the EQC on
 20 August 25, 2000, Petitioners believe that the EQC should decide to reconsider DEQ's
 21

22 ¹ For the purposes of ORS 183.090, the statutory definition of the word "agency" as
 23 contained means "any state board, commission, department, or division thereof, authorized
 24 by law to make rules or to issue orders..." and therefore ORS 183.090(1)'s statement that "an
 25 agency may only impose a civil penalty as provided in this section" does not limit imposition
 of a civil penalty to DEQ, but is inclusive of the EQC. See ORS 183.310(1) and
 183.090(13)(a).

1 application of the SDP to the fines it levied against Smurfit Newsprint. Alternatively,
2 however, if the EQC decides that it lacks authority for such review, Petitioners request that the
3 EQC expeditiously place the issue of clarifying the requirements of the SDP on its agenda.

4 If the EQC takes this route, the EQC should specifically address and allow public
5 comment on the question of whether only knowledge by a regulated entity's highest-level
6 manager will trigger the SDP's ten-day reporting timeline. This is important not only from the
7 perspective of deterring violations of Oregon's water quality laws, but is also important since
8 DEQ's application of the SDP in the case of Smurfit's fines raises serious questions about
9 whether DEQ's enforcement is consistent with the regulatory and statutory requirements of the
10 Clean Water Act. If DEQ and/or EQC decide that the SDP can be applied as it has been by
11 DEQ in Smurfit's case, at least several of the Petitioners believe that this would require EPA to
12 withdraw Oregon's authority to enforce the Clean Water Act and intend to initiate proceedings
13 accordingly. As a result, Petitioners request that EQC take action now to correct DEQ's
14 application of the SDP in a manner that is contrary to goals behind adopting the SDP, DEQ's
15 own SDP guidelines and common sense.
16

17 Dated this 28th Day of September, 2000.

18 
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Oregon

John A. Kitzhaber, M.D., Governor

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September 27, 2000

Sent by Certified Mail # Z 263 117 650

Sent by Certified Mail # Z 263 117 651

Lieutenant Colonel Thomas F. Woloszyn
Commander
Umatilla Chemical Depot
Attn.: SCBUL-CO
Hermiston, OR 97838

Mr. Gil White
Project Manager
Raytheon Demilitarization Company
78068 Ordnance Road
Hermiston, OR 97838

Sent by Certified Mail # Z 263 117 652

Mr. Stephen C. DePew
UMCDF Site Project Manager
Project Manager for Chemical Stockpile Disposal
78072 Ordnance Road
Hermiston, OR 97838

Re: May 8, 2000 Chemical Agent Release at
TOCDF
Umatilla Chemical Agent Disposal Facility
ORQ 000 009 431
DEQ Item No. 00-1280 (52.09)

Dear LTC Woloszyn, Mr. DePew, and Mr. White:

On July 12 the Department of Environmental Quality (Department) sent a letter to Mr. James Bacon, Program Manager for Chemical Demilitarization (PMCD) regarding the chemical agent release that occurred May 8, 2000 at the Tooele Chemical Agent Disposal Facility (TOCDF). The Department received a reply from Mr. DePew dated August 31, 2000. We have addressed this letter to all three Permittees at UMCDF because the Department is requiring a response in accordance with Permit Condition I.M. of the UMCDF Hazardous Waste Permit. Mr. DePew's letter did not indicate who was copied on his reply, so we have enclosed with this letter both the original July 12 letter from the Department and Mr. DePew's August 31 reply.

As you may be aware, the Department has the responsibility and authority in the State of Oregon to enforce Oregon's environmental regulations and to exercise permitting oversight of the Umatilla Chemical Agent Disposal Facility (UMCDF). The Department's letter of July 12 was directed to Mr. Bacon because, in the Department's experience, it is the Army's Program Manager for Chemical Demilitarization (PMCD) that has the equivalent responsibility,



Oregon

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July 12, 2000

Mr. James Bacon
Program Manager for Chemical Demilitarization (PMCD)
ATTN: SFAE-CD-Z, Building E4585
Corner of Hoadley and Parrish Roads, Edgewood Area
Aberdeen Proving Ground, Maryland 21010-5401

Re: May 8, 2000 Chemical Agent Release at TOCDF
DEQ Item No. 00-0965(52.09)

Dear Mr. Bacon:

The Oregon Department of Environmental Quality (Department) has reviewed four reports that have been produced to date in the aftermath of the GB nerve agent release from the common stack at the Tooele Chemical Agent Disposal Facility (TOCDF) on May 8-9, 2000. The Department has reviewed the recent reports by the Centers for Disease Control, the Utah DEQ, EG&G Defense Materials, Inc., and the Army Safety Center. Each of these individual reports highlights serious shortcomings in the ability of personnel at TOCDF to safely operate the incineration facility. Although the Department is confident that the Army and EG&G will respond to the concerns, conclusions, and recommendations contained in each report (and that the Utah DEQ will review the responses for adequacy prior to allowing the re-start of the Deactivation Furnace System at TOCDF), we have reviewed these reports from the viewpoint of what could be learned and applied to the Umatilla Chemical Agent Disposal Facility (UMCDF).

The Department has identified several issues that could affect operations at UMCDF (and other baseline incineration sites):

- The apparent failure of the Programmatic Lessons Learned (PLL) program, and the statement in the report by EG&G that "...there is no documented evidence that the lessons learned from either the Chemical Demilitarization Operations Manual or the Programmatic Lessons Learned have been implemented at TOCDF."
- The problems with excessive false alarms from the Automatic Continuous Agent Monitoring System (ACAMS). The excessive number of previous false alarms clearly affected the response of the TOCDF Control Room staff and the staff in the Emergency Operations Center during the events of May 8-9. There is also a concern with the

Mr. James Bacon
July 12, 2000
DEQ Item No. 00-0965
Page 2 of 3

Army's interpretation of analytical results from the Depot Area Agent Monitoring Systems (DAAMS) (see Attachment A of the CDC report).

- The apparent failure of the Army's training program for TOCDF personnel. We noted that all of the operators (and the shift supervisor and manager) involved in the May 8 incident were "fully trained" in accordance with all requirements. Clearly, those requirements are inadequate, since no one in the Control Room that evening seemed to have a full understanding of the interrelationships between the various systems, nor seemed to grasp the significance of the data coming from many individual operational parameters.

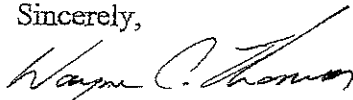
The Department is very concerned that the integration of all operations at a demilitarization facility, to include standard operating procedures, lessons learned, and roles and responsibilities of supervisors and operators, is not fully developed. A facility of this complexity requires a responsible party to be able to grasp the "big picture" perspective to ensure that changes in one area are not detrimental to another and thereby affect the entire system. It is unclear who performs this function at Umatilla and we believe this is not a function the operations contractor should perform.

The fundamental question the Army must answer is "who is responsible for the integration of all operations at UMCDF and what assurances do the citizens of Oregon have that the lessons learned from this event (and any previous events) will be applied to Umatilla?". Our confidence in the future operation of the Umatilla has been shaken based upon the findings presented in the four investigation reports.

Enclosed is a copy of a matrix of the recommendations and concerns (noted in the various reports) that the Department has prepared for a presentation to the Oregon Environmental Quality Commission on July 14, 2000. The Department requires that PMCD submit a response by September 11, 2000 identifying how each of the recommendations/concerns listed in the matrix apply to Umatilla and the actions that will be taken to implement them. A timeline for the actions and who is responsible should also be provided.

We expect and are confident that you will be able to address our concerns so that we may continue to move forward to the successful completion of the project and the nation's mission of eliminating the chemical weapons stockpile.

Sincerely,



Wayne C. Thomas
Administrator
Chemical Demilitarization Program

Mr. James Bacon
July 12, 2000
DEQ Item No. 00-0965
Page 3 of 3

Enclosure

CF Environmental Quality Commission Members
Langdon Marsh, Director, Oregon DEQ
Armand Minthorn, Confederated Tribes of Umatilla Indian Reservation
LTC Thomas F. Woloszyn, Commander, UMCD
Stephen C. DePew, PMCSD, Umatilla
Loren Sharp, Raytheon Demilitarization Company, Umatilla
Stephanie Hallock, Office of the Governor, State of Oregon
Catherine Massimino, EPA Region 10
Martin Gray, Utah Division of Solid and Hazardous Waste
Oregon Chemical Demilitarization Citizens Advisory Commission
Umatilla County Commission
Morrow County Court

**SUMMARY OF RECOMMENDATIONS/CONCERNS FROM INVESTIGATIVE REPORTS
RELATED TO THE CHEMICAL AGENT RELEASE AT THE
TOOELE CHEMICAL AGENT DISPOSAL FACILITY ON MAY 8-9, 2000**

(Prepared by Oregon Department of Environmental Quality)

SUBJECT OF RECOMMENDATION/CONCERNS	COC	C/ENH DEO	EG&G ³	ARMY SAFETY
USE OF "NON-NORMAL" PROCEDURES: Review the process for developing and implementing a "non-normal" procedure to assure that procedures contain the essential elements, to include a complete and accurate hazards analysis. Assure that procedures are not applied to operations beyond the original intent or the scope of the supporting hazard analysis.	X	X	X	X
STANDARD OPERATING PROCEDURES (SOPS): The form/organization of SOPs used in the Control Room should be reassessed to assure critical information is presented in a readily accessible timely manner. Reassess the process by which procedures are reviewed/approved, with specific attention to the sequence in which changes are approved/incorporated. Transfer information from the Operational Management Memorandum (OMM) program into the appropriate, related SOPs and do not allow the use of the OMM program for procedural direction of operations. Review and revise all SOPs.		X	X	X

¹ "Technical Investigation Report: Release of GB at the Tooele Chemical Agent Disposal Facility (TOCDF) on May 8-9, 2000," Centers for Disease Control, June 2000.

² "Investigation Report On The Agent Release From The Common Incinerator Stack On May 8 And 9, 2000 At The Tooele Chemical Agent Demilitarization Facility," Utah Department Of Environmental Quality, June 16, 2000.

³ "EG&G Investigation into the Chemical Agent Discharge at the Tooele Chemical Agent Disposal Facility," EG&G Defense Materials, Inc., released June 22, 2000.

⁴ "Informal 15-6 Investigation of the Tooele Chemical Agent Disposal Facility (TOCDF) Common Stack Release 8-8 May 2000," Deputy Director of Army Safety, released July 5, 2000.

SUBJECT OF RECOMMENDATION/CONCERN'S	CDC	UTAH DIO	EPA/SC	ARMY SAFETY
STANDARD OPERATING PROCEDURES (SOPS): Review the temporary change procedure to ensure it is responsive to operator's need. Common and routine temporary changes should be incorporated in to an operating procedure. Provide contingency procedures to assist shift management and operators in recovery of the plant from frequently experienced or probable plant upset conditions, to include the loss of key plant/system components and events.			X	X
DOCUMENT CONTROL: All drawings required by the Control Room Operators should be "controlled" drawings. Improve the rigor and function of the Document Control System.			X	X
TRAINING ISSUE (Need for simulator): Procure and install a DFS furnace and PAS system training simulator to ensure the on site capability to conduct comprehensive site specific DFS furnace and PAS systems training. Provide the necessary troubleshooting skills by training all furnace operators in the proper techniques for furnace recovery.		X	X	X
TRAINING ISSUES: Improve the current training program to evaluate shift operators' level of knowledge of plant equipment, systems and their interrelated function; formalize the structure of on-shift training; and periodically review the experience level of each team and reassign staff if necessary to ensure each shift is equally qualified. Ensure all line managers are current in the training and qualification certifications. Provide training opportunities to operators besides on-the-job training.		X	X	X
MANAGEMENT ISSUES: Review the Lessons Learned from this event with all shift operations personnel and line management and provide special training for all operations personnel on new and revised procedures developed as a result of corrective action related to this event. Augment current management oversight programs by increasing the participation of responsible line and functional managers for operation of the Chemical Agent Disposal Facility. Include unannounced monitoring visits to the plant and control room.			X	

SUBJECT/OPINION/RECOMMENDATION/CONCERNS	CBO	UTAH DDEG	EG&G	ARMY SABERS
<p>MECHANICAL/DESIGN ISSUE (chute cleaning): The procedure for clearing jams in the chutes regularly causes difficulties for incinerator operators. Prepare a comprehensive and detailed Standard Operating Procedure for ECR Feed Chute Cleanout and gate malfunction and jam correction, to include procedures for restoration of the ECR, DFS and PAS systems to normal operating conditions.</p>			X	X
<p>MECHANICAL/DESIGN ISSUE (chute jamming): Modify the DFS furnace feed chute to eliminate the need to clean out the chute manually.</p>		X	X	
<p>MECHANICAL/DESIGN ISSUE (flow measurement): Identify and install a more robust method of ensuring that the DFS flue gas rate is measured for minimum draft, or alternatively, acquire a redundant means of measuring flow.</p>			X	X
<p>MECHANICAL/DESIGN ISSUE (Burner management): Evaluate the Burner Management System design, to allow a relight of the furnace if temperature and flow are in accordance with National Fire Protection Association Standards. Modify the response of the control system so that an operator action is required in order to configure the DFS to initiate system purge. (EG&G also recommends eliminating the Plant Shift Manager's authority to make temporary changes that compromise plant protective features.)</p>			X	X
<p>MECHANICAL/DESIGN ISSUES (Operator display): Provide a method for the control Room Operator to be able to monitor the furnace and its associated pollution abatement system as a single system so that flow and pressure excursions can be more readily identified and corrected. Provide a lighted and interactive furnace system schematic on a large display that shows major components and control status. Provide the Operator a display of the flow, but also of the individual input parameters to the flow indicator (i.e., temperature/pressure).</p>		X	X	X

SUBJECT OF RECOMMENDATION/CONCERNS	CDC	UTAH DEC	EG&G	ARMY SAFETY
<p>MECHANICAL/DESIGN ISSUE (Afterburner isolation): Incorporate the existing Engineering Change Proposal to install an isolation system that would allow the Afterburner to be remotely isolate from the kiln during upset conditions (This has already been incorporated at Umatilla, Pine Bluff, and Anniston facilities.)</p>			X	X
<p>MECHANICAL/DESIGN ISSUE (Scrubber tower operation): Modify the Scrubber Tower Clean Liquor recirculation system to make sure sump levels can be maintained without excessive operator intervention. Ensure, by procedure, that clean liquor and quench brine flow is established whenever the ID fan or emergency ID fan is running. This was addressed in a Programmatic Lessons Learned (PLL) issue paper (96-662), which identified the issue of ensuring that the clean liquor pump was operating when the ID fan is operating.</p>			X	X
<p>PROGRAMMATIC LESSONS LEARNED PROGRAM: Track correction progress on corrective action determined as a result of event investigations by using the Deficiency Reporting (DR) racking system. Have existing PLL staff review the PLL and CDOM and provide input to the DR system to track review and/or implementation of applicable finding.</p>			X	
<p>AGENT MONITORING (Eliminate excessive false alarms) Conduct a study, locate, or develop and provide a chemical munitions agent sensing and alarm system that will experience significantly fewer false positives and be just as sensitive to detecting agent concentrations.</p>	X		X	
<p>AGENT MONITORING (Eliminate effects of moisture) The dilution tube in the common stack and duct ACAMS/DAAMS sample probes should be positioned a uniform distance from the distal end of the sample probe. The entire length of Stack/PAS duct sampling probes should be tested at least weekly to verify agent transfer capability. Modify the ACAMS alarm and sensing system so that caustic moisture carry over does not impair or delay its proper and timely function.</p>	X		X	X

SUBJECT OF RECOMMENDATION/CONCERNS	C/D/C	E/A/H D/E/O	E/C/S/C	ARMY SAFETY
<p>AGENT MONITORING (Analysis of DAAMS tubes)</p> <p>The DAAMS tubes monitoring the perimeter were not pulled and analyzed immediately upon confirmation by the DAAMS tubes in the furnace duct and the stack that there had been a release. Procedures should be established to assure that B tubes from DAAMS perimeter monitoring stations are retained for later analysis if the results of the "A" tube indicate a peak within the agent gate, but at less than the instrument's Limit of Quantification (LOQ).</p>	X	X	X	X
<p>AGENT MONITORING (Implementation of Contingency Plans)</p> <p>All stack and duct ACAMS alarms should be considered valid until proven otherwise. The decision making process associated with the <i>Contingency Procedure for Agent Detected in the Stack</i> needs to be evaluated to ensure that the correct procedures are implemented during an agent release. The Deseret Chemical Depot Emergency Operations Center failed to notify off-post communities until four hours after the first release.</p>	X	X		



DEPARTMENT OF THE ARMY
PROGRAM MANAGER FOR CHEMICAL DEMILITARIZATION
ABERDEEN PROVING GROUND, MARYLAND 21010-4005

31 August 2000

520
00-1211
STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 31 2000

HERMISTON OFFICE

Project Manager
For Chemical Stockpile Disposal

PMU00-0760

SUBJECT: CHEMICAL EVENT OCCURRING AT TOOELE CHEMICAL AGENT
DISPOSAL FACILITY

Mr. Wayne C. Thomas
Program Administrator
Oregon Department of Environmental Quality
256 E. Hurlburt Avenue, Suite 105
Hermiston, Oregon 97838

Dear Mr. Thomas:

Mr. James Bacon and Colonel Christopher Lesniak have asked me to respond to a letter dated July 12, 2000, which Mr. Bacon received from you relative to your office's concerns based upon the chemical event that occurred at the Tooele Chemical Agent Disposal Facility (TOCDF). First and foremost, let me reiterate that the Army remains totally committed to ensuring maximum protection to the public, our workers, and the environment throughout the mission of eliminating the United States chemical weapons stockpile. Our relationships with local and state governments and agencies are a cornerstone of this commitment. The fact that this incident has caused some of your staff to reflect upon their faith and confidence in the Army is of paramount concern to me.

As you may be aware, the Chemical Demilitarization Program has been in place for over 20 years and has positioned the United States as the world leader in chemical weapons destruction. As we move forward, we engage in a constant assessment of our approach and continually seek out the best practices for accomplishing our mission. Safety to the public, our workers, and the environment remain the top priority within our program. We do this within the timeframe set forth by the Chemical Weapons Convention, an international treaty our nation signed to help rid the world of the threat of chemical weapons. Together, with the many stakeholders, regulatory agencies, and oversight bodies, we are making significant progress in executing our mandate.

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Despite our best efforts to execute our mission consistent with our fundamental commitment to safety and environmental protection, an event occurred at our chemical weapons disposal facility in Tooele, Utah. Due to an extraordinary sequence of events and circumstances, a small amount of GB agent—commonly referred to as Sarin—was released from the facility's Common Stack the night of May 8, 2000. In short, human error and equipment malfunction caused an upset in the Deactivation Furnace System (DFS), which in turn, created conditions that allowed agent vapors to be drawn into the furnace from the Explosion Containment Room. These vapors ultimately were released from the Common Stack, triggering two sets of alarms in close succession that night.

We view the incident that occurred at our Tooele facility as an anomaly, one that emerged from the unusual combination of challenges faced by the operations team on duty that evening. All independent investigations from oversight agencies have shown that even at the time of the highest agent reading during the entire event, the agent could not have migrated more than 8 to 10 feet from the common stack. The amount of GB released to the environment was calculated at 22.5 milligrams plus or minus 4 milligrams. According to the independent investigations, none of the agent reached the Depot perimeter. As confirmed by the Centers for Disease Control and Prevention, this amount posed no health risk and hazard to the plant workers, the environment, or to the general public.

The chemical demilitarization process, regardless of technology, is built on an approach of creating defense in depth – an approach which begins with rigorous risk and hazards assessment, design, testing, operation, and re-assessment based upon testing and operational lessons-learned. The baseline facilities have an additional advantage in that results from both the Johnston Atoll Chemical Agent Disposal System (JACADS), the Army's prototype system, and from the TOCDF are assessed and used to modify or refine operating systems or practices at future sites like the Umatilla Chemical Agent Disposal Facility (UMCDF).

This accident resulted in the penetration of some of the defenses built to reduce the likelihood of agent release from or through the DFS. Therefore, it is incumbent on all stakeholders in the program to calmly assess the facts and factors that led to or which contributed to this event, and to assess how best to bolster the "defense in depth" wherever necessary based upon a thorough understanding of the contributing issues and events. This process is underway. From a UMCDF perspective, it should be noted that an additional layer of defense—the Pollution Abatement System Filtration System, was added to the UMCDF design to provide added protection against events such as the one that occurred in TOCDF. That system, along with an isolation valve for the DFS for use in restarting the system when the afterburner temperature is insufficient to ensure

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complete agent destruction, should further reduce the likelihood of a similar event at the UMCDF. However, please do not read of these improvements and think that the Army is complacent; we are committed to understanding how this event occurred, identifying both programmatic/systemic improvements and operating contractor performance deficiencies, and taking the appropriate actions. Your letter asked a fundamental question: "Who is responsible for the integration of all operations at UMCDF and what assurances do the citizens of Oregon have that the lessons learned from this event (and any previous events) will be applied to Umatilla." Let me address this question directly:

As the Executive Agency responsible for the disposal of the chemical weapons stockpile, the Army is ultimately responsible for the safe and environmentally responsible disposal of the chemical weapons stockpile.

In executing its mandate, the Army has hired Systems Contractors (SC)—companies that are responsible for ensuring that the facility is properly constructed, tested, operated, and closed consistent with the requirements for the facility. These requirements are codified in both the baseline design documentation and also in the environmental permits that govern the operation.

From an "on the ground" perspective, it is the SC who is responsible for the integration of all operations at the UMCDF. The Army is responsible for ensuring that the SC carries out its responsibilities and obligations. In the case of Umatilla, the SC is Raytheon Demilitarization Company (RDC), the same company that operates JACADS. RDC is also building and will operate two other baseline facilities besides the UMCDF, the Anniston Chemical Agent Disposal Facility (ANCDF), and the Pine Bluff Chemical Agent Disposal Facility (PBCDF).

To assist the SC, and to ensure adequate oversight is provided, the Army has also contracted with Science Applications International Corporation (SAIC), to perform a variety of functions, to include managing the Programmatic Lessons-Learned (PLL) Program. The PLL Program is actually a vast information-sharing network of workshops, newsletters, conference calls, and engineering change proposals. Information from chemical events such as this one is shared with all sites, along with recommended corrective actions. Each site must then respond, in writing, detailing how it has used this information to modify equipment, operating practices, or other systems. This information is assessed by Colonel Christopher Lesniak's organization in Edgewood, Maryland; to ensure acceptability. This entire process is documented in a comprehensive PLL database, which is made available to all SCs, to all portions of the Army demilitarization community, and to the regulatory community upon request.

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Your letter also states, "A facility of this complexity requires a responsible party to be able to grasp the "big picture" perspective to ensure that changes in one area are not detrimental to another and thereby affect the entire system." We agree entirely with this statement. However, you go on to say, "the integration of all operations. . . is not fully developed" and "It is unclear who performs this function at Umatilla and we believe this is not a function the operations contractor should perform." We must respectfully, but forcefully, disagree with your assertion on this point. The SC - whose operators and plant managers are making minute-by-minute decisions, whose engineers live with the process, assess performance on a regular basis, and propose changes for optimization, whose mechanics enter extremely hostile environments to repair equipment or to implement modifications - the SC is able - **and is required** - to grasp the "big picture" before they should be entrusted with the disposal of chemical agents.

A thorough oversight program is in place to create a "defense in depth" at the management level. It assists the SC when necessary, and to intervene when essential to ensure that the fundamental precepts of the program; protecting the safety of our workers, the environment, and the general public-are not compromised.

The issues highlighted in your letter, along with the recommendations from the various groups that reviewed the TOCDF incident, are all under assessment to determine what actions are appropriate. The need for analysis can best be demonstrated by looking at the issues centering on monitoring system performance. The Automatic Continuous Air Monitoring System performance reported by the SC at the TOCDF is very different from that being experienced at the JACADS site. Why is that? Is it due to differing ambient conditions? Is it due to other technical causes - such as furnace tuning? A similar analysis is underway for all of the areas, including personnel training, where recommendations have been provided. We will continue to provide all assessment information as it is completed, which meets your request to provide the most current information to the Oregon Department of Environmental Quality in accordance with your letter. Ensuring that we do what is best for the UMCDF, consistent with its current schedule, is more important than meeting an arbitrary response date. I am hopeful that, should more time be needed for developing an integrated reply, we will have your support.

With the safety of our workers, the public and the environment as the paramount concern of this program, I want to emphasize that we have been taking, and will continue to take, corrective actions to resolve these issues so that the disposal of these deadly weapons can continue. We must remember that, as unfortunate as this event was, the

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greater safety threat is—and has always been—the continued storage of these chemical weapons.

Your faith and confidence in support of the UMCDF and its mission are valued and vital to our success. I am available to personally discuss this with you and other officials if you so desire.

Finally, I would be remiss if I did not point out that your letter may have been better directed to myself, the Site Project Manager for the Umatilla Chemical Agent Disposal Facility. Colonel Christopher Lesniak has given me responsibility for the execution of the UMCDF project. In addition, some discussions at the staff level between you and myself may have been helpful to your staff and yourself in better understanding the TOCDF incident and where the project is moving in response to it. I would strongly encourage coordination at our level, and following the chain of command to ensure that your staff receives accurate and timely information, particularly on emergent issues such as this. If my staff is not able to provide information sufficient to satisfy your staff's concern, please feel free to contact me directly at (541) 564-7051.

Sincerely,


Stephen C. DePew
UMCDF Site Project Manager

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item F
September 29, 2000 Meeting

Title:

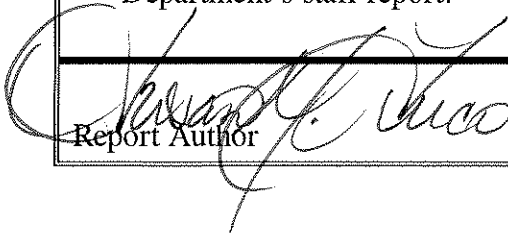
Public Participation Procedures for Permit Decisions

Summary:

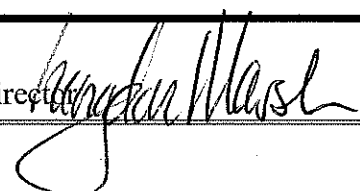
This rulemaking proposal would create a system of categories for solid waste and water quality permits that provide for increased public participation depending on the permitting action. These categories provide for earlier and increased public involvement in permit actions with great environmental or public health concern, and a streamlined process of public involvement for permit actions over which the Department has little discretion and that have little environmental or public health concern. The Department will propose a similar system of categories for air quality permits as part of a broader revision to air quality permitting procedures expected in late 2000 or early 2001.

Department Recommendation:

The Department recommends that the Commission adopt the rules and rule amendments regarding public participation procedures for permit decisions as presented in Attachment A of the Department's staff report.


Report Author

Division Administrator


Director

Date: September 12, 2000
To: Environmental Quality Commission
From: Langdon Marsh
Subject: Agenda Item F, Public Participation Procedures for Permit Decisions, EQC
Meeting: September 29, 2000

Background

On July 13, 2000, the Director authorized the Director's Department to proceed to a rulemaking hearing on proposed rules that would place into the solid waste and water quality rules a system of categories that provide for increased public participation depending on the permitting action.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on August 1, 2000. 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 July 13, 2000.

A Public Hearing was held August 16, 2000 with Susan Greco serving as Presiding Officer. Written comment was received through August 18, 2000. The Presiding Officer's Report (Attachment C) summarizes that no oral comments were presented at the hearing. Attachment D lists all the written comments received. (A copy of the comments is available upon request.)

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

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

In 1998, an internal work group composed of regional and program staff, public affairs and the Director's office was created to address some concerns regarding the Department's process of public participation in permitting decisions. Of particular concern to the group was how to involve people earlier in the permit development process for those permits that are of great environmental or public health concern. On the other hand, there are certain situations where a streamlined process is appropriate including renewals with no change or administrative changes. The workgroup felt that people not only want to review the permit record but also they want to have a real opportunity for input into the decision. The workgroup wanted to develop a process that would allow enough time for the detailed review and comment preparation that is necessary for significant permitting decisions.

The work group developed a system of categories that would provide increased public participation depending on the anticipated level of public concern, potential environmental harm and legal requirements regarding the permit action. The lowest category will include those permit actions over which the Department has no discretion and which have no environmental impact. The highest category includes new major sources or major modifications to those sources. Additionally, the Department retained the discretion to 'bump' a source to a higher category based on anticipated public interest in the source, the compliance and enforcement history of the facility or owner, or the potential for significant environmental or public harm due to the location or type of facility. The proposed process is designed to involve the public earlier and more extensively for certain permit actions while providing a more abbreviated process for others. The Department is hoping that it will result in more meaningful comments earlier in the process when both the Department and other agencies are able to address those issues.

The highest category (Category IV) requires public participation earlier in the process on "major" permitting decisions by requiring the Department to hold a community involvement session in the community surrounding the site of the facility. This "open house" is in addition to the public hearing that occurs after a draft permit has been developed. This earlier public process will help ensure communication between the community, the applicant and the Department that is critical to defining issues, identifying options and fostering a sense of cooperation between each of these parties.

At this time, the Department is proposing to adopt rules that will categorize water quality and solid waste permit actions. These proposed rules also incorporate process requirements that used to be housed in Division 14. The air quality program will be doing the same as they redefine their permitting programs in late 2000 or early 2001.

These rule changes will lead to more of the public's, the permittee's and staff's time being spent on significant permit decisions with less time spent on de minimus permit decisions. The lack of early public participation in the Department's current process often leads to the comment period

begin extended to accommodate the public's concerns. Additionally the increase in clear, concise information in the Department's public notices will lead to more effective public comments.

Relationship to Federal and Adjacent State Rules

The federal Clean Water Act contains public participation requirements which are applicable to NPDES permits. The category process was designed to ensure that the NPDES program would still comply with the federal requirements. There are no federal requirements applicable to the solid waste program.

Authority to Address the Issue

The Commission has the authority to address this issue under ORS 459.045, 468.020, 468B.048, 468A.025.

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

An advisory committee met four times in 1998 and 1999 to work on the category process. Attachment F contains a list of the advisory committee members. Additionally in August 1998, the Department sent a memorandum to interested persons asking for comments on the proposed process.

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

The rulemaking will place into the solid waste and water quality rules a system of categories that provide for increased public participation depending on the permitting action. The categories are based on the anticipated level of public concern, potential environmental or public health impact, and legal requirements. This rulemaking also makes various housekeeping changes and incorporates the permit process requirements from Division 14 into the program's rules.

Category I contains those permit actions over which the Department has no discretion and that have de minimis environmental impact. This includes such things as administrative changes include name change or transfer, registration under a general permit and short term permits. The Department does not provide public notice of these actions under its current rules.

Category II contains those permit actions over which the Department has minimal discretion and that have minimal potential environmental impact. It generally contains renewals without changes and minor modifications. The Department will send the public notice to the pertinent mailing lists. A comment period of at least 30 days will be provided with no public hearing.

Category III - contains those permit actions that require significant discretion on the part of the Department or involve the potential for significant harm to either the environment or public health. This category is similar to what the Department provides under its current rules and includes minor modifications of an NPDES permit, issuance of general permits, and issuance of new composting facility permits. The Department will send the public notice to the pertinent mailing lists. A minimum comment period of 35 days will be provided. A hearing will be scheduled if a group of 10 or more people request one within 14 days or the Department determines that a hearing is necessary. The Department will provide 30 days notice of the hearing.

Category IV is for new major facilities or a renewal with a new or major increase in a discharge. This includes new or major modification NPDES permit, a new solid waste landfill or incinerator. Problem sources that fit within category III can be 'bumped' up to category IV. This category provides the most extensive public involvement starting after the completion of a permit application. The Department will send notice of the permit application to the Department's mailing lists for permits, adjacent property owners, if possible, and local media. Included in this notice will be information relating to a community involvement session where interested persons can learn about the proposed facility and who to contact at the involved agencies to obtain more information. The Department will also establish an information repository in a location close to the facility.

Following this meeting, the draft permit will be developed in consultation with the applicant and staff incorporating concerns that were developed through the initial public process. Public notice will be developed once a draft permit is completed and mailed by the Department to the mailing list and adjacent property owners, if possible, and a hearing will be scheduled during the public comment period. The Department will provide a minimum 30 day notice of the hearing and 40 day comment period.

Summary of Significant Public Comment and Changes Proposed in Response

A listing of all public comments received and the Department's evaluation of those comments is attached to this report as Attachment D. The Department received comments from Oregon Refuse and Recycling Association and Waste Management, Inc. The majority of comments were semantic in nature. Oregon Refuse and Recycling Association commented that they did not receive the public notice in a timely manner. They requested that the comment period be extended. The Department did send a copy of the public notice to ORRA on July 13, 2000, over one month before the close of the comment period. The Department did not extend the comment period.

Based on a comment by staff, the Department has added rule language that will apply the category process to all permit applications received before the effective date of these rule changes as best as is practicable. For category 4 permit actions, it may not be possible to conduct the informal session before the drafting of the permit if the permit has already been drafted.

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

The advisory committee, in addition to discussing the categories, also spent significant time discussing how the Department could improve its public notices to better inform the public. Particularly they wished to see improvement in the information contained in the public notices on what the Department has the authority to address, what is beyond the scope of the permit and what the effects of the permit action would be on the public health and the environment. The environmental or health impacts of the source need to be related to the public in a way that is understandable. The Department is currently working on revising the Public Notice and Involvement Guide to reflect the changes in the public process. Included in the Guide will be a number of elements that should be included in public notices when the Department has that information available. Templates for creating public notices have been developed. Training to staff on using the category process and the new templates has already begun. The Department has also created a pamphlet on how to provide effective public comments.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Public Participation Procedures for Permit Decisions as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule Amendments Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. Department's Evaluation of Public Comment
- E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- F. Advisory Committee Membership

Memo To: Environmental Quality Commission

Agenda Item F, Public Participation Procedures for Permit Decisions, EQC Meeting

Page 6

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Report Prepared By: Susan Greco

Phone: (503) 229-5213

Date Prepared: September 12, 2000

DIVISION 14

PROCEDURES FOR ISSUANCE, DENIAL, MODIFICATION, AND REVOCATION OF AIR CONTAMINANT DISCHARGE PERMITS; GREEN PERMITS

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

340-014-0005

Purpose

~~The purpose of OAR 340-014-0005 through 340-014-0050 this Division is to prescribe uniform procedures for obtaining air contaminant discharge permits from the Department of Environmental Quality as prescribed by pursuant to Division 216 of this Chapter ORS 459.205, 468A.045 and 468B.050. The procedures apply to issuing, denying, modifying and revoking such permits.~~

~~Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048~~

~~Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050~~

~~Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93~~

340-014-0007

Exceptions

~~The procedures prescribed in this Division do not apply to the issuance, denial, modification and revocation of the following permits: National Pollutant Discharge Elimination System (NPDES) permits issued pursuant to the Federal Water Pollution Control Act Amendments of 1972 and acts amendatory thereof or supplemental thereto; as prescribed by OAR Chapter 340, Division 45; Resource Conservation and Recovery Act (RCRA) permits as prescribed by OAR Chapter 340, Division 106; On-Site Sewage Disposal Permits as prescribed by OAR Chapter 340, Division 74; and the Underground Storage Tank (UST) permits as prescribed by OAR Chapter 340, Division 150; and federal operating permits issued pursuant to the Federal Clean Air Act Amendments of 1990 as prescribed by OAR Chapter 340, Division 28.~~

~~Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048~~

~~Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050~~

~~Hist.: DEQ 53(Temp), f. & ef. 6-21-73; DEQ 58, f. 9-21-73, ef. 10-15-73; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95~~

340-014-0010

Definitions

As used in this Division:

(1) "Department" means Department of Environmental Quality. ~~Department actions shall be taken by the Director as defined herein.]~~

(2) "Commission" means Environmental Quality Commission.

(3) "Director" means Director of the Department of Environmental Quality or the Director's authorized deputies ~~or officers designee.~~

(4) "Permit" means a written document permit issued by the Department, bearing the signature of the Director, which by its conditions may authorize the permittee to construct, install, modify or operate specified facilities, conduct specified activities or emit, discharge or dispose of wastes in accordance with specified limitations.

Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048

Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93

340-014-0022 (Renumbered and amended from 340-011-0007)

Public Notice and Informational Hearings

(1) If the Department proposes to issue, modify or renew a permit under OAR 340-254-0070 or OAR 340-216-0020, a public notice containing information regarding the proposed permit will be prepared by the Department. This notice will be forwarded to the applicant and, at the discretion of the Department, other interested persons for comment. Each public notice will, at a minimum, for that permit, contain:

(a) All Notices:

(A) Name of applicant;

(B) Type and duration of permit;

(C) Type of facility and kind of product if appropriate;

(D) Description of substances stored, disposed of or discharged under the conditions of the permit;

(E) An indication of the location of plans, specifications, or other documents used in preparing the permit;

(F) Any special conditions imposed in the permit.

(b) New Permits Only:

(A) A list of other Department permits requiring public notice under this rule, which are expected to be required;

(B) Basis of the need for a permit.

(c) Renewal Permits with Increased Discharges Only:

(A) Basis of the need for permit modification;

(B) Date of previous permit;

(C) Formal compliance and enforcement history (excluding items under appeal) under most recent permit.

(2) The notice will also contain a description of public participation opportunities.

(3) The Department shall consider all timely received comments and any other information obtained which may be pertinent to the permit application.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.065 & ORS 468.070

340-014-0055

Implementation Date

~~These rules become effective April 1, 1995. Until these rules become effective, existing rules remain in effect. Nothing in this section is intended to prevent the Department from taking any action necessary to prepare for implementing the new rule.~~

~~Stat. Auth.: ORS 459.045, ORS 468.020, ORS 468A.025 & ORS 468B.048~~

~~Stats. Implemented: ORS 459.205, ORS 468A.040 & ORS 468B.050~~

Hist - DEO 27-1994, f. 11-15-94, cont. of 4-1-95

DIVISION 45
REGULATIONS PERTAINING TO NPDES
WPCF PERMITS

340-045-0010

Definitions

As used in these rules unless otherwise required by context:

(1) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.

(2) "Department" means Department of Environmental Quality.

(3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.

(4) "Discharge or Disposal" means the placement of wastes into public waters, on land or otherwise into the environment in a manner that does or may tend to affect the quality of public waters.

(5) "Disposal System" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems but excludes on-site sewage disposal systems regulated through the requirements of OAR 340-071-0160, 340-071-0162 and ORS 454.655, and systems which recirculate without discharge.

(6) "Federal Act" means Public Law 92-500, known as the Federal Water Pollution Control Act Amendments of 1972 and acts amendatory thereof or supplemental thereto.

(7) "General Permit" means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033, in lieu of individual permits being issued to each source.

(8) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(9) "NPDES Permit" means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System authorized by the Federal Act and of OAR Chapter 340, Division 045340-045-0005 through ~~340-045-0065~~.

(10) "Navigable Waters" means all navigable waters of the United States and their tributaries; interstate waters; intrastate lakes, rivers, and streams which are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken and sold in interstate commerce or which are utilized for industrial purposes by industries in interstate commerce.

(11) "Permit Action" means the issuance, modification, renewal or revocation by the Department of a permit.

(12) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatever.

(13) "Point Source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete

fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(143) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(154) "Pretreatment" means the waste treatment which might take place prior to discharging to a sewerage system including, but not limited to, pH adjustment, oil and grease removal, screening, and detoxification.

(165) "Process Wastewater" means wastewater contaminated by industrial processes but not including non-contact cooling water or storm runoff.

(176) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland, or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters) which are wholly or partially within or bordering the state or within its jurisdiction.

(187) "Regional Administrator" means the Regional Administrator of Region X of the U.S. Environmental Protection Agency.

(198) "Septage" means the liquid and solid material pumped from a septic tank, holding tank, cesspool, or similar domestic sewage treatment system.

(209) "Septage Alkaline Stabilization Facility" means a facility which actively mixes alkaline material with raw septage to increase and maintain pH at 12 in the resultant mixture for sufficient time to achieve chemical stabilization.

(210) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The mixture of sewage as above defined with wastes or industrial wastes, as defined in sections (8) and (23) of this rule, shall also be considered "sewage" within the meaning of these rules.

(224) "Sewerage System" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(232) "State" means the State of Oregon.

(243) "Toxic Waste" means any waste which will cause or can reasonably be expected to cause a hazard to fish or other aquatic life or to human or animal life in the environment.

(254) "Treatment" or "Waste Treatment" means the alteration of the quality of ~~wastewaters~~wastewater by physical, chemical, or biological means or a combination thereof such that the tendency of said wastes to cause any degradation in water quality or other environmental conditions is reduced.

(265) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

(276) "WPCF Permit" means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is

issued by the ~~Director Department~~ in accordance with the procedures of OAR 340-014-0005 through 340-014-0050 Chapter 340, Division 450 or OAR 340-071-0162.

Stat. Auth.: ORS 454.626, ORS 454.780, ORS 468.020 & ORS 468B

Stats. Implemented: ORS 468.005 & ORS 468B.005

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 22-1981, f. & ef. 9-2-81; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95

~~340-045-0025~~

~~Procedures for Obtaining WPCF Permits~~

~~Except for the procedures for application for and issuance of NPDES permits on point sources to navigable waters of the United States, and on-site sewage disposal permits issued pursuant to OAR Chapter 340, Division 71, submission and processing of applications for WPCF permits and issuance, renewal, denial, transfer, modification, and suspension or revocation of WPCF permits shall be in accordance with the procedures set forth in OAR 340-014-0005 through 340-014-0050.~~

~~Stat. Auth.: ORS 454.626, ORS 454.780 & ORS 468.020~~

~~Stats. Implemented: ORS 468.065 & ORS 468B.050~~

~~Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95~~

~~340-045-0027~~

~~Public Notice and Participation Requirements For Permitting Actions~~

~~(1) The Department categorized permitting actions according to environmental and public health significance. Category I represents permit actions with low environmental and public health significance and no public notice and opportunity for public participation. Category IV represents permit actions with potentially high environmental and public health significance, and the greatest level of public notice and opportunity for public participation. The following describes the public notice and participation requirements for each category:~~

~~(a) Category I - No public notice or opportunity for public participation.~~

~~(b) Category II - The Department will provide public notice of the proposed action and a minimum of 30 days to submit written comments.~~

~~(c) Category III - The Department will provide public notice of the proposed action and a minimum of 30 days to submit written comments. The Department will provide a minimum of 30 days notice for a hearing if one is scheduled. The Department will schedule a public hearing to allow interested parties to submit oral or written comments if:~~

~~(A) For NPDES permits, the Department receives written requests for public hearing during the public comment period from at least ten persons or from an organization or organizations representing at least ten persons.~~

~~(B) For WPCF permits, the Department receives written requests for public hearing within 14 days of mailing the public notice from at least ten persons or from an organization or organizations representing at least ten persons; or~~

~~(C) The Department determines that a hearing is necessary.~~

~~(d) Category IV -~~

____ (A) Once an application is considered complete, the Department will provide public notice of the receipt of a completed application and requested permitting action; and

____ (B) Schedule an informational meeting in the community where the facility will be or is located and provide public notice of the meeting. The Department will consider any information gathered in this process in its drafting of the proposed permit.

____ (C) Once a draft permit is complete, provide public notice of the proposed permit and a minimum of 15 days to submit written comments; and

____ (D) Schedule a public hearing to allow interested parties to submit oral or written comments. A minimum notice of 30 days shall be provided for the hearing.

____ (2) The following actions are classified as follows:

____ (a) Category I

____ (A) Minor modification of an NPDES or a WPCF permit

____ (B) Issuance of a special, short-term WPCF permit

____ (C) Issuance of a new or renewal WPCF permit for an on-site sewage system with a design flow less than 20,000 gallons per day, regulated by OAR 340-071.

____ (D) NPDES or WPCF permit administrative actions that include but are not limited to: transfer of a permit to a new owner or operator, termination or revocation of a permit, denial of a permit, and withdrawal of an application.

____ (E) Mutual agreement and order in lieu of a WPCF permit

____ (b) Category II

____ (A) Mutual agreement and order in lieu of an NPDES permit unless delay in issuing order may magnify problem [see OAR 340-045-0062(4)]

____ (B) Issuance of a renewal WPCF individual permit regulated by OAR 340-045, including a renewal of a WPCF permit for an on-site sewage system with a design flow of 20,000 gallons per day or greater, regulated by OAR 340-071.

____ (c) Category III

____ (A) Issuance of a new or renewal NPDES individual permit unless otherwise specified in this rule

____ (B) Major modification of an NPDES permit unless otherwise specified in this rule

____ (C) Issuance of a new or renewal WPCF or NPDES general permit

____ (D) Issuance of a biosolids land application site authorization letter for any proposed site that meets the sensitive site criteria in OAR 340-050-0030(2).

____ (E) Issuance of a new WPCF individual permit regulated by OAR 340-045, including a new WPCF permit for an on-site sewage system with a design flow of 20,000 gallons per day or greater, regulated by OAR 340-071.

____ (F) Approval of a new pretreatment program or a substantial modification to an existing approved pretreatment program

____ (G) All other actions not elsewhere classified

____ (d) Category IV

____ (A) Issuance of a new NPDES individual permit for a major facility, as classified by the Department.

____ (B) Issuance of a renewal NPDES individual permit for a major facility, as classified by the Department, when there is a new or increased discharged load.

____ (C) Major modification of an NPDES individual permit for a major facility, as classified by the Department, when there is a new or increased discharged load.

(3) The Department may move a permit action to a higher category based on, but not limited to, the following factors:

- (a) Anticipated public interest in the facility;
- (b) Compliance and enforcement history of the facility or owner;
- (c) Potential for significant environmental or public harm due to location or type of facility, or
- (d) Federal requirements.

(4) The public notice required under section (1)(b), (c) and (d)(C) of this rule, will contain at least the following information:

- (a) Name and address of the permittee and permit applicant and, if different, facility location;
- (b) Type of facility including a description of the facility's process subject to the permit;
- (c) Description of the proposed permitting action (i.e., new permit, renewal permit, or permit modification);
- (d) Description of the permitted substances stored, disposed of, discharged, or emitted, including whether there has been an increase or decrease in the substance since the last permit action for the facility;
- (e) Location and description of documents relied upon in preparing the draft permit action;
- (f) Other permits required by the Department;
- (g) Date of the previous permit action if a renewal or modification;
- (h) Opportunity for public comment whether in writing or in person if required;
- (i) Compliance, enforcement and complaint history, along with their respective resolutions; and
- (j) A summary of what discretionary decisions were made by the Department in drafting the permit.

(5) The Department will provide public notice as required by this rule to the applicant, those requesting notice of the permitting action, local news media, and other interested parties as identified by the Department.

(6) All permit applications which have been received by the Department prior to the effective date of this rule, will be processed under this rule (under the category process) as best as is practicable.

Stat. Auth.: ORS 459.045, 459.785, 468.020, 468A.040, & 468B.048

Stat. Impl.: ORS 459.245, 459.735, 459.740, 468.065, 468A.040, & 468B.048

340-045-0030

Application for NPDES or WPCF Permit

(1) Any person wishing to obtain a new, ~~modified,~~ or renewal NPDES or WPCF permit from the Department ~~must~~ ~~shall~~ submit a written application on a form provided by the Department. ~~The Department must receive Applications must be submitted at least 180 days before an NPDES permit is needed or at least 60 days before a WPCF permit is needed.~~

(2) Any person wishing to modify their NPDES or WPCF permit must submit a written application on a form provided by the Department. Applications must be submitted well in advance of the needed modification in order to process the request as required by OAR 340-045-0055.

(3) All application forms must be completed in full and signed by the applicant or his the applicant's legally authorized representative. The name of the applicant must be the legal name of the owner of the facilities or the owner's his agent or the lessee responsible for the operation and maintenance of the facility. Applications that are correctly signed and appear administratively complete will be considered timely upon receipt. A request for further information under section (5) of this rule will not effect the timeliness of an application.

(42) Applications which that are obviously incomplete, or unsigned, improperly signed, or that do not contain the required exhibits clearly identified will not be accepted by the Department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the Department for filing.

(54) Within 45 days of receipt of an application, the Department will preliminarily review an application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the Department from later requesting further information from the applicant as provided in this section.

(a) If the Department later determines that additional information is needed, it will promptly request in writing the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as the Department establishes in writing.

(b) If the Department determines that additional measures are necessary to gather facts regarding the application, it shall notify the applicant in writing that such measures will be instituted and provide the timetable and procedures to be followed. The application will be considered withdrawn if the applicant fails to comply with the additional measures.

(5) If upon review of an application, the Department determines that a permit is not required, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on the application.

(65) An application that which has been filed with the U.S. Army Corps of Engineers in accordance with Section 13 of the Federal Refuse Act, or an NPDES application that which has been filed with the U.S. Environmental Protection Agency will be accepted as an application filed under this section provided the application is complete and the information on the application is still current.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 22-1981, f. & ef. 9-2-81

340-045-0033

General Permits

(1) The Director may issue general permits for certain categories of minor sources where individual NPDES or WPCF permits are not necessary in order to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities ~~that which~~ involve the same or substantially similar types of operations;

(b) They discharge or dispose of the same or similar types of wastes;

(c) They require the same monitoring requirements, effluent limitations and operating conditions; and

(d) They would be more appropriately controlled under a general permit than an individual permit.

(2) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(3) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027 and 340-045-0035(3) ~~and (7)~~. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.

(4) If a person covered by a general permit is dissatisfied with the conditions or limitations of the permit issued by the Director, ~~that person he~~ may request a hearing before the Commission or its authorized representative. ~~The Department must receive such a written request for a hearing shall be made in writing to the Director within 20 days following the date of issuance of the general permit. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011.~~

(5) All persons operating a source or conducting an activity described in a general permit become permittees, unless the source or activity is specifically covered by an individual NPDES or WPCF permit.

(6) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be ~~cancelled~~canceled or allowed to expire if the permitted source or activity is also covered by a general permit. As long as the source or activity is covered by an individual NPDES or WPCF permit, as well as a general permit, the conditions and limitations of the individual permit govern, until such time as it is ~~cancelled~~canceled or expires.

(7) Any permittee not wishing to be covered by a general permit may make application for an individual permit in accordance with ~~WPCF permit procedures in OAR 340-014-0020 or NPDES procedures in OAR 340-045-0030 or OAR 340-071-0162,~~ whichever is applicable.

(8) The Director may revoke a general permit as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit if:

(a) The covered source or activity is a significant contributor of pollution or creates other environmental problems;

(b) The permittee is not in compliance with the terms and conditions of a general permit; or

(c) Conditions or standards have changed so that the source or activity no longer qualifies for a general permit.

(9) ~~In order for the Department to maintain a list of general permittees, the Director~~ Department may require general permittees to register with the Department.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468B.050

340-045-0035

Issuance of NPDES Permits

(1) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with provisions of all applicable statutes, rules, regulations, and effluent guidelines of the State of Oregon and the U.S. Environmental Protection Agency.

(2) The Department ~~shall~~ will formulate and prepare a tentative determination to issue or deny an NPDES permit for the discharge described in the application. If the tentative determination is to issue an NPDES permit, then a proposed NPDES permit ~~will~~ shall be drafted which includes at least the following:

- (a) Proposed effluent limitations;
- (b) Proposed biosolids limitations;
- (c) Appropriate monitoring requirements;
- (d) Proposed schedule of compliance, if necessary; established in conformance with the Federal Act and regulations issued pursuant thereto; and
- (~~ee~~) Other special conditions.

(3)(~~a~~) In order to inform potentially interested persons of the proposed discharge and of the tentative determination to issue an NPDES permit, ~~a public notice announcement shall will be prepared and circulated in a manner approved by the Director provided as directed in sections (6) and (7) of this rule.~~ In addition to the information required under OAR 340-011-0007(1) ~~045-0027(4)~~ the public notice ~~shall~~ will contain:

(~~aA~~) A description (when available) of the water quality of the receiving water body both upstream and downstream;

(~~bB~~) If the waterbody is water quality limited under Section 303(d)(1) of the Clean Water Act, a description of whether the permit relates to the parameter(s) that which is water quality limited and; if so, how the permit will fit within the existing Total Maximum Daily Load (TMDL)s or if no TMDL exists, how it is acceptable; and

(~~cC~~) A description of any load increase proposed and action required for its approval.

~~(b) The notice shall encourage comments by interested individuals or agencies, and shall tell of the availability of fact sheets, proposed NPDES permits, applications, and other related documents available for public inspection and copying. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments. All comments submitted during the 30-day comment period shall be considered in the formulation of a final determination.~~

(4) A fact sheet ~~will~~ shall be prepared for each draft NPDES permit for a major industrial facility and for each NPDES general permit. In addition, a fact sheet will shall be prepared for every industrial NPDES permit ~~which that~~ incorporates a variance and for every draft permit ~~that which~~ the Director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly describe the principle facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. Fact sheets will shall contain the following, where applicable:

- (a) A brief description of the type of facility or activity;
- (b) The type and quantity of wastes to be discharged;

(c) Applicable standards and guidelines used as a basis for effluent and biosolids limits;

(d) An explanation of any proposed variances;

(e) A sketch, map, or detailed location of the discharge, where appropriate;

(f) Information spelling out procedures for finalizing the permit and providing additional public input, including opportunity for public hearing; and

(g) Where appropriate, an assessment of future control needs based on the adequacy of present controls, records of compliance, applicable rules and regulations;

(h) A statement of the inclusion of a biosolids management and land application plan, if appropriate; and

(i) Name and telephone number of a person to contact for additional information.

(5) After the public notice has been drafted and the ~~fact sheet and~~ proposed NPDES permit provisions have been prepared by the Department, they will be forwarded to the applicant for review and comment. ~~All~~ These comments must be submitted in writing within 14 days after mailing of the proposed materials if ~~such~~ the comments are to receive consideration prior to final action on the application, unless the applicant requests additional time. The applicant may also waive his right for the 14-day review time in the interest of accelerating the issuance procedures.

~~(6) After the 14 day applicant review period has elapsed, the public notice and fact sheet shall be sent to any person upon request. The director shall add the name of any person or group upon request to a mailing list to receive copies of public notices and fact sheets. Any public notice and fact sheet under this section shall be prepared and circulated consistent with the requirements of regulations issued under the Federal Act. The fact sheet, proposed NPDES permit provisions, application, and other supporting documents will be available for public inspection and copying. The Director may, in his discretion, charge a reasonable fee for reproduction and distribution of the public notice, fact sheet, and other supporting documents.~~

~~(7) The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to NPDES applications. If the Director determines that useful information may be produced thereby, or if there is a significant public interest in holding a hearing, or there are written requests for a hearing from ten persons or from an organization or organizations representing at least ten persons, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing.~~

(6) Issuance of an NPDES permit, except a new NPDES permit for a major facility or a renewal NPDES permit for a major facility when there is a new or increased discharge load, is a Category III permitting action as described in OAR 340-045-0027. Public notice will be provided after the 14-day applicant review period has elapsed and will include the fact sheet when one is required, pursuant to section (4) of this rule.

(7) Issuance of a new NPDES permit for a major facility or a renewal NPDES permit for a major facility when there is a new or increased discharge load, is a Category IV permitting action as described in OAR 340-045-0027.

(8) At the conclusion of the public involvement period, the Director ~~will~~ shall make a final determination on the application as soon as practicable and promptly notify the applicant ~~thereof in writing of the final determination.~~ For all permits that receive

comments on the proposed permit requirements during the public comment period, a response to comments will be issued that specifies any changed provisions in the permit, and the reasons for the changes, and that describes and responds to all significant comments. This response to comments will be made available to the public on request. Any NPDES permit issued hereunder will ~~shall~~ contain such pertinent and particular conditions as may be required to comply with the Federal Act or regulations issued pursuant thereto. Pursuant to federal regulation, an NPDES permit will be effective for a fixed term not to exceed five years.

(a) Denial of the permit: If the Director determines that the NPDES permit should be denied, the Department will include in the notification ~~notification shall~~ the reasons for the denial ~~be~~ in accordance with OAR 340-045-0050.

(b) Issuance of the permit: If conditions of the NPDES permit issued are different from the proposed provisions forwarded to the applicant for review, the notification shall include the reasons for the changes made. A copy of the NPDES permit issued shall be attached to the notification. In any case, before the Director will issue an NPDES permit ~~that which~~ applies effluent limitations in accordance with effluent guidelines rather than water quality standards, the Director will make a determination that the permitted discharge will not violate applicable water quality standards and will provide some justification for that determination. Such justification will include, but not necessarily be limited to:

(a) A description of the anticipated effect on water quality at the mixing zone boundary of the chemical and/or physical parameter(s) upon which the size and shape of the mixing zone are based; and

(b) A statement of anticipated effect of the discharge on aquatic life.

(9) ~~The Department's decision is effective 20 days from the date of service of the notification unless within that time the Department receives a request for a hearing from the applicant. If the applicant is dissatisfied with the conditions or limitations of any NPDES permit issued by the Director, he may request a hearing before the Commission or its authorized representative. Such a~~ The request for hearing ~~must shall~~ be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the NPDES permit and state the grounds for the request. ~~Any~~ The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011 ~~held shall~~ be conducted pursuant to the regulations of the Department.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 71, f. 6-4-74, ef. 6-25-74; DEQ 126(Temp), f. & ef. 12-30-76 thru 4-28-77; DEQ 133, f. & ef. 5-2-77; DEQ 22-1981, f. & ef. 9-2-81; DEQ 13-1988, f. & cert. ef. 6-11-88; DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90

340-045-0037

Issuance of WPCF Permits

(1) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the U.S. Environmental Protection Agency.

(2) After the public notice has been drafted and the proposed WPCF permit provisions have been prepared by the Department, they will be forwarded to the applicant for review and comment. These comments must be submitted in writing within 14 days after mailing if the comments are to receive consideration prior to final action on the application, unless the applicant requests additional time. The applicant may also waive his right for the 14-day review time in the interest of accelerating the issuance procedures.

(3) If the Department proposes to issue a permit, public notice and participation shall be provided as directed by OAR 340-45-0027.

(4) The Department must take final action on the permit application within 45 days of the close of the public comment period if a comment period is required. The Department shall consider all timely comments and any other information obtained that may be pertinent to the permit action in the formulation of a final determination.

(5) The Department shall promptly notify the applicant in writing of the final action as provided in OAR 340-011-0097 and will include a copy of the permit.

(7) The duration of a WPCF permit shall not exceed 10 years.

(8) The Department's decision is effective 20 days from the date of service of the notice unless within that time the Department receives a request for a hearing from the applicant. The request for hearing must be made in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011.

Stat. Auth.: ORS 183 & ORS 468

Stats. Implemented: ORS 468.065 & ORS 468B.050

340-045-0040

Renewal or Modification of NPDES or WPCF Permits

(1) The procedures for issuance of an NPDES and WPCF permits shall apply to renewal of an NPDES these permits, and to a modification requested by the permittee.

(2) If a completed application for renewal of a permit is filed with the Department in a timely manner 180 days prior to the expiration date of the an NPDES permit or 60 days prior to the expiration date of a WPCF permit, the permit will shall not be deemed to expire until final action has been taken on the renewal application to issue or deny the permit.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 53(Temp), f. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 21-1990, f. & cert. ef. 7-6-90

340-045-0045

Transfer of an NPDES or WPCF Permit

(1) No NPDES or WPCF permit will shall be transferred to a third party without prior written approval from the Department-Director. Such approval may be granted by the Director where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the NPDES or WPCF permit and the rules of the Commission.

(2) An application, on a form provided by the Department, should be submitted to the Department for authorization of a transfer of permit at least 30 days prior to the proposed action.

(3) The transfer of a permit is considered a Category I permitting action as described in OAR 340-045-0027.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76

340-045-0050

Denial of an NPDES or WPCF Permit

(1) The Department will promptly notify the applicant in writing of the denial of a permit application. If the Director proposes to deny issuance of an NPDES permit, he shall notify the applicant by registered or certified mail in accordance with OAR 340-011-0097, of the intent to deny and The notification will include the reasons for denial. The denial shall will become effective 20 days from the date of service of the mailing of such notice unless within that time the Department receives applicant a requests for a hearing before the Commission or its authorized representative. Such The request for a hearing must shall be made in writing to the Director and shall state the grounds for the request. The hearing shall be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011.

Any hearing held shall be conducted pursuant to the regulations of the Department.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468.070

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76

340-045-0055

Department-Initiated Modification of an NPDES or WPCF Permit

In the event that it becomes necessary for the Department to institute modification of an NPDES permit due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes, the Department shall notify the permittee by registered or certified mail and shall at that time issue a public notice announcement in a manner approved by the Director of its intent to modify the NPDES permit. Such notification shall include the proposed modification and the reasons for modification. The modification shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative or unless the Director determines that significant public interest merits a public hearing or a change in the proposed modification, or if there are written requests for a hearing from ten persons or from an organization representing at least ten persons. Any request for hearing by the permittee or any person shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the regulations of the Department. A copy of the modified NPDES permit shall be forwarded to the permittee as soon as the modification becomes effective. The existing NPDES permit shall remain in effect until the modified NPDES permit is issued.

(1) If the Department determines it is appropriate to initiate modification of an NPDES or WPCF permit, the Department will notify the permittee by registered or certified mail of the modification and the reasons for the modification. Department initiated modifications for NPDES permits shall be in accordance with section (2) of this rule, and for WPCF permits shall be in accordance with section (3) of this rule.

(2) The procedures for application and issuance of NPDES permits apply to any modification requested by the permittee or initiated by the Department excluding modifications that are considered minor.

(a) If the modification is minor, it is considered a Category I permitting action as described in OAR 340-045-0027. Pursuant to federal regulations, types of minor modifications include the following:

(A) Corrections of typographical errors;

(B) Requirements for more frequent monitoring and/or reporting;

(C) Changes in an interim compliance date provided the new date is not more than 120 days after the date in the existing permit and does not interfere with the final compliance date requirement;

(D) Changes to the construction schedule for a new discharger provided pollution control equipment is installed and operational prior to discharge;

(E) Deletion of a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with the existing permit limits;

(F) Incorporation of conditions from a publicly owned treatment works' pretreatment program that has been approved in accordance with OAR 340-045-0063(1).

(b) If the modification is not minor, it is considered a Category III or Category IV permitting action as described in OAR 340-045-0027. Only the conditions subject to modification are reopened during this process. The existing NPDES permit will remain in effect until the modification is final.

(3) The procedures for application and issuance of WPCF permits apply to any modification requested by the permittee or initiated by the Department excluding modifications that are considered minor.

(a) If modification to a WPCF permit is minor, as defined in section (2) of this rule for NPDES permits, it is considered a Category I permitting action as described in OAR 340-045-0027.

(c) Any other modification to a WPCF permit is considered a Category II permitting action as described in OAR 340-045-0027.

(4) The modification will become effective upon mailing unless the permittee requests a hearing within 20 days. A request for a hearing must be made in writing and state the grounds for the request. Any hearing shall be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. If a hearing is requested, the existing permit continues in effect until the a final order is issued.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065, ORS 468.070 & ORS 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 13-1988, f. & cert. ef. 6-11-88

340-045-0060

Termination Suspension or Revocation of an NPDES or WPCF Permit

~~(1) In the event that it becomes necessary for the Director to suspend or revoke a NPDES permit due to non-compliance with the terms of the NPDES permit, unapproved changes in operation, false information submitted in the application, or any other cause, the Director shall notify the permittee by registered or certified mail of his intent to suspend or revoke the NPDES permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative. Such request for a hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the regulations of the Department. The Director may suspend or revoke an NPDES without notification by registered or certified mail if the suspension or revocation is in response to a request for such from the permittee.~~

~~(2) If the Department finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may, pursuant to applicable statutes, suspend or revoke a NPDES permit effective immediately. Notice of such suspension or revocation must state the reasons for such action and advise the permittee that he may request a hearing before the Commission or its authorized representative. Such request for a hearing shall be made in writing to the Director within 90 days of the date of suspension and shall state the grounds for the request. Any hearing shall be conducted pursuant to the regulations of the Department.~~

~~(1) Automatic Termination. A permit is automatically terminated when:~~

- ~~(a) The Department issues a new permit for the same activity or operation;~~
- ~~(b) The permittee requests in writing that the permit terminate, if the Department determines that a permit is no longer needed; or~~
- ~~(c) The permittee fails to submit application for permit renewal as required in OAR 340-45-0030. Termination is effective on the permit expiration date.~~

~~(2) Revocation with prior notice.~~

- ~~(a) If the Department determines that a permittee is in non-compliance with the terms of its permit, submitted false information in the application or other required documentation, or is in violation of any applicable law, the Director may revoke the permit.~~

~~(b) The Department will provide notice of the intent to revoke the permit in accordance with OAR 340-011-0097. The notice will include the reasons why the permit will be revoked. The Department must receive a written request for a hearing stating the grounds for the request within 60 days from the date of service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. The permit will continue in effect until the 60 days expires or a final order is issued.~~

~~(3) Revocation without prior notice.~~

- ~~(a) If the Department finds that the permittee's activities cause a serious danger to the public health or safety of the environment, the Department may immediately revoke or refuse to renew a permit without prior notice or opportunity for a hearing.~~

(b) If no advance notice of the revocation is provided, the Department will notify the permittee as soon as possible as provided in OAR 340-011-0097. The notification will state the reasons for the revocation or refusal to renew.

(c) The Department must receive a written request for a hearing stating the grounds for the request within 90 days of the service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. If the Department does not receive a request for a hearing within 90 days, the revocation or refusal to renew becomes final without further action by the Department.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468.070

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 22-1981, f. & ef. 9-2-81

340-045-0061

Special WPCF Permit (Short-Term)

The Director may waive the procedures required in OAR 340-045 and issue a special, short-term WPCF permit for unexpected or emergency activities, operations, emissions or discharges. Such a permit will not exceed 60 days in duration from date of issuance and will be developed to ensure adequate protection or property and preservation of public health, welfare and resources. Application for a special WPCF permit must be in writing and may be in the form of a letter that fully describes the emergency and the proposed activities, operations, emissions, or discharges.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.065 & ORS 468.070

340-045-0062

~~Stipulated Consent~~Mutual Agreement and Orders

(1) ~~The Director may issue a stipulated consent~~mutual agreement and order (MAO) in lieu of; or in addition to an NPDES permit or a WPCF permit where the MAO# is part of an enforcement action, for disposal of wastewater disposal associated with the cleanup of a spill, or other for an activity which that does not lend itself to the normal permitting process or permit term.

(2) ~~The stipulated consent order~~An MAO may include, but not necessarily be limited to, compliance schedules, effluent limitations, monitoring and reporting requirements, and/or stipulated penalties.

(3) ~~The term of a stipulated order~~an MAO, when used in lieu of a permit, will shall not be longer than the term of the type of permit it is replacing.

~~(4) For the issuance of a stipulated consent order, the normal permitting procedures found in OAR Chapter 340, Divisions 14 and 45 are not required but are optional. However, when the order is issued in lieu of an NPDES permit, a public notice announcement of that intended action will be distributed at least 30 days prior to finalizing the order, except for environmental cleanups or other instances where a delay in issuing the order may magnify the problem. In that instance, a public notice announcement may be issued at the same time the order is issued.~~

(4) The permitting procedures in OAR 340-045 are not required for MAOs, except for the following:

(a) An MAO issued in lieu of an NPDES permit is considered a Category II permitting action as described in OAR 340-045-0027. An exception to this requirement is allowed for environmental cleanups or other instances where a delay in issuing an MAO may magnify the problem. In these situations, public notice may be issued at the same time the MAO is issued.

(5) When an MAO-a stipulated order is used in lieu of a permit, the fee schedule for permits found in OAR340-045-0075 will shall apply.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.065 & ORS 468B.050

Hist.: DEQ 21-1990, f. & cert. ef. 7-6-90

340-045-0063

Industrial Waste Pretreatment

(1) All owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards will shall develop and implement a pretreatment program for controlling those industrial contributors. The program will shall be submitted to the Director for approval. Prior to approval, the Director shall provide opportunity for public comment by issuing a public notice of the receipt of a pretreatment program. Opportunity shall also be provided for a public hearing. Any person or group of persons may request or petition for a public hearing. A public hearing will be held if the owner of the affected sewerage system so requests. Also, if the Director determines that useful information may be produced thereby, or if there is significant public interest, a hearing will be held. Department approval is considered a Category III action as described in OAR 340-045-0027.

(2) The Director will review requests for revisions of categorical pretreatment standards to reflect removals achieved by the sewerage system. No removal credit is allowed unless approved by the Director.

(3) Both the owners of sewerage systems receiving industrial wastes and the industrial contributors will shall comply with applicable pretreatment provisions of the federal Clean Water Act and the rules of the Department.

(4) Where a question exists as to whether or not an industrial contributor falls within a particular industrial subcategory, the Director will shall make a written finding and shall submit it to the EPA Regional Enforcement Division Director for a final determination, unless the Enforcement Division Director waives the receipt of the Director's determination as provided in the federal regulations. In that case the Director's determination shall be final.

(5) The owner of a sewerage system receiving industrial waste is responsible ~~for~~ for assuring that the industrial contributor meets the prohibited discharge or categorical pretreatment standards established by the United State Environmental Protection Agency or the Department, whichever is most limiting. The owner of the sewerage system may impose more stringent pretreatment standards if deemed necessary by the owner for the proper operation and maintenance of the sewerage system or disposability of the sewage sludge.

(6) The Director will review requests for Fundamentally Different Factors variances and will shall either deny them or concur with them and submit the concurrence to the

United State Environmental Protection Agency for approval, as provided in federal regulations.

Stat. Auth.: ORS 468 & ORS 468B

Stats. Implemented: ORS 454.020 & ORS 468B.035

Hist.: DEQ 16-1980, f. & ef. 5-27-80

340-045-0075

Permit Fee Schedule⁶

(1) Filing Fee. Unless waived by this rule, a filing fee of \$50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed. The following filing fees are waived:

(a) Small gold mining suction dredges which qualify for General Permit 700, and with an intake hose diameter of four inches or less;

(b) Small gold mining operations which qualify for General Permit 600, and which can process no more than five cubic yards of material per day.

(2) Application Processing Fee ⁵ Unless waived by this rule, an application processing fee shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications:

(A) Major industries¹ — \$31,400;

(B) Minor industries — \$6,280;

(C) Major domestic² — \$20,000;

(D) Minor domestic³:

(i) Categories Da, Db — \$4,000;

(ii) Category E — \$2,000;

(iii) Category F — \$500;

(E) Agricultural — \$6,280;

(b) Permit Renewals (including request for effluent limit modification):

(A) Major industries¹ — \$15,700;

(B) Minor industries — \$3,140;

(C) Major domestic² — \$10,000;

(D) Minor domestic³:

(i) Categories Da, Db — \$2,000;

(ii) Category E — \$1,000;

(E) Agricultural — \$3,140;

(c) Permit Renewals (without request for effluent limit modification):

(A) Major industries¹ — \$7,850;

(B) Minor industries — \$1,180;

(C) Major domestic² — \$5,000;

(D) Minor domestic³:

(i) Categories Da, Db — \$750;

(ii) Category E — \$500;

(iii) Category F — \$200;

(E) Agricultural — \$1,180;

- (d) Permit Modifications (involving increase in effluent limitations):
 - (A) Major industries¹ — \$15,700;
 - (B) Minor industries — \$3,140;
 - (C) Major domestic² — \$10,000;
 - (D) Minor domestic³:
 - (i) Categories Da, Db — \$2,000;
 - (ii) Category E — \$1,000;
 - (E) Agricultural — \$3,140;
- (e) Permit Modifications (not involving an increase in effluent limits): All categories — \$500;
- (f) Special WPCF Permits issued pursuant to OAR 340-014-0050-045-0061 — \$250;
- (g) Modifications of septage alkaline stabilization facilities permits — \$200;
- (h) New General Permits, by permit number:
 - (A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, 1200D, 1200S, 1400A — \$80;
 - (B) 300, 1200F, 1300, 1400B, 1500, 1600 — \$155;
 - (C) All other 1200, 1700 — \$235;
 - (D) Others not elsewhere specified — \$235;
 - (E) In addition, the following fees shall be added to categories (A) through (D) when the listed activities are a required part of the application review process:
 - (i) Disposal system plan review — \$315;
 - (ii) Site inspection and evaluation — \$785;
- (i) Renewal of General Permits, as listed in subsection (2)(h) of this rule — \$35;
- (j) Application processing fees described in subsections (2)(h) and (i) of this rule are waived for specific categories as follows:
 - (A) Small gold mining operations which qualify for General Permit 600, and which can process no more than five cubic yards of material per day, or more than five cubic yards of material per day but less than 1,500 cubic yards of material per year;
 - (B) Small gold mining suction dredges which qualify for General Permit 700.
- (3) Technical Activities Fee.^{4, 5} All permittees shall pay a fee for NPDES and WPCF permit-related technical activities, as follows:
 - (a) New or substantially modified sewage treatment facility — \$4,600;
 - (b) Minor sewage treatment facility modifications and pump stations — \$500;
 - (c) Pressure sewer system, or major sewer collection system expansion — \$350;
 - (d) Minor sewer collection system expansion or modification — \$100;
 - (e) New or substantially modified water pollution control facilities utilizing alkaline agents to stabilize septage — \$500;
- (4) Annual Compliance Determination Fee Schedule: ⁵[Schedule not included. See ED. NOTE.]
 - (b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee): **(For multiple sources on one application select only the one with highest fee)**
 - (A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry — \$9,420;
 - (B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry — \$9,420;
 - (C) Seafood Processing Industry:

- (i) Bottom fish, crab, and/or oyster processing — \$ 1,060;
- (ii) Shrimp processing — \$1,060;
- (iii) Salmon and/or tuna processing — \$1,885;
- (iv) Surimi processing — \$1,885;
- (D) Electroplating industry (excludes facilities which do anodizing only):
 - (i) Rectifier output capacity of 15,000 amps, or more — \$9,420;
 - (ii) Rectifier output capacity of less than 15,000 amps but more than 5000 amps — \$4,710;
- (E) Primary Aluminum Smelting — \$9,420;
- (F) Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities — \$9,420;
- (G) Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above — \$4,710;
- (H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters — \$9,420;
- (I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater — \$9,420;
- (J) Cooling water discharges in excess of 20,000 BTU/sec — \$4,710;
- (K) Milk products processing industry which processes in excess of 250,000 pounds of milk per day — \$9,420;
- (L) Major mining operations (over 500,000 cubic yards per year) — \$9,420;
- (M) Minor mining and/or processing operations:
 - (i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing — \$3,140;
 - (ii) Medium using froth flotation — \$4,710;
 - (iii) Medium using chemical leaching — \$6,280;
 - (iv) Small (less than 100,000 cubic yards per year) mechanical processing — \$785;
 - (v) Small using froth flotation — \$1,570;
 - (vi) Small using chemical leaching — \$3,140;
- (N) All facilities not elsewhere classified with disposal of process wastewater — \$1,885;
- (O) All facilities not elsewhere classified which dispose of non-process wastewaters (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) — \$1,180;
- (P) Dairies and other confined feeding operations on individual permits — \$705;
- (Q) All facilities which dispose of ~~wastewaters~~wastewater only by evaporation from watertight ponds or basins — \$705;
- (R) General permits, as listed under paragraph (2)(h)(A) through (2)(h)(D) of this rule, except as follows: — \$275;
 - (i) 1400A — \$155;
 - (ii) Annual compliance determination fees are waived for gold mining activities which qualify for General Permit Categories 600 and 700.

FOOTNOTES:

¹ *Major Industries Qualifying Factors:*

- 1- Discharges large BOD loads; or
- 2- Is a large metals facility; or

- 3- Has significant toxic discharges; or
- 4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or
- 5- Any other industry which the Department determines needs special regulatory control.

² *Major Domestic Qualifying Factors:*

- 1- Serving more than 10,000 people; or
- 2- Serving industries which can have a significant impact on the treatment system.

³ *Minor Domestic Qualifying Factors:*

- 1- Do not meet major domestic qualifying factors;
- 2- Categories Da, Db discharge to surface waters;
- 3- Categories E and F do not discharge to surface waters, and are under Water Pollution Control Facilities (WPCF) Permit.

⁴ *Technical Activities Fee Qualifying Factors:*

- 1- Fee charged for initial submittal of engineering plans and specifications;
- 2- Fee not charged for revisions and resubmittals of engineering plans and specifications;
- 3- Fee not charged for facilities plans, design studies, reports change orders or inspections.

⁵ *Confined Animal Feeding Operations:* Sections (2), (3), and (4) of this rule do not apply to General Permit 800, confined animal feeding operations, administered by the Oregon Department of Agricultural.

⁶ *On-site Sewage Disposal Systems:* Fees for on-site sewage disposal systems, including those requiring WPCF permits, are found in OAR Chapter 340, Division 71.

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468.065(2)

Stats. Implemented: ORS 468B.050 & ORS 468.065

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98

~~340-045-0090~~

~~Implementation Date~~

~~OAR 340-045-0070 becomes effective upon filing. All other rule modifications become effective April 1, 1995. Until these rules become effective, existing rules remain in effect. Nothing in this Section is intended to prevent the Department from taking any action necessary to prepare for implementing the new rules.~~

~~Stat. Auth.: ORS 454.626, ORS 454.780 & ORS 468.020~~

~~Stats. Implemented: ORS 468B.065~~

~~Hist.: DEQ 27-1994, f. 11-15-94, cert. of. 4-1-95~~

**DIVISION 71
ON-SITE SEWAGE DISPOSAL**

340-071-0100

Definitions

As used in OAR 340, Divisions 071, 072, and 073, unless otherwise specified:

(1) "Absorption Facility" means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(2) "Active Sand Dune" means wind drifted ridges and intervening valleys, pockets, and swales of sand adjacent to the beach. The sand is grayish-brown (color value of four (4) or more), with little or no horizon, color, or textured differences. Active dunes are either bare of vegetation or lack sufficient vegetation to prevent blowing of sand.

(3) "Aerobic Sewage Treatment Facility" means a sewage treatment plant which incorporates a means of introducing air and oxygen into the sewage so as to provide aerobic biochemical stabilization during a detention period. Aerobic sewage treatment facilities may include anaerobic processes as part of the treatment system. Mechanical Oxidation Sewage Treatment Facility means an aerobic treatment facility.

(4) "Aerobic System" means an alternative system consisting of a septic tank or other treatment facility, an aerobic sewage treatment facility and an absorption facility, designed to provide a level of treatment before disposal.

(5) "Agent" means the Director or that person's authorized representative.

(6) "Alteration" means expansion and/or change in location of an existing system, or any part thereof. Major alteration is the expansion or change in location of the soil absorption facility or any part thereof. Minor alteration is the replacement or re-location of a septic tank or other components of the system other than the soil absorption facility.

(7) "Alternative System" means any Commission approved on-site sewage disposal system identified within this division, for use in lieu of the standard subsurface system.

(8) "Approved Material" means construction items that have been reviewed and accepted for use by the Department.

(9) "Approved Criteria" means methods of design or construction that have been reviewed by the Technical Review Committee (TRC) and accepted for use by the Department.

(10) "ASTM" means American Society of Testing Materials.

(11) "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made.

(12) "Authorized Representative" means the staff of the Department of Environmental Quality or staff of the local governmental unit performing duties for and under agreement with the Department of Environmental Quality.

(13) "Automatic Siphon" means a hydraulic device designed to rapidly discharge the contents of a dosing tank between predetermined water or sewage levels.

(14) "Bedroom" means any room within a dwelling which is accepted as such by the State of Oregon Department of Commerce building codes representative or the local authorized building official having jurisdiction.

(15) "Biochemical Oxygen Demand (BOD)" means a measure of the decomposable organic matter in wastewater. It is used as an indication of wastewater strength. For the purpose of these rules, all references to BOD shall be for the five day BOD.

(16) "Black Waste" means human body wastes including feces, urine, other extraneous substances of body origin and toilet paper.

(17) "Capping Fill System" means an alternative system where the disposal trench effective sidewall is installed a minimum of twelve (12) inches into the natural soil below a soil cap of specified depth and texture.

(18) "Cesspool" means a lined pit which receives raw sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.

(19) "Chemical Recirculating Toilet Facility" means a toilet facility wherein black wastes are deposited and carried from the bowl by a combination of liquid waste and water which has been chemically treated and filtered.

(20) "Chemical Toilet Facility" means a non-flushing, non-recirculating toilet facility wherein black wastes are deposited directly into a chamber containing a solution of water and chemical.

(21) "Clayey Soil" means mineral soil that is over forty (40) percent clay that shrinks and develops wide cracks when dry and swells and shears when wet forming slickensides and wedge-shaped structure. Clayey soil is very hard or extremely hard when dry, very firm when moist, and very sticky and very plastic when wet.

(22) "Claypan" means a dense, compact clay layer in the subsoil. It has a much higher clay content than the overlying soil horizon from which it is separated by an abrupt boundary. Claypans are hard when dry and very sticky and very plastic when wet. They impede movement of water and air and growth of plant roots.

(23) "Combustion Toilet Facility" means a toilet facility wherein black wastes are deposited directly into a combination chamber for incineration.

(24) "Commercial Facility" means any structure or building, or any portion thereof, other than a single-family dwelling.

(25) "Commission" means the Environmental Quality Commission.

(26) "Community System" means an on-site system which will serve more than one (1) lot or parcel or more than one (1) condominium unit or more than one (1) unit of a planned unit development.

(27) "Completed Application" means one in which the application form is completed in full, is signed by the owner or that person's authorized representative, and is accompanied by all required exhibits and required fee.

(28) "Conditions Associated With Saturation" means soil morphological properties that may indicate the presence of a water table that persists long enough to impair system function and create a potential health hazard. These conditions include:

(a) High chroma matrix with iron depletions. Soil horizons whose matrix chroma is 3 or more in which there are some visible iron depletions having a value 4 or more and a chroma of 2 or less. Iron-manganese concentrations as soft masses or pore linings may be present but are not diagnostic of conditions associated with saturation; or

(b) Depleted matrix with iron concentrations. Soil horizons whose matrix color has a value of 4 or more and a chroma of 2 or less as a result of removal of iron and

manganese oxides, and that have some visible zones of iron concentration as soft masses or pore linings; or

(c) Depleted matrix without iron concentrations. Soil horizons whose color is more or less uniform with a value of 4 or more and a chroma of 2 or less as a result of removal of iron and manganese oxides. These horizons lack visible iron concentrations as soft masses or pore linings; or

(d) Reduced matrix. Soil horizons whose color has a value of 4 or more and a chroma of 2 or less with hues that are often, but not exclusively, on the gley pages of the Munsell Color Book. Upon exposure to air, yellow colors form within 24 hours as some of the ferrous iron oxidizes; or

(e) Dark colored organic soils. Either these soils are Histosols, or they are mineral soils that have Histic epipedons; or

(f) Salt-affected soils. Soils in arid and semi-arid areas that have visible accumulations of soluble salts at or near the ground surface; or

(g) Dark colored shrink-swell soils. These soils are Vertisols whose colors have values of 3 or less and chromas of 1 or less. Iron concentrations may be present but are not diagnostic of conditions associated with saturation.

(29) "Confining Layer" means a layer associated with an aquifer that because of its low permeability does not allow water to move through it perceptibly under head differences occurring in the groundwater system.

(30) "Construction" includes installation of a new system or part thereof, or the alteration, repair or extension of an existing system. The grading, excavating, and earth-moving work connected with installation, alteration, or repair of a system, or part thereof, is considered a part of system construction.

(31) "Conventional Sand Filter" means a filter with two (2) feet or more of sand filter media designed to chemically and biologically process septic tank or other treatment unit effluent from a pressure distribution system operated on an intermittent basis.

(32) "Curtain Drain" means a groundwater interceptor that is installed as a trench with a minimum width of twelve (12) inches and extending into the layer that limits effective soil depth. It has a perforated pipe installed along the bottom of, and the length of the trench and has a minimum of twelve (12) inches of drain media over the drainline and filter fabric placed over the drain media. The curtain drain must meet the setbacks from septic tanks and disposal areas as required in **Table 1**.

(33) "Cut-Manmade" means a land surface resulting from mechanical land shaping operations where the modified slope is greater than fifty (50) percent, and the depth of cut exceeds thirty (30) inches.

(34) "Department" means the Department of Environmental Quality.

(35) "Design Criteria" means the criteria used in designing on-site sewage disposal systems including, but not necessarily limited to, dimensions, geometry, type of materials, size of drain media or filter media, disposal field sizing, depth, grade or slope, hydraulic loading rate or any other factor relevant to the successful operation of the system. It does not include disposal area siting criteria.

(36) "Director" means the Director of the Department of Environmental Quality.

(37) "Disposal Area" means the entire area used for underground dispersion of the liquid portion of sewage including the area designated for the future replacement system.

It may consist of a seepage pit or of a disposal field or of a combination of the two. It may also consist of a cesspool, seepage bed, bottomless sand filter, or evapotranspiration-absorption system.

(38) "Disposal Field" means a system of disposal trenches or a seepage trench or system of seepage trenches.

(39) "Disposal Trench" means a ditch or a trench installed into natural soil, permeable saprolite or diggable bedrock, with vertical sides and substantially flat bottom with a minimum of twelve (12) inches of clean, coarse drain media or other material that is used in these rules into which a single distribution pipe has been laid, the trench then being backfilled with a minimum of six (6) inches of soil.

(40) "Distribution Box" means a watertight structure which receives septic tank or other treatment facility effluent and distributes it concurrently into two (2) or more header pipes leading to the disposal area. (See OAR 340-073-0035).

(41) "Distribution Pipe" means an open-jointed or perforated pipe used in the dispersion of septic tank or other treatment facility effluent into disposal trenches, seepage trenches, or seepage beds.

(42) "Distribution Unit" means a distribution box, dosing tank, diversion valve or box, header pipe, or other means of transmitting septic tank or other treatment unit effluent from the effluent sewer to the distribution pipes.

(43) "Diversion Valve" means a watertight structure which receives septic tank or other treatment facility effluent through one (1) inlet, distributes it to two (2) outlets, only one (1) of which is utilized at a given time (See OAR 340-073-0045).

(44) "Dosing Tank" means a watertight receptacle placed after a septic tank or other treatment facility equipped with an automatic siphon or pump.

(45) "Dosing Septic Tank" means a unitized device performing functions of both a septic tank and a dosing tank.

(46) "Drainfield" means a Disposal Field.

(47) "Drain Media" means clean washed gravel, clean crushed rock, or other loose types of natural or synthetic aggregate approved by the Director, used in the distribution of effluent. It shall have a minimum size of three quarters (3/4) inches and a maximum size of two and one-half (2-1/2) inches. The material shall be durable and inert so that it will maintain its integrity and not collapse or disintegrate with time and shall not be detrimental to the performance of the system.

(48) "Dwelling" means any structure or building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to: houses, houseboats, boathouses, mobile homes, travel trailers, hotels, motels, and apartments.

(49) "Effective Seepage Area" means the sidewall area within a disposal trench or a seepage trench from the bottom of the trench to a level two (2) inches above the distribution pipes, or the sidewall area of any cesspool, seepage pit, unsealed earth pit privy, or gray water waste disposal sump seepage chamber; or the bottom area of a pressurized soil absorption facility installed in soil as defined in section (139) this rule.

(50) "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water, air, and growth of plant roots. Layers that differ from overlying soil material enough to limit effective soil depth are hardpans, claypans, fragipans, compacted soil, bedrock, saprolite, and clayey soil.

(51) "Effluent Filter" means an effluent treatment device installed on the outlet of a septic tank which is designed to prevent the passage of suspended matter larger than one-eighth inch in size.

(52) "Effluent Lift Pump" means a pump used to lift septic tank or other treatment facility effluent to a higher elevation. (See OAR 340-073-0055).

(53) "Effluent Sewer" means that part of the system of drainage piping that conveys partially treated sewage from a septic tank or other treatment facility into a distribution unit or an absorption facility. (See OAR 340-073-0060).

(54) "Emergency Repair" means repair of a failing system where immediate action is necessary to relieve a situation in which sewage is backing up into a dwelling or building, or repair of a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities, but would allow use of the septic tank as a temporary holding tank until such time as new or additional absorption facilities could be constructed pursuant to an issued permit.

(55) "Equal Distribution" means the distribution of effluent to a set of disposal trenches in which each trench receives effluent in equivalent or proportional volumes.

(56) "Escarpment" means any naturally occurring slope greater than fifty (50) percent which extends vertically six (6) feet or more as measured from toe to top, and which is characterized by a long cliff or steep slope which separates two (2) or more comparatively level or gently sloping surfaces, and may intercept one (1) or more layers that limit effective soil depth.

(57) "Evapotranspiration-Absorption (ETA) System" means an alternative system consisting of a septic tank or other treatment facility, effluent sewer and a disposal bed or disposal trenches, designed to distribute effluent for evaporation, transpiration by plants, and by absorption into the underlying soil.

(58) "Existing On-Site Sewage Disposal System" means any installed on-site sewage disposal system constructed in conformance with the rules, laws and local ordinances in effect at the time of construction, or which would have conformed substantially with system design provided for in Commission, State Board of Health or State Health Division rules.

(59) "Existing System" means "Existing On-Site Sewage Disposal System."

(60) "Failing System" means any system which discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters.

(61) "Family Member" means any one (1) of two (2) or more persons related by blood or legally.

(62) "Filter Fabric" means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt and clay into drain media. A specification for filter fabric is found in OAR 340-073-0041.

(63) "Five-Day Biochemical Oxygen Demand (BOD5)" means the quantity of oxygen used in the biochemical oxidation of organic matter in five days at twenty (20) degrees centigrade under specified conditions and reported as milligrams per liter (mg/L).

(64) "Fragipan" means a loamy subsurface horizon with high bulk density relative to the horizon above, seemingly cemented when dry, and weakly to moderately brittle when moist. Fragipans are mottled and low in organic matter. They impede movement of water, air, and growth of plant roots.

(65) "General Permit" means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033, in lieu of individual permits being issued to each source.

(66) "Governmental Unit" means the state or any county, municipality, or political subdivision, or any agency thereof.

(67) "Grade" means the rate of fall or drop in inches per foot or percentage of fall of a pipe.

(68) "Gray Water" means household sewage other than "black wastes", such as bath water, kitchen waste water and laundry wastes.

(69) "Gray Water Waste Disposal Sump" means a receptacle or series of receptacles designed to receive hand-carried gray water for disposal into the soil.

(70) "Grease and Oils" means a component of sewage typically originating from food stuffs, consisting of compounds of alcohol or glycerol with fatty acids.

(71) "Groundwater Interceptor" means any natural or artificial groundwater or surface water drainage system including agricultural drain tile, cut banks, and ditches which intercept and divert groundwater or surface water from the area of the absorption facility.

(72) "Hardpan" means a hardened layer in soil caused by cementation of soil particles with either silica, calcium carbonate, magnesium carbonate, or iron and/or organic matter. The hardness does not change appreciably with changes in moisture content. Hardpans impede movement of water and air and growth of plant roots.

(73) "Header Pipe" means a tight jointed part of the sewage drainage conduit which receives septic tank effluent from the distribution box, or drop box, or effluent sewer and conveys it to the disposal area.

(74) "Headwall" means a steep slope at the head or upper end of a land slump block or unstable landform.

(75) "Holding Tank" means a watertight receptacle designed to receive and store sewage to facilitate disposal at another location.

(76) "Holding Tank System" means an alternative system consisting the combination of a holding tank, service riser and level indicator (alarm), designed to receive and store sewage for intermittent removal for disposal at another location.

(77) "Hydrasplitter" means a hydraulic device to proportion flow under pressure by the use of one or more orifices. Also may be referred to as a Hydrosplitter.

(78) "Incinerator Toilet Facility" means "Combustion Toilet Facility".

(79) "Individual System" means a system that is not a community system.

(80) "Individual Water Supply" means a source of water and a distribution system which serves a residence or user for the purpose of supplying water for drinking, culinary, or household uses and which is not a public water supply system.

(81) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

(82) "Intermittent Sand Filter" means a conventional sand filter.

(83) "Intermittent Stream" means any surface public water or groundwater interceptor that continuously flows water for a period of greater than two months in any one year, but not continuously for that year.

(84) "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

(85) "Large System" means any on-site system with a projected daily sewage flow greater than two thousand five hundred (2,500) gallons.

(86) "Lateral Pipe" means "Distribution Pipe".

(87) "Mechanical Sewage Treatment Facility" means an aerobic sewage treatment facility.

(88) "Nonwater-Carried Waste Disposal Facility" means any toilet facility which has no direct water connection, including pit privies, vault privies and portable toilets.

(89) "Occupant" means any person living or sleeping in a dwelling.

(90) "On-Site Sewage Disposal System" means any existing or proposed on-site sewage disposal system including, but not limited to a standard subsurface, alternative, experimental or nonwater-carried sewage disposal system, installed or proposed to be installed on land of the owner of the system or on other land as to which the owner of the system has the legal right to install the system. This does not include systems that are designed to treat and dispose of Industrial Waste as defined in OAR Chapter 340, Division 045.

(91) "Operating Permit" means a WPCF permit issued pursuant to these rules.

(92) "Owner" means any person who alone, or jointly, or severally with others:

(a) Has legal title to any single lot, dwelling, dwelling unit, or commercial facility; or

(b) Has care, charge, or control of any real property as agent, executor, executrix, administrator, administratrix, trustee, commercial lessee, or guardian of the estate of the holder of legal title; or

(c) Is the contract purchaser of real property.

NOTE: Each such person as described in subsections (b) and (c) of this section, thus representing the legal title holder, is bound to comply with the provisions of these rules as if he were the legal title holder.

(93) "Peer Review" means a review by members of a scientific community recognized as experts in the field of study and well rehearsed with scientific principles and experimentation. At a minimum, the review shall be performed by three members.

(94) "Permanent Groundwater Table" means the upper surface of a saturated zone that exists year-round. The thickness of the saturated zone, and, as a result, the elevation of the permanent groundwater table may fluctuate as much as twenty (20) feet or more annually; but the saturated zone and associated permanent groundwater table will be present at some depth beneath land surface throughout the year.

(95) "Permit" means the written document issued and signed by the Agent which authorizes the permittee to install a system or any part thereof, which may also require operation and maintenance of the system.

(96) "Permit Action" means the issuance, modification, renewal or revocation by the Department of a permit.

(97) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(98) "Pollution" or "Water Pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid,

radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(998) "Portable Toilet" means any self contained chemical toilet facility that is housed within a portable toilet shelter and includes but is not limited to construction type chemical toilets.

(10099) "Portable Toilet Shelter" means any readily relocatable structure built to house a toilet facility.

(1010) "Pressure Distribution Lateral" means piping and fittings in pressure distribution systems which distribute septic tank or other treatment unit effluent to drain media through small diameter orifices.

(1024) "Pressure Distribution Manifold" means piping and fittings in a pressure distribution system which supply effluent from pressure transport piping to pressure distribution laterals.

(1032) "Pressure Distribution System" means any system designed to uniformly distribute septic tank or other treatment unit effluent under pressure in an absorption facility or sand filter.

(1043) "Pressure Transport Piping" means piping which conveys sewage effluent from a septic tank or other treatment or distribution unit by means of a pump or siphon.

(1054) "Pretreatment" means the wastewater treatment which takes place prior to discharging to any component of an on-site sewage treatment and disposal system, including but not limited to, pH adjustment, oil and grease removal, BOD5 and TSS reduction, screening and detoxification.

(1065) "Prior Approval" means a written approval for on-site sewage disposal, for a specific lot, issued prior to January 1, 1974.

(1076) "Prior Construction Permit" means a subsurface sewage disposal system construction permit issued prior to January 1, 1974, by a county that had an ordinance requiring construction permits for subsurface sewage disposal systems.

(1087) "Privy" means a structure used for disposal of human waste without the aid of water. It consists of a shelter built above a pit or vault in the ground into which human waste falls.

(1098) "Projected Daily Sewage Flow" means the peak quantity of sewage a facility is forecast to produce on a daily basis upon which system sizing and design is based. It may be referred to as design flow. The Projected Daily Sewage Flow allows for a safety margin and reserve capacity for the system during periods of heavy use.

(11009) "Public Health Hazard" means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

(1110) "Public Waters" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground

waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(1124) "Recirculating Gravel Filter (RGF)" means a type of gravel filter wastewater treatment system which utilizes an effluent recycle system where a portion of the filtered effluent is mixed with septic tank effluent in a recirculation/dilution tank and redistributed to the filter, in conformance with these rules.

(1132) "Recirculating Gravel Filter System" means a Recirculating Gravel Filter and a absorption facility used to treat and dispose of sewage.

(1143) "Redundant Disposal Field System" means a system in which two complete disposal systems are installed, the disposal trenches of each system alternate with each other and only one system operates at a given time.

(1154) "Repair" means installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system. Major repair is defined as the replacement of the soil absorption system. Minor repair is defined as the replacement of a septic tank, broken pipe, or any part of the on-site sewage disposal system except the soil absorption system.

(1165) "Residential Strength Wastewater" means the primary sewage effluent from a septic tank which does not typically exceed the following parameters: Five-Day Biochemical Oxygen Demand (BOD5) of 300 mg/L; Total Suspended Solids (TSS) of 150 mg/L; Total Kjeldahl Nitrogen (TKN) of 150 mg/L; and Oil & Grease of 25 mg/L. Other contaminants may also be present in the wastewater, however, they shall not exceed the concentrations or quantities normally found in residential sewage. Effluent parameters are to be measured using approved Standard Method or EPA procedures.

(1176) "Sand Filter Media" means a medium sand or other approved material used in a conventional sand filter. The media shall be durable and inert so that it will maintain its integrity and not collapse or disintegrate with time and shall not be detrimental to the performance of the system. The particle size distribution of the media shall be determined through a sieve analysis conducted in accordance with **ASTM C-117** and **ASTM C-136**. The media shall comply with the following particle size distribution: 100 percent passing the 3/8 inch sieve, 95 percent to 100 percent passing the No. 4 sieve, 80 percent to 100 percent passing the No. 8 sieve, 45 percent to 85 percent passing the No. 16 sieve, 15 percent to 60 percent passing the No. 30 sieve, 3 percent to 15 percent passing the No. 50 sieve, and 4 percent or less passing the No. 100 sieve.

(1187) "Sand Filter Surface Area" means the area of the level plane section in the medium sand horizon of a conventional sand filter located two (2) feet below the bottom of the drain media containing the pressurized distribution piping.

(1198) "Sand Filter System" means the combination of septic tank or other treatment unit, dosing system with effluent pump and controls, or dosing siphon, piping and fittings, sand filter, and absorption facility used to treat and dispose of sewage.

(12049) "Sanitary Drainage System" means that part of the system of drainage piping that conveys untreated sewage from a building or structure to a septic tank or other treatment facility, service lateral at the curb or in the street or alley, or other disposal terminal holding human or domestic sewage. The sanitary drainage system consists of a building drain or building drain and building sewer.

(1219) "Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands or cut with a knife. It does not include hard bedrock or hard fractured bedrock. It has rock structure instead of soil structure.

(1224) "Saturated Zone" means a three (3) dimensional layer, lens, or other section of the subsurface in which all open spaces including joints, fractures, interstitial voids, pores, etc. are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge or discharge.

(1232) "Scum" means a mass of sewage solids floating at the surface of sewage which is buoyed up by entrained gas, grease, or other substances.

(1243) "Seepage Area" means "Effective Seepage Area".

(1254) "Seepage Bed" means an absorption system having disposal trenches wider than three (3) feet.

(1265) "Seepage Pit" means a "cesspool" which has a treatment facility such as a septic tank ahead of it.

(1276) "Seepage Trench System" means a system with disposal trenches with more than six (6) inches of drain media below the distribution pipe.

(1287) "Self-Contained Nonwater-Carried Waste Disposal Facility" includes, but is not limited to, vault privies, chemical toilets, combustion toilets, recirculating toilets, and portable toilets, in which all waste is contained in a watertight receptacle.

(1298) "Septage" means the domestic liquid and solid sewage pumped from septic tanks, cesspools, holding tanks, vault toilets, chemical toilets or other similar domestic sewage treatment components or systems and other sewage sludge not derived at sewage treatment plants.

(13029) "Septic Tank" means a watertight receptacle which receives sewage from a sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption facility. (See OAR 340-073-0025 and 340-073-0030).

(1310) "Septic Tank Effluent" means partially treated sewage which is discharged from a septic tank.

(1324) "Serial Distribution" means the distribution of effluent to a set of disposal trenches constructed at different elevations in which one (1) trench at a time receives effluent in consecutive order beginning with the uppermost trench, by means of a drop box, a serial overflow or other approved distribution unit. The effluent in an individual trench must reach a level of two (2) inches above the distribution pipe before effluent is distributed to the next lower trench.

(1332) "Sewage" means water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, surface waters, or industrial waste as may be present.

(1343) "Sewage Disposal Service" means:

(a) The construction of on-site sewage disposal systems (including the placement of portable toilets), or any part thereof; or

(b) The pumping out or cleaning of on-site sewage disposal systems (including portable toilets), or any part thereof; or

(c) The disposal of material derived from the pumping out or cleaning of on-site sewage disposal systems (including portable toilets); or

(d) Grading, excavating, and earth-moving work connected with the operations described in subsection (a) of this section.

(1354) "Sewage Stabilization Pond" means a pond designed to receive the raw sewage flow from a dwelling or other building and retain that flow for treatment without discharge.

(1365) "Slope" means the rate of fall or drop in feet per one hundred (100) feet of the ground surface. It is expressed as percent of grade.

(1376) "Soil Permeability Rating" refers to that quality of the soil that enables it to transmit water or air, as outlined in the **United States Department of Agriculture Handbook, Number 18, entitled Soil Survey Manual**.

(1387) "Soil Separate" means the size of soil particles according to **Table 7**.

(1398) "Soil Texture" means the amount of each soil separate in a soil mixture. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger:

(a) The major textural classifications are defined as follows. (See **Table 6**):

(A) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released, but will crumble when touched;

(B) Loamy Sand: Consists primarily of sand, but has enough silt and clay to make it somewhat cohesive. The individual sand grains can readily be seen and felt. Squeezed when dry, the soil will form a cast which will readily fall apart, but if squeezed when moist, a cast can be formed that will withstand careful handling without breaking;

(C) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand;

(D) Loam: Consists of an even mixture of the different sizes of sand and of silt and clay. It is easily crumbled when dry and has a slightly gritty, yet fairly smooth feel. It is slightly plastic. Squeezed in the hand when dry, it will form a cast that will withstand careful handling. The cast formed of moist soil can be handled freely without breaking;

(E) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is passing between thumb and finger, it will not press out into a smooth, unbroken ribbon, but will have a broken appearance;

(F) Clay Loam: Consists of an even mixture of sand, silt, and clay, which breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and

finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling;

(G) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement;

(H) Silty Clay: Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch or less sized wire formed between thumb and finger will withstand considerable movement and deformation;

(I) Clay: Consists of large amounts of clay and moderate to small amounts of sand. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or one-sixteenth (1/16) inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

b) These and other soil textural characteristics are also defined as shown in the United States Department of Agriculture Textural Classification Chart which is hereby adopted as part of these rules. This textural classification chart is based on the Standard Pipette Analysis as defined in the **United States Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1. (See Table 6).**

(~~14039~~) "Soil With Rapid or Very Rapid Permeability" means:

(a) Soil which contains thirty-five (35) percent or more of coarse fragments two (2) millimeters in diameter or larger by volume with interstitial soil of sandy loam texture or coarser as defined in subsection (138)(a) of this rule and as classified in Soil Textural Classification Chart, **Table 6**; or

(b) Coarse textured soil (loamy sand or sand as defined in section (138) of this rule and as classified in Soil Textural Classification Chart, **Table 6**); or

(c) Stones, cobbles, gravel, and rock fragments with too little soil material to fill interstices larger than one (1) millimeter in diameter.

(1410) "Split Waste Method" means a procedure where "black waste" sewage and "gray water" sewage from the same dwelling or building are disposed of by separate systems.

(~~1424~~) "Stabilized Dune" means a sand dune that is similar to an active dune except vegetative growth is dense enough to prevent blowing of sand. The surface horizon is either covered by a mat of decomposed and partially decomposed leaves, needles, roots, twigs, moss, etc., or to a depth of at least six (6) inches contains roots and has a color value of three (3) or less.

(~~1432~~) "Standard Subsurface System" means an on-site sewage disposal system consisting of a septic tank, distribution unit and absorption facility constructed in accordance with OAR 340-071-0220, using six (6) inches of drain media below the distribution pipe, and maintaining not less than eight (8) feet of undisturbed earth between disposal trenches.

(~~1443~~) "Steep Slope System" means a seepage trench system installed on slopes greater than thirty (30) percent and less than or equal to forty-five (45) percent, pursuant to these rules.

(1454) "Subsurface Sewage Disposal" means the physical, chemical or bacteriological breakdown and aerobic treatment of sewage in the unsaturated zone of the soil above any temporarily perched groundwater body.

(1465) "Subsurface Disposal System" means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility.

(1476) "Surface Waters" means public waters, but excludes underground waters and wells.

(1487) "System" means "On-Site Sewage Disposal System".

(1498) "Temporary Groundwater Table" means the upper surface of a saturated zone that exists only on a seasonal or periodic basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate. However, a temporary groundwater table and associated saturated zone will dissipate (dry up) for a period of time each year.

(15049) "Test Pit" means an open pit dug to sufficient size and depth to permit thorough examination of the soil to evaluate its suitability for subsurface sewage disposal.

(1510) "Third-Party" means a consulting firm, research institute, academic institute, or other similar entities with no vested interest in the outcome of test results of a material or technology under performance evaluation.

(1524) "Tile Dewatering System" means an alternative system in which the absorption facility is encompassed with field collection drainage tile, the purpose of which is to reduce and control a groundwater table to create a zone of aeration below the bottom of the absorption facility.

(1532) "Toilet Facility" means a fixture housed within a toilet room or shelter for the purpose of receiving black waste.

(1543) "Total Kjeldahl Nitrogen (TKN)" means the combination of ammonia and organic nitrogen but does not include nitrate and nitrite nitrogen.

(1554) "Total Suspended Solids" (TSS) means solids in sewage that can be removed readily by standard filtering procedures in a laboratory and reported as milligrams per liter (mg/L).

(1565) "Treatment" means the alteration of the quality of wastewaters by physical, chemical or biological means or combination thereof such that tendency of said wastes to cause degradation in water quality, risk to public health or degradation of environmental conditions is reduced.

(1576) "Underdrain Media" means that material placed under the sand filter media in a sand filter. It shall be clean, washed pea gravel with 100 percent passing the 1/2 inch sieve, 18 to 100 percent passing the 1/4 inch sieve, 5 to 75 percent passing the No. 4 sieve, 24 percent or less passing the No. 10 sieve, 2 percent or less passing the No. 16 sieve, and 1 percent or less passing the No. 100 sieve.

(1587) "Unstable Landforms" means areas showing evidence of mass downslope movement such as debris flow, landslides, rockfall, and hummock hill slopes with undrained depressions upslope. Unstable landforms may exhibit slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, and telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground. Active sand dunes are unstable landforms.

(1598) "Vertisols" means a mineral soil characterized by a high content of swelling-type clays which in dry seasons, causes the soils to develop deep wide cracks.

(16059) "WPCF Permit" means a Water Pollution Control Facilities Permit which has been issued pursuant to OAR Chapter 340, Division 045-014 and OAR 340-071-0162.

(1610) "Wastewater" means Sewage.

(1621) "Zone of Aeration" means the unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists. [ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 454.625 & ORS 468.020

Stats. Implemented: ORS 454.605 & ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 19-1999, f. & cert. ef. 12-29-99

340-071-0162

Permit Application Procedures -- WPCF Permits

(1) Any person wishing to obtain a new, modified, or renewal WPCF permit shall submit a written application on forms provided by the Department. Applications must be submitted at least 60 days before a permit is needed. All application forms must be ~~completed in full~~, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facilities, the owner's agent, or the lessee responsible for the operation and maintenance. Some of the required exhibits, but not necessarily all of them, which must accompany the application are:

(a) A land use compatibility statement from the local land use planning agency indicating that the site is approved for the activity for which the applicant is applying (if the activity is approved only upon condition of a conditional use permit, a copy of the issued conditional use permit shall be one of exhibits);

(b) A copy of a favorable site evaluation report indicating that the site is approved for the type and quantity of wastes to be disposed;

(c) Evidence that the permit processing fees and the first year's annual compliance determination fee have been paid to the Department or Agent, as directed;

(d) A site diagram meeting the requirements of OAR 340-071-0160(3)(c).

(2) Applications that which are obviously incomplete, unsigned, improperly signed or which that do not contain the required exhibits clearly identified will not be accepted by the Department for filing and will may be returned for completion. Applications that are correctly signed and appear administratively complete will be considered timely upon receipt. A request for further information under section (3) of this rule will not effect the timeliness of an application.

(3) Within 415 days after filing receipt of the application, the Department will preliminarily review the application to determine the adequacy of the information

submitted. Failure to complete this review within 45 days does not preclude the Department from later requesting further information from the applicant as provided in this section.

(a) If the Department determines that additional information is needed, it will promptly request in writing the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(b) If, in the opinion of the Department, determines that additional measures are necessary to gather facts regarding the application, the Department will notify the applicant what that said measures will be instituted, and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the Department determines the information in the application is adequate, the applicant shall be notified in writing that the application is complete for processing. The application will be considered withdrawn if the applicant fails to comply with the additional measures.

(4) Following determination that the application is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes and rules of the Commission.

(5) Draft Permit Review. If the Department makes a preliminary determination to issue a permit, a permit will be drafted and sent to the applicant for review. The applicant will have up to 14 calendar days to comment on the draft permit.

(6) Public Participation. For on-site sewage disposal systems with a design flow of 5,000 gallons per day or greater, a public notice of the pending Department action shall be distributed to the interested public. If in the public interest, at the discretion of the Department, a public notice may be distributed regarding pending Department actions on other on-site disposal systems requiring WPCF permits. If a public notice is distributed, it shall be for a period of at least 30 days. If, during the public notice period, the Department receives written requests from ten persons, or from an organization representing at least 10 persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Department shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. public participation will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits.

(7) Final Department Action. The Department must take final action on the permit application Wwithin 45 days after of the closing of the public comment period if a comment period is required, the Department shall take final action on the permit application. In making its final determination, tThe Department shall will consider all timely the comments received and any other information obtained which that may be pertinent to the permit action application being considered.

(8) Applicant's Appeal Rights. If the applicant is dissatisfied with the conditions or limitations of the permit, the applicant may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of final permit action. The Department's decision is effective 20 days from the date of service of the notice of the Department's final action unless within that time the Department receives a request

for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. Any hearing held shall will be conducted as a contested case hearing pursuant to ORS 183.413 through 183.470 an OAR Chapter 340, Division 011.

(9) Permit Term. A permit issued pursuant to this rule shall be for a period not to exceed 5 years. The expiration date shall be recorded on each permit issued. At least 960 days prior to the expiration of the permit, a permit renewal application, on forms provided by the Department, shall be filed with the Department to obtain renewal of the permit.

(10) For systems which are proposed to be or which are operating under a WPCF permit, no person shall construct, alter or repair the absorption facility, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.

(11) No person shall connect to or use any system authorized by a WPCF permit, unless the system has been inspected and certified as per OAR Chapter 340, Division 052, and that certification has been received and accepted by the Department.

(12) Renewal of a Permit. The procedures for issuance of a permit shall apply to renewal of a permit. If a completed application for renewal of a permit is filed with the Department 60 days in a timely manner prior to before the expiration date of the permit, the permit will shall not be deemed to not expire until final action has been taken on the renewal application to issue or deny a permit.

(13) Permit Modification. In the event it becomes necessary for the Department to institute modification of a permit due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes, the modification will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits, the Department shall notify the permittee by registered or certified mail of its intent. ~~Such notification shall include the proposed modification and reasons for modification. The modification shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 011.~~

(14) A Ppermit termination Suspension or Rrevocation will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits. ~~In the event it becomes necessary for the Department to suspend or revoke a permit due to non-compliance, unapproved changes in operation, false information submitted in the application, failure to pay fees, or to maintain the required surety bond or equivalent security, the Department will notify the permittee by registered or certified mail of its intent. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative or resolves the issue which would cause the permit to be suspended. Any request for a hearing shall be in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 011.~~

(15) A transfer of a Transfer of a WPCF Permit will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits. ~~No WPCF permit shall be transferred to a third party without prior written approval from the Department. Such~~

~~approval may be granted by the Department where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the WPCF permit and the rules of the Commission.~~

(16) General Permits.

(a) The Department may issue general permits for certain categories of on-site sewage disposal systems where an individual WPCF permit is not necessary in order to adequately protect public health and the environment. Prior to issuing the general permit, the Department shall follow the ~~same public notice participation procedures found in accordance with OAR Chapter 340, Division 45 as applicable to WPCF permits section (6) of this rule.~~ In order to be covered by a general permit issued by the Department, a person shall:

(A) Submit a registration application on a form provided by the Department or Agent, along with the necessary attachments, including but not limited to favorable site evaluation and land use compatibility statement;

(B) Demonstrate that the on-site disposal facility fits into the category of sources covered by the general permit;

(C) Submit applicable fees.

(b) Any person covered by a general permit may request to be covered by an individual WPCF, in lieu of the general permit, upon submission of the required application and fees;

(c) The Department may revoke a general permit as it applies to any person's on-site sewage disposal system and require such person to apply for and obtain an individual WPCF permit, if:

(A) The covered source or activity is a significant contributor of pollution or creates other environmental problems;

(B) The permittee is not in compliance with the terms and conditions of the general permit; or

(C) Conditions or standards have changed so that the source or activity no longer qualifies for a general permit.

(d) The Department's Agent may distribute and receive registration applications for general permits for on-site sewage disposal systems and may distribute general permits, if the procedure is established in an agreement between the Department and the Agent.

(17) Rules Which Do Not Apply to WPCF Applicants or Permittees.

(a) Because the permit review, issuance, and appeal procedures for WPCF permits are different from those of other on-site permits regulated by these rules, the following portions within this division do not apply to WPCF applicants or permittees: OAR 340-071-0116; 340-071-0155; 340-071-0160(6), (8), (9), and (10); 340-071-0165(1); 340-071-0170; 340-071-0175; 340-071-0185; 340-071-0195; 340-071-0200; 340-071-0205; 340-071-0210; 340-071-0215(1), (2), (3); 340-071-0270; 340-071-0275(4)(c)(A); 340-071-0295(1); 340-071-0305; 340-071-0320; 340-071-0325; 340-071-0330; 340-071-0345; 340-071-0360(2)(b)(B); 340-071-0410; 340-071-0415; 340-071-0420; 340-071-0425; 340-071-0430; 340-071-0435; 340-071-0440; 340-071-0445; and 340-071-0500;

(b) Permit applicants and permittees are not subject to any WPCF permit-related fees other than those specifically contained within OAR 340-071-0140;

(c) The following portions of OAR Chapter 340, Division 073, do not apply to WPCF applicants or permittees: OAR 340-073-0030(1); 340-073-0065; 340-073-0070; and 340-073-0075.

Stat. Auth.: ORS 454.625 & ORS 468.020

Stats. Implemented: ORS 468.065, ORS 468.070, ORS 468B.050 & ORS 468B.055

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-99, f. & cert. ef. 12-29-99

DIVISION 093

SOLID WASTE: GENERAL PROVISIONS

340-093-0005

Purpose and Applicability

The purpose of OAR Chapter 340, Divisions 93 through 97 is to prescribe requirements, limitations, and procedures for storage, collection, transportation, treatment and disposal of solid waste. All persons storing, collecting, transporting, treating and disposing of solid waste in this state are subject to the provisions of OAR Chapter 340, Division 93 ("General Provisions"), in addition to any other rules in OAR Chapter 340, Divisions 94, 95, 96, and 97 governing the appropriate specific type of solid waste disposal site. This Division also describes uniform procedures for permitting by the Department as prescribed in ORS 459.205 and 459.710 through 459.790.

Stat. Auth.: ORS 459.005 - ORS 459.418 & ~~ORS 459A.100 - ORS 459A.120~~

Stats. Implemented: ORS 459.005 & ORS 459.015

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0005

340-093-0030

Definitions

As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

(1) "Access Road" means any road owned or controlled by the disposal site owner ~~which that~~ terminates at the disposal site and ~~which that~~ provides access for users between the disposal site entrance and a public road.

(2) "Agricultural Waste" means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.

(3) "Agricultural Composting" means composting as an agricultural operation (as defined in ORS 467.120(2)(a)) conducted on lands employed for farm use (as defined in ORS 215.203). Agricultural composting operations may include supplemental feedstocks to aid in composting feedstocks generated on the farm.

(4) "Agronomic Application Rate" means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case shall such application adversely impact the waters of the state. Such application shall be designed to:

(a) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;

(b) Condition and improve the soil comparable to that attained by commonly used soil amendments; or

(c) Adjust soil pH to desired levels.

(5) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(6) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(7) "Asphalt paving" means asphalt which has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and ~~that~~ which is weathered, consolidated, and does not contain visual evidence of fresh oil.

(8) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(9) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(10) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(11) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(12) "Biosolids" means solids derived from primary, secondary or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors.

(13) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

(14) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.

(15) "Closure Permit" means a document issued by the Department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the Department.

(16) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

(17) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.

(18) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process.

(19) "Composting Facility" means a site or facility which utilizes organic solid waste or mixed solid waste to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture, vermicomposting and agricultural composting operations are considered composting facilities.

(20) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

(21) "Construction and Demolition Landfill" means a landfill ~~that~~ which receives only construction and demolition waste.

(22) "Corrective Action" means action required by the Department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340 Division 40, whichever is more stringent.

(23) "Cover Material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

(24) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

(25) "Current Assets" means cash or other assets or resources commonly identified as those ~~that~~ which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(26) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(27) "Department" means the Department of Environmental Quality.

(28) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(29) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.

(30) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (81)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site ~~that~~ which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site

is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(31) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

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

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;

(c) Industrial waste going to an industrial waste facility; or

(d) Waste received at an ash monofill from an energy recovery facility.

(32) "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

(33) "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(34) "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

(35) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters ~~that which~~ are inundated by the base flood.

(36) "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

(37) "Green Feedstocks" are materials used to produce a compost. Green feedstocks are low in a) substances that pose a present or future hazard to human health or the environment and b) low in and unlikely to support human pathogens. Green feedstocks include but are not limited to: yard debris, animal manures, wood waste (as defined in OAR 340-093-0030(94)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products and crop residue. Green feedstocks may also include other materials that can be shown to DEQ by the composter to be low in substances that pose a present or future hazard to human health or the environment and low in and unlikely to support human pathogens. This term is not intended to include materials fed to animals and not used for composting.

(38) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(39) "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

(40) "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes ~~that which~~ are defined as hazardous waste pursuant to ORS 466.005.

(41) "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(42) "Home composting" means composting operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of food waste and yard debris.

(43) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air-flow and temperature.

(44) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

(45) "Industrial Waste Landfill" means a landfill ~~that~~ ~~which~~ receives only a specific type or combination of industrial waste.

(46) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

(47) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

(48) "Institutional Composting" means the composting of green feedstocks generated from the facility's own activities. It may also include supplemental feedstocks. Feedstocks must be composted on-site, the compost produced must be utilized within the contiguous boundaries of the institution and not offered for sale or use off-site. Institutional composting includes but is not limited to: parks, apartments, universities, schools, hospitals, golf courses and industrial parks.

(49) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

(50) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

(51) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(52) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

(53) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(54) "Local Government Unit" means a city, county, Metropolitan Service District formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality

control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(55) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.

(56) "Material Recovery" means any process of obtaining from solid waste, by pre-segregation or otherwise, materials which still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

(57) "Material Recovery Facility" means a solid waste management facility that ~~which~~ separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected.

(58) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

(59) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

(60) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under **§257.2 of 40 CFR**, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.

(61) "Net Working Capital" means current assets minus current liabilities.

(62) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

(63) "Non-green Feedstocks" are materials used to produce a compost. Non-green feedstocks are high in

(a) substances that pose a present or future hazard to human health or the environment; and

(b) high in and likely to support human pathogens. Non-green feedstocks include but are not limited to: animal parts and by-products, mixed materials containing animal parts or by-products, dead animals and municipal solid waste. This term is not intended to include materials fed to animals and not used for composting.

(64) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(65) "Permit" means a document issued by the Department, ~~bearing the signature of the Director or the Director's authorized representative~~ which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

(66) "Permit Action" means the issuance, modification, renewal or revocation by the Department of a permit.

(67) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(687) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

(698) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(7069) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(710) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(724) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the Metropolitan Service District. For a county within the Metropolitan Service District, "immediate service area" means that Metropolitan Service District boundary.

(732) "Release" has the meaning given in ORS 465.200(14).

(743) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

(754) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(765) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(776) "Sensitive Aquifer" means any unconfined or semiconfined aquifer ~~that which~~ is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

(787) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

(798) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(8079) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

(819) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

(824) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

(832) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(843) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

(854) "Supplemental Feedstocks" are green feedstocks from off-farm or off-site used to produce a compost at an agricultural or institutional operation, are the minimum amount necessary to allow composting of on-farm and on-site feedstocks, and can be shown by the composter to DEQ to be necessary to maintain porosity, moisture level or carbon to nitrogen ratio in the farm or institution's composting operation. The goal of these feedstocks is to supplement those feedstocks generated on the farm or at the institution so that composting may occur.

(865) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(876) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

(887) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

(898) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (18) of this rule, "material recovery" as defined in section (56) of this rule, nor does it apply to a "material recovery facility" as defined in section (57) of this rule.

(9089) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

(910) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

(924) "Vegetative" means feedstocks used for composting ~~that which~~ are derived from plants including but not limited to: fruit and vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease or dairy products such as milk, mayonnaise or ice cream.

(932) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

(943) "Wellhead protection area" means the surface and subsurface area surrounding a water well, spring or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield. A public water system is a system supplying water for human consumption that has four or more service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day.

(954) "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, stumps, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing or treated with chemical additives, glue resin or chemical preservatives.

(965) "Wood waste Landfill" means a landfill ~~that which~~ receives primarily wood waste.

(976) "Zone of Saturation" means a three-dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459 & ORS 459A

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

340-093-0070

Applications for Permits

(1) Any person wishing to obtain a new, modified, or renewal permit from the Department must submit a written application on a form provided by the Department. The Department must receive renewal applications at least 180 days before a permit is needed. All other applications must be received 60 days before a permit is needed. All application forms must be completed in full, signed by the applicant or the applicant's

legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility.

Applications for permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

(2) The Department will accept Applications for a permit, including those required for a composting facility general permit, shall be accepted by the Department only when complete, as detailed in section (3) and (4) of this rule. Within 45 days after receipt of an application, the Department will preliminarily review the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the Department from later requesting further information from the applicant as provided in this section.

(a) If the Department determines that additional information is needed it will promptly request the needed information from the applicant. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as the Department establishes in writing.

(b) If additional measures are necessary to gather facts regarding the application, the Department will notify the applicant that such measures will be instituted, and the timetable and procedures to be followed. The application will be considered to be withdrawn if the applicant fails to comply with these additional measures.

(3) General permit: Composting facilities as defined in OAR 340-096-0024(2) are considered to be "lower risk disposal sites" and thus subject to general permits. General permits are permits and permittees shall comply with all pertinent rules except subsections (4)(e) and (f) of this rule, and the requirements of OAR 340-093-0150, 340-093-0210, 340-094-0060(2) and 340-095-0030(2). In order to comply with requirements, persons applying for a general permit must submit to DEQ items listed in (4)(a), (b), (c), and (d) of this rule prior to receiving a permit. To comply with the remainder of all pertinent rules, these composting facilities must have procedures in place and documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met. A composting facility for which a general permit has been issued, but DEQ determines has inadequate or incomplete plans, specifications, operations and maintenance manuals, operational procedures, or other requirements, may be required to revise documents or operational procedures to comply with current technological practices and pertinent rules of the Department.

(4) Applications for a registration or permit shall be complete only if they:

(a) Are submitted in triplicate on forms provided by the Department, are accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the Department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction with respect to new or existing disposal sites, or alterations, expansions, improvements or changes in method or type of disposal at new or existing disposal sites. Such recommendations shall include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the Department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit;

(d) Include payment of application fees as required by OAR 340-097-0110 and 340-097-0120;

(e) Include a site characterization report(s) prepared in accordance with OAR 340-093-0130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-093-0140;

(g) For a new land disposal site:

(A) Include 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 340-094-0110 to 340-094-0120 or OAR 340-095-0050 to 340-095-0060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance, of the land disposal site, pursuant to OAR 340-094-0140 or OAR 340-095-0090, unless the Department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-095-0050(3).

(h) Include any other information the Department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the Department.

(5) If the Department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the Department may waive any of the requirements of subsections (4)(e) and (f) of this rule, OAR 340-093-0150, 340-094-0060(2) and 340-095-0030(2). In making this judgment, the Department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any information the Department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(6) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the Department, there is sufficient public concern regarding the proposed disposal site, the Department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

(7) Permit or registration modifications and renewals:

(a) Permit Modification: An application for a permit modification is required for:

(i) The sale or exchange of the activity or facility; or

~~(ii) Any change in the nature of the activities or operations from those of the last application including modification or expansion of the disposal site or a change in the method or type of disposal. Any application that would substantially change the scope or operations of the disposal site must include written recommendations from the local government unit as required in subsection (4)(b) of this rule.~~

~~(b) Permit Renewal: (a) Notwithstanding OAR 340-014-0020(1), a~~ An application for a permit renewal is required if ~~any~~ a permittee intends ~~ing~~ to continue operation beyond the permitted period. ~~A must file a complete renewal application must be filed for renewal of the permit at least 180 days before the existing permit expires.;~~

~~(ib) A complete application for renewal must be made in the form required by the Department and must include the information required by this Division and any other information required by the Department.;~~

~~(iie) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (4)(b) of this rule.;~~

~~(iiid) If a completed application for renewal of a permit is filed with the Department in a timely manner before prior to the expiration date of the permit, the permit does shall not be deemed to expire until the Department takes final action on the renewal application.;~~

~~(ive) If a completed application for renewal of a permit is not filed with the Department in a timely manner 180 days prior to before the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-094-0100 or 340-095-0050.;~~

~~(8f) Permits extended continued under subsection (7)(d) of this rule remain fully effective and enforceable until the effective date of the new permit.~~

Stat. Auth.: ORS 459

Stats. Implemented: ORS 459.235

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0025; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 17-1997, f. & cert. ef. 8-14-97

340-093-0100

Public Notice and ~~Public Comment~~Participation Requirements Regarding Permit Actions

~~(1) In order to inform potentially interested persons of a proposed permit issuance or permit renewal with significant changes, a public notice shall be prepared and circulated in a manner approved by the Director. In addition to the information required under OAR 340-011-0007(1), the public notice shall contain:~~

~~(a) A description of the facility which includes important natural features of the site;~~

~~(b) A description of any leachate management systems or controls.~~

~~(2) Solid waste permit documents for permit determinations, including modifications that involve selection of corrective action remedies, shall be available for public review and comment.~~

~~(1) The Department categorized permit actions according to environmental and public health significance. Category I represents permit actions with low environmental~~

and public health significance and less public notice and opportunity for public participation. Category IV represents permit actions with potentially high environmental and public health significance, and the greatest level of public notice and opportunity for participation.

(2) OAR 340-093-0105 classifies permits as Category I through Category IV. If a permit action is uncategorized, the permit action will be processed under Category III. The following describes the public notice and participation requirements for each category:

(a) Category I – No public notice or opportunity for public participation;

(b) Category II – The Department will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.

(c) Category III – The Department will provide public notice of the proposed permit action and a minimum of 35 days to submit written comments. The Department will provide a minimum of 30 days notice for a hearing if one is scheduled. The Department will schedule a hearing to allow interested persons to submit oral or written comments if:

(i) within 14 days of the mailing of the notice, the Department receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing, or

(ii) the Department determines that a hearing is necessary.

(d) Category IV – Once an application is considered complete under OAR 340-093-0070, the Department will:

(i) Provide public notice of the receipt of a completed application and requested permitting action; and

(ii) Schedule an informational meeting within the community where the facility will be or is located and provide public notice of the meeting. The Department will consider any information gathered in this process when it drafts the proposed permit.

(iii) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments.

(iv) Schedule a public hearing to allow interested persons to submit oral or written comments and a minimum of 30 days notice for the hearing.

(3) The Department may move a permit action to a higher category under (2) of this rule, based on, but not limited to, the following factors:

(a) Anticipated public interest in the facility;

(b) Compliance and enforcement history of the facility or owner;

(c) Potential for significant environmental or public harm due to location or type of facility; or

(d) A change in the nature of the facility or the quantity or types of solid waste received, processed or disposed of at the facility.

(4) The public notice required under (2)(b), (c) and (d)(iii) of this rule will contain at least the following information:

(a) Name of the applicant and location of the facility;

(b) Type of facility including a description of the facility's process subject to the permit;

(c) Description of permitted substances stored, disposed of, discharged or emitted, including whether there has been an increase or decrease in the substance since the last permit action for the facility;

(d) Location and description of documents relied upon in preparing the draft permit action;

(e) Other permits required by the Department;

(f) Date of previous permit action;

(g) Opportunity for public comment, whether in writing or in person;

(h) Compliance, enforcement and complaint history along with resolution of the same; and

(i) A summary of the discretionary decisions made by the Department in drafting the permit.

(5) The Department will provide the notice, as required under section (2) of this rule, to the applicant, those requesting notice of the permitting action, local news media, and other interested persons as identified by the Department.

Stat. Auth.: ~~ORS 183~~, ORS 459.005 - ORS 459.418, ORS 459A.100 - ORS 459A.120 & ORS 468

Stats. Implemented: ORS 459.245

Hist.: DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0024

340-093-0105

Categories for Permit Actions

(1) Category 1:

(a) Composting facility registration under 340-096-0024(1).

(b) Assignment to a composting facility general permit under 340-096-0024(2).

(c) Waste Tire Carrier Permit under 340-064-0055.

(d) Letter Authorization under 340-093-0060.

(e) Modification to a permit that is administrative in nature or does not alter permit conditions.

(2) Category 2:

(a) Renewal of closure permit under 340-094-0100 and 340-095-0500.

(b) Renewal of transfer station under 340-096-0040.

(c) Renewal of material recovery facility under 340-096-0040.

(d) Renewal of waste tire storage site under 340-064-0015.

(e) All other modifications not listed under category 1.

(3) Category 3:

(a) New captive industrial facility as defined in 340-097-0120(1)(c).

(b) New transfer station or material recovery facility under 340-096-0040.

(c) Composting facility full permit under 340-096-0024.

(d) Closure permit under 340-094-0100 and 340-095-0500.

(e) Issuance of a composting facility general permit under 340-096-0024.

(f) New construction and demolition landfill under 340-095-0001.

(g) New solid waste treatment facility under 340-096-0050.

(h) New off-site industrial facility under 340-097-0120(2)(a).

(i) New sludge disposal facility under 340-096-0030.

(4) Category 4:

(a) New municipal solid waste landfill facility under 340-094-0001.

(b) New waste tire storage site under 340-064-0015.

- (c) New incinerator under 340-096-0010.
- (d) New energy recovery facility under 340-097-0120(2)(a).
- Stat. Auth.: ORS 459A.025, 459.045 and 468.020
- Stat. Implemented: ORS 459.245

340-093-0110

Issuance or Denial of a Permits

(1) The Department must take final action on the permit application within 45 days of the close of the comment period. The scheduling of a hearing and the consideration of comments will automatically constitute good cause for an extension of time under ORS 459.245. The Department will consider all timely received comments and any other information obtained that may be pertinent to the permit action.

(2) Issuance of a permit: The Department may adopt or modify the proposed provisions in the permit application. The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0097 and will include a copy of the permit. If the permit conditions are different from those contained in the permit application, the notification will include the reasons for the changes.

(3) Denial of a permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0097. If the Department denies a permit application, the notification will include the reasons for the denial.

Upon receipt of a completed application, t

The Department will ~~shall~~ deny the permit if:

- (a1) The application contains false information.
- (b2) The Department wrongfully accepted the application was wrongfully accepted by the Department.
- (c3) The proposed disposal site would not comply with OAR Chapter 340, Divisions 93 through 97 or other applicable rules of the Department.
- (d4) The proposal is not part of or not compatible with the adopted local solid waste management plan, or:
- (e5) There is no clearly demonstrated need for the proposed new, modified or expanded disposal site or for the proposed change in the method or type of disposal.

(4) The Department's decision is effective 20 days from the date of service of the notice unless within that time the Department receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470, and OAR Chapter 340, Division 011.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.245

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-061-0026; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98

340-093-0113

Department Initiated Modification of a Permit

If the Department determines it is appropriate to modify a permit, the Department will notify the permittee by registered or certified mail of the proposed modification and

include them and the reasons for them. The modification will become effective upon mailing unless the permittee requests a hearing within 20 days. A request for hearing shall be made in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. If a hearing is requested, the existing permit continues in effect until a final order is issued.

Stat. Auth.: ORS 459A.025, ORS 459.045 & ORS 468.020

Stats. Implemented: ORS 459.245

340-093-0115

Termination or Revocation of a Permit

(1) Automatic Termination: A permit automatically terminates when:

(a) The Department issues a new permit for the same activity or operation;

(b) The permittee requests in writing that the permit terminate, if the Department determines that a permit is no longer needed; or

(c) The permittee fails to timely submit an application for permit renewal.

(i) Termination is effective on the permit expiration date.

(ii) A permit may be reinstated only if the permittee applies for a new permit including the associated fees pursuant to Division 097.

(iii) All permit conditions will remain in effect until such time as a new permit is issued by the Department. Failure by a permittee to abide by the terms of any permit conditions will be a violation of this provision.

(2) Revocation with prior notice:

(a) If the Department determines that a permittee is in noncompliance with the terms of the permit, submitted false information in the application or other required documentation, or is in violation of any applicable law, the Department may revoke the permit.

(b) The Department will provide notice of the intent to revoke the permit in accordance with OAR 340-011-0097. The notice will include the reasons why the permit will be revoked, and include an opportunity for hearing before the revocation. The Department must receive a written request for hearing stating the grounds for the request within 60 days from service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. The permit will continue in effect until the 60 days expires or until a final order is issued.

(3) Revocation without prior notice:

(a) If the Department finds that the permittee's activities cause a serious danger to the public health, safety or the environment, the Department may immediately revoke or refuse to renew the permit without prior notice or opportunity for a hearing.

(b) If no advance notice of the revocation is provided, the Department will notify the permittee as soon as possible as provided in OAR 340-011-0097. The notification will set forth the specific reasons for the revocation or refusal to renew.

(c) The Department must receive a written request for a hearing stating the grounds for the request within 90 days of service of the notice. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR Chapter 340, Division 011. If the Department does not receive a request for a hearing

within 90 days, the revocation or refusal to renew becomes final without further action by the Department.

Stat. Auth.: ORS 459.045 and 459.785

Stats. Implemented: ORS 459.255 and 459.755

340-096-0024

Special Rules Pertaining to Composting: Types of Composting Facilities

Composting facilities are categorized by the following criteria and shall meet the portions of this rule as listed in (1)(c), (2)(c), or (3) below:

(1) Composting facility registration: For facilities utilizing as feedstocks for composting:

(a) More than 20 tons and less than or equal to 2,000 tons of green feedstocks in a calendar year; or

(b) More than 20 tons and less than or equal to 5,000 tons of feedstocks which are exclusively yard debris and wood waste in a calendar year;

(c) Composting facilities receiving a registration shall comply with only the following items of OAR 340-096-0028: (1)(d), (2)(c), (3)(a), (3)(b), (3)(c), and (4) and are not subject to the remaining requirements of OAR 340-096-0028;

(d) Persons applying for a composting facility registration shall submit to DEQ items listed in OAR 340-093-0070(4)(a), (b), (c), and (d) prior to receiving their registration. These facilities are subject to the procedures and requirements of OAR 340-093-0070 (1), (6), and (7), (application processing, public hearings, registration renewal), but are exempted from the remaining requirements of OAR 340-093-0070;

(e) A composting facility registration will be treated as a permit only for purposes of OAR 340-018-0030 and not for other purposes;

(f) Upon determination by the Department that a registered facility is adversely affecting human health or the environment, a registered facility may be required to apply for and meet the requirements of a composting facility general permit.

(2) Composting facility general permit: For facilities utilizing as feedstocks for composting:

(a) More than 2,000 tons of green feedstocks in a calendar year; or

(b) More than 5,000 tons of green feedstocks which are exclusively yard debris and wood waste in a calendar year;

(c) Persons receiving a composting facility general permit shall comply with all items of OAR 340-096-0028 except (2)(b), (3)(g), and (3)(i). In order to meet these requirements, composters shall have procedures in place and written documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met;

(d) Persons applying for a composting facility general permit shall comply with the requirements of "General Permit," pursuant to OAR 340-093-0070(3);

(e) Upon determination by the Department that a facility with a composting facility general permit is adversely affecting human health or the environment, that facility may be required to apply for and meet the requirements of a composting facility full permit.

(3) Composting facility full permit: For facilities utilizing as feedstocks for composting more than 20 tons of feedstocks during a calendar year that includes any amount of non-green feedstocks. Persons applying for a composting facility full permit shall comply with all items of OAR 340-096-0028. In order to meet these requirements, these persons must submit written documents to the Department for review and approval prior to receiving their permit, as described in OAR 340-093-0050 and OAR 340-093-0070.

(4) Composting facilities exempted from requirements to obtain a permit are listed in OAR 340-093-0050(3)(d).

(5) The Director may issue a different level of composting regulation to a facility upon receipt of a request and justification regarding special conditions based on the amount and type of unique feedstocks which do not justify scrutiny of a higher level of regulation. Justification must be substantiated by results from testing, documentation of operational procedures or other methods. Applications shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340, Division 09344.

Stat. Auth.: ORS 459.045, ORS 459A.025 & ORS 468.020

Stats. Implemented: ORS 459.005, ORS 459.015 & ORS 459.205

Hist.: DEQ 17-1997, f. & cert. ef. 8-14-97; DEQ 27-1998, f. & cert. ef. 11-13-98

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

DEQ - Director's Office
Agency and Division

Susan M. Greco
Rules Coordinator

811 S.W. 6th Avenue, Portland, OR 97213
Address

Chapter 340
Administrative Rules Chapter Number

(503) 229-5213
Telephone

<u>August 16, 2000</u>	<u>2:00 p.m.</u>	<u>811 SW 6th Avenue Rm 3A Portland</u>	<u>Agency Staff</u>
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?
X Yes No

RULEMAKING ACTION

ADOPT:

340-093-0113, 340-093-0115, 340-045-0027, 340-045-0037, 340-045-0061, 340-045-0090

AMEND:

340-014-0005, 340-014-0010, 340-093-0005, 340-093-0030, 340-093-0070, 340-093-0100, 340-093-0110, 340-096-0024, 340-045-0010, 340-045-0030, 340-045-0033, 340-045-0035, 340-045-0040, 340-045-0045, 340-045-0050, 340-045-0055, 340-045-0060, 340-045-0062, 340-045-0063, 340-045-0075, 340-071-0100, 340-071-0162

REPEAL:

340-014-0007, 340-014-0055, 340-045-0025

AMEND AND RENUMBER:

340-011-0007 to 340-014-0022

Stat. Auth.: ORS 459.045, 468.020, 468B.048, 468A.025

Stats. Implemented: ORS 459.205, 468A.040 and 468B.050

RULE SUMMARY

This rulemaking proposal will place into the solid waste and water quality rules a system of categories which provide for increased public participation depending on the permitting action. The categories are based on the anticipated level of public concern, potential environmental harm and legal requirements

August 18, 2000
Last Day for Public Comment


Authorized Signer and Date

Attachment B.1

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Public Participation Procedures for Permit Decisions

Fiscal and Economic Impact Statement

Introduction

The rules will establish a system of categories that would provide increased public participation depending on the anticipated level of public concern, potential environmental harm and legal requirements regarding the permit action. The public will be involved earlier in the permit development process for those permits that are for new major sources or a significant modification to a major source. On the other hand, permit actions over which the Department has no discretion or there is de minimis environmental impact will be processed in a more streamlined fashion.

General Public

The general public will benefit from these rules in that they will be provided with a greater opportunity for public participation in the Department's permitting decisions for those permits that have the potential for environmental harm. Some permitting actions may provide for less opportunity for public participation than under current rules. The Department does not currently provide public notice for those permit actions that were placed into category I. There will be no fiscal impact on the general public from these rules.

Small Business

Although this proposal does not change any of the permitting requirements or fees associated with obtaining a permit, the rules will change the public participation requirements for obtaining a permit from the Department. Depending on what category the permit is placed into, there may be more or less public participation requirements associated with the permit. Since the Department performs the public notice requirements under the rules, the business should have no additional fiscal impact associated with the rule changes even if additional public participation is required. If the permit is placed into Category IV, there may be an additional 30 to 45 day delay in the issuance of the permit. If the permit is placed into Category II, there will be a time savings associated with not scheduling a hearing when one would have been scheduled under the current rules.

Large Business

The effect on large businesses will be the same as those on small businesses.

Local Governments

The effect on local governments will be the same as those on businesses if the local government entity is required to obtain either a solid waste or water quality permit.

State Agencies

The rules were designed to require more public participation for some permits while requiring less for other permits so that there were be no fiscal impact on the Department. Permits will still be processed by existing regional staff as permits are needed by a facility.

The effect on other state agencies will be the same as that on businesses and local governments. If the agency is required to obtain a solid waste or water quality permit, then there may either be a savings of time or a delay in the issuance of their permit.

Assumptions

An assumption of this impact statement is that this rule change will lead to more of the public's, the permittee's and staff's time being spent on significant permit decisions with less time spent on de minimus permit decisions. Permit decisions were categorized so that the potential for high environmental and public health significance corresponded with the greatest level of public notice and opportunity for participation. The lack of early public participation in the Department's current process often leads to the comment period begin extended to accommodate the public's concerns. Additionally the increase in clear, concise information in the Department's public notices will lead to more effective public comments. This earlier and more extensive public process will help ensure communication between the community, the applicant and the Department which is critical to defining issues and identifying options which will lead to a earlier resolution of the public's concerns.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Public Participation Procedures for Permit Actions

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The rules will provide for a system of categories of the Department's permit actions. Each category provides for specified level of public participation. The highest category requires public participation earlier in the process than currently required by the Department's rules.

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

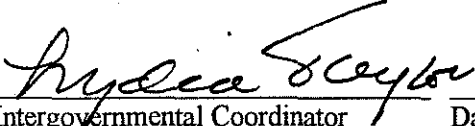
a. If yes, identify existing program/rule/activity:

The proposed rules do not directly affect land use. However, the Department's water quality and solid waste permitting programs have generally been determined agency programs that significantly affects land use. (see OAR 340-018-0030). The proposed rules do not change the current Departmental requirement that a permit applicant must receive local government approval through a Land Use Compatibility Statement before the permit will be issued.

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

c. If no, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.


Intergovernmental Coordinator Date 7/11/00

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

1. **Are there federal requirements that are applicable to this situation? If so, exactly what are they?** Yes - the federal Clean Water Act contains public participation requirements which are applicable to NPDES permits. The category process was designed to ensure that the NPDES program would still comply with the federal requirements. There are no federal requirements applicable to the solid waste program.
2. **Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?** Neither, the federal requirements contain the procedural details that the NPDES program must follow.
3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?** N/A
4. **Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?** N/A
5. **Is there a timing issue which might justify changing the time frame for implementation of federal requirements?** N/A
6. **Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?** N/A
7. **Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)** Yes, those applicants seeking a permit which has the potential for greater environmental or health effects will be required to use a process that is more extensive. For those permits that are de minimis or administrative changes, there will be limited or no public participation process. This will focus both staff, the public's and the permittee's resources on those permit actions that are of significance to the health and safety of the public .
8. **Would others face increased costs if a more stringent rule is not enacted?** N/A
9. **Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?** The permitting public process procedures for Category IV actions is more stringent than the federal requirements in that the Department will hold an informational hearing prior to developing the draft permit. The reason for this informational hearing is to allow the public a chance to provide comments

early in the process. By doing so, the Department is hoping to receive more meaningful comments when it can address the public's concerns.

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

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain? Some permit applicants will experience a longer public process while others will have an abbreviated process depending on the category that the permit is placed into. The process should lead to the drafting of permits that better address the public's concerns.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 13, 2000
To: Interested and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements - Public Participation
Procedures for Permit Decisions

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding public participation procedures for permit decisions. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal will place into the solid waste and water quality rules a system of categories which provide for increased public participation depending on the permitting action. The categories are based on the anticipated level of public concern, potential environmental harm and legal requirements. This rulemaking will also make various housekeeping changes to the rules.

The Department has the statutory authority to address this issue under ORS 459.045, 468B.048 and 468.020. These rules implement ORS 459.205 and 468B.050.

Hearing Process Details

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

Date: August 16, 2000
Time: 2:00 p.m.
Place: 811 S.W. 6th Avenue, Room 3A (3rd floor), Portland, Oregon
Deadline for submittal of Written Comments: August 18, 2000 - 5 p.m.
Agency staff will be the Presiding Officer at the hearing.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Susan Greco, 811 S.W. 6th Avenue, Portland, Oregon 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments.

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

Attachment B.5

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).
- Attachment E Category Flowcharts
- Attachment F Advisory Committee Members

What Happens After the Public Comment Period Closes

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is September 29, 2000. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

In 1998, an internal work group composed of regional and program staff, public affairs and the Director's office was created to address some concerns regarding the Department's process of public participation in permitting decisions. Of particular concern to the group was how to involve people earlier in the permit development process for those permits that are of great environmental or public

health concern. On the other hand, there are certain situations where a streamlined process is appropriate including renewals with no change or administrative changes. The workgroup felt that people not only want to review the permit record but also they want to have a real opportunity for input into the decision. The workgroup wanted to develop a process that would allow enough time for the detailed review and comment preparation that is necessary for significant permitting decisions.

The work group developed a system of categories that would provide increased public participation depending on the anticipated level of public concern, potential environmental harm and legal requirements regarding the permit action. The lowest category will include those permit actions over which the Department has no discretion and which have no environmental impact. The highest category includes new major sources or a major modification to that source. Additionally, the Department retained the discretion to 'bump' a source to a higher category based on anticipated public interest in the source, the compliance and enforcement history of the facility or owner, or the potential for significant environmental or public harm due to the location or type of facility. The proposed process is designed to involve the public earlier and more extensively for certain permit actions while providing a more abbreviated process for others. The Department is hoping that it will result in more meaningful comments earlier in the process when both the Department and other agencies are able to address those issues.

The highest category (Category IV) requires public participation earlier in the process on "major" permitting decisions by requiring the Department to hold a community involvement session in the community surrounding the site of the facility. This "open house" is in addition to the public hearing that occurs after a draft permit has been developed. This earlier public process will help ensure communication between the community, the applicant and the Department which is critical to defining issues, identifying options and fostering a sense of cooperation between each of these parties.

At this time, the Department is proposing to adopt rules which will categorize water quality and solid waste permit actions. These proposed rules also incorporate any process requirements which used to be housed in Division 14. The air quality program will be doing the same as they redefine their permitting programs in late 2000 or early 2001.

How was the rule developed?

An advisory committee met four times in 1998 and 1999 to work on the category process. Attachment F contains a list of the advisory committee members. Additionally in August 1998, the Department sent a memorandum to interested persons asking for comments on the proposed process.

The Department relied on the following documents:

- *Advisory Committee Minutes from meetings dated 11/9/98, 11/30/98, 12/17/98 and 1/27/99
- *Memorandum from Ed Druback and Susan Greco dated January 13, 1999
- *Memorandum from Susan Greco dated August 5, 1998 and comments received

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Susan Greco for times when the documents are available for review.

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

The proposed rules will affect both the public and those persons wishing to obtain either a water quality or solid waste permit from the Department. For some permits, the public participation process to obtain these permits may be abbreviated compared to current requirements; for other permits, the process may be more extensive.

How will the rule be implemented?

The advisory committee, in addition to discussing the categories, also spent significant time discussing how the Department could improve its public notices to better inform the public. Particularly they wished to see improvement in the information contained in the public notices on what the Department has the authority to address, what is beyond the scope of the permit and what the effects of the permit action would be on the public health and the environment. The environmental or health impacts of the source need to be related to the public in a way that is understandable. The Department is currently working on revising the Public Notice and Involvement Guide to reflect the changes in the public process. Included in the Guide will be a number of elements that should be included in public notices when the Department has that information available. Templates for creating public notices are being developed and training will be provided to staff on writing the notices in a less technical manner. The Department is also creating a pamphlet on how to provide effective public comments.

Are there time constraints?

There are no time constraints for adopting the permit public participation rule changes.

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:

Susan Greco
811 S.W. 6th Avenue
Portland OR 97204.
Telephone: (503) 229-5213 or toll free in Oregon (800) 452-4011

**State of Oregon
Department of Environmental Quality**

Memorandum

Date: August 16, 2000

To: Environmental Quality Commission

From: Susan Greco

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: August 16, 2000, 2 p.m.
Hearing Location: 811 S.W. 6th Avenue, Portland - Room 3A
Title of Proposal: Public Participation Procedures for Permit Decisions

The rulemaking hearing on the above titled proposal was convened at 2:00 p.m. No one attended the hearing and the hearing was closed at 2:30 p.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Public Participation Procedures for Permit Decisions

Department's Evaluation of Public Comment

Comments by Oregon Refuse and Recycling Association

1. Did not receive the proposed rulemaking documents until August 17th so did not have time to review and comment on the proposal. Requests additional time to comment on the proposal.

The rulemaking proposal package was mailed to Max Brittingham of Oregon Refuse and Recycling Association on July 13, 2000. This allowed ORRA over a month to prepare comments on the proposal. The comment period will not be extended.

Comments by Waste Management

1. Include a definition of the term "permit action" which is used throughout the new rules.

The Department agrees with this comment and will add a definition for permit action.

2. Revise OAR 340-093-0070 to make the 180 day requirement for submittal of a permit application advisory only.

Under OAR 340-014-0020 the Department required that all permit applications must be received 60 days before the permit is needed unless another timeframe is required by law. Under OAR 340-093-0070 a permit application for a renewal must be submitted 180 days before the permit expires. The Department decided, for the convenience of applicants, to make the time frames the same for new, modification and renewal applications. The Department will revise the rule language to require that a solid waste permit application for new permits and modifications must be submitted 60 days before the permit is needed. Permit renewals still must be submitted 180 days before the permit expires.

3. Revise OAR 340-093-0070(2)(a) to allow the Department to extend the time for an applicant to submit additional information if necessary.

The Department agrees with this comment and will make the change recommended by Waste Management.

4. Delete OAR 340-093-0079(2)(b).

The language was taken from OAR 340-014-0020(4)(b) and is intended to encompass the situation where some additional fact-finding measures are necessary for the Department to review the permit application. Such measures might include additional tests of equipment or even additional public participation measures. Since the rule language is not mandatory but merely provides the Department with an additional tool, the Department will not be deleting this provision.

5. Add to OAR 340-093-0070(7)(a)(i) that a permit modification application for the sale or exchange of the facility will be approved if the transferee assumes all responsibility for the permit requirements.

The language in OAR 340-093-0070(7)(a) is taken directly from OAR 340-014-0015 and is not a new requirement. The Department may require the transferee to do more than merely state that they will assume the permit responsibilities. The Department does not agree that the rule should specifically state that a permit modification must be issued.

6. Change OAR 340-093-0070(7)(a)(ii) to only require a permit modification application for those changes in the facility that are "substantial".

The language in OAR 340-093-0070(7)(a) is taken directly from OAR 340-014-0015, thus it is not a new requirement that a modification application must be submitted to the Department for all changes at the facility. To limit this requirement to only "substantial" changes would be a significant change from current requirements.

7. Add language to OAR 340-093-0070(7)(b) that allows the Department to accept a renewal application that is filed less than 180 days before the permit expires.

The Department has always required that a permit renewal application must be filed at least 180 days before the permit expires. Section (iv) specifically states that the Department 'may' require the permittee to close the site if the application is not timely filed. Thus the Department is not required to order the closure of the facility. Additionally the failure to submit a renewal application 180 days prior to the expiration of the permit is considered a violation and subject to civil penalties under OAR Chapter 340, Division 12.

8. Reconcile the language in OAR 340-093-0070(7)(b)(iii) with OAR 340-093-0070(7)(b)(iv).

The Department agrees that the language in the two sections should be reconciled.

9. Delete OAR 340-093-0100(3)(d) which allows the Department to move a permit action to a higher category based on "A change in the nature of the facility or the quantity or types of solid waste received, processed, or disposed of at the facility."

This provision was included to address those situations where a permit action has been classified at a lower category but the changes in the facility warrant a higher level of

public participation. For example, a permit renewal for a transfer station has been placed into category 2. The renewal application could include significant changes in the facility such as the amount or type of material that may be disposed of at the facility. The Department feels that, while it may not be necessary to process all renewals at the category 3 level, some facilities, based on proposed changes at renewal time, may warrant processing at the higher category level.

10. Delete OAR 340-093-0100(4)(c) which requires the public notice of permit action to include a "Description of permitted substances stored, disposed of, discharged or emitted including whether there has been an increase or decrease in the substance since the last permit action for the facility."

This is not a new requirement but instead is based on OAR 340-011-0007 which listed all items that needed to be included in a permit public notice. The public needs to know what substances are being stored, disposed of or discharged from a facility for the public to be able to provide comments on the permit action. This rule language does not require that the Department list every element of the proposed permit action. In fact in the past, the Department has provided a general summary of the facility and what the facility is proposing. The Department disagrees with this comment and will not be changing this requirement.

11. Delete OAR 340-093-0100(4)(i) which requires the public notice of permit action to include "A summary of the discretionary decisions made by the Department in drafting the permit."

The advisory committee felt that this was one of the most important elements to the public notice. If the public does not have an understanding of what discretionary decisions were made by the Department, the public does not know what parts of the proposed permit they are able to effectively comment on. Waste Management is concerned that because there are so many discretionary decisions for solid waste facilities, that listing all those items will make the public notice unworkable. The rule does not require a listing of all discretionary decisions but rather a summary of those decisions. The Department does not believe that this requires the Department to list every decision or even to summarize every decision but rather to provide an overview or brief summary of the most important discretionary decisions made by the Department.

12. Add to OAR 340-093-0113 that the Department must first consult with the permittee prior to initiating a modification of a permit and provide 30 days notice of the proposed permit modification.

The rule language contained in OAR 340-093-0113 was formerly contained in OAR 340-014-0040. This is not a new requirement. Requiring the Department to consult with the permittee prior to a Department initiated modification would be a new requirement. These modifications generally occur due to changing conditions such as rule changes that are now applicable to the facility. The Department does not feel that consultation or prior notice is necessary in these situations.

12. Revise OAR 340-093-0115(3)(c) so that the existing permit remains in effect until after a final order is issued in the hearing.

OAR 340-093-0115(3) sets forth the procedures for revocation or suspension of a permit without prior notice based on serious danger to the public health, safety or the environment. The basis for this procedure is derived from ORS 183.430(2). Under that statute, the permit does not continue in effect if a request for a hearing is received. The permit is immediately revoked. An immediate revocation is based on public or environmental concerns so it does not make sense to allow the permittee to continue to operate in a manner that puts the public or the environment at risk.

DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal
for**

Public Participation Procedures for Permit Decisions

Department's Changes to Rules Based on Public Comment

Changes based on Waste Management's comments

OAR 340-093-0030 and 340-045-0010

Based on comment #1 add a definition into OAR 340-093-0030 and 340-045-0010 that defines Permit Action as follows:

"Permit Action" means the issuance, modification, renewal or revocation by the Department of a permit.

OAR 340-093-0070

Proposed rule language

(1) Any person wishing to obtain a new, modified, or renewal permit from the Department must submit a written application on a form provided by the Department. The Department must receive applications at least 180 days before a permit is needed unless another timeframe is specified by law. All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility.

Based on comment #2 rule language has been changed to:

Any person wishing to obtain a new, modified, or renewal permit from the Department must submit a written application on a form provided by the Department. The Department must receive renewal applications at least 180 days before a permit is needed ~~unless another timeframe is specified by law. All other applications must be received 60 days before a permit is needed.~~ All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility.

Proposed rule language:

(2)(a) If the Department determines that additional information is needed it will promptly request the needed information from the applicant. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request.

Based on comment #3 rule language has been changed to:

(2)(a) If the Department determines that additional information is needed it will promptly request the needed information from the applicant. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request or such other time as the Department establishes in writing.

Proposed rule language:

(7)(iii) If a completed application for renewal of a permit is filed with the Department in a timely manner before the expiration date of the permit, the permit does not expire until the Department takes final action on the renewal application.

(iv) If a completed application for renewal of a permit is not filed 180 days before the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-094-0100 or 340-095-0050.

Based on comment #8 rule language has been changed to:

(iii) If a completed application for renewal of a permit is filed with the Department in a timely manner before the expiration date of the permit, the permit does not expire until the Department takes final action on the renewal application.

(iv) If a completed application for renewal of a permit is ~~not~~ filed with the Department in a timely manner 180 days before the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-094-0100 or 340-095-0050.

Changes based on Department staff's comments

OAR 340-045-0027 and 340-093-0100

add section (6) to each rule which reads as follows:

(6) All permit applications which have been received by the Department prior to the effective date of this rule, will be processed under this rule (under the category process) as best as is practicable.

OAR 340-045-0027

Proposed rule language:

(2)(a)(C) Issuance of a new or renewal WPCF permit for an on-site sewage system with a design flow less than 20,000 gallons per day regulated by OAR 340-071 and meeting the siting and design criteria of that division.

Based on staff comment rule language has been changed to:

(2)(a)(C) Issuance of a new or renewal WPCF permit for an on-site sewage system with a design flow less than 20,000 gallons per day, regulated by OAR 340-071, ~~and meeting the siting and design criteria of that division.~~

Proposed rule language:

(2)(b)(B) Issuance of a renewal WPCF individual permit including a WPCF permit for an on-site sewage system with a design flow greater than 5,000 gallons per day regulated by OAR 340-071 unless otherwise specified in this rule.

Based on staff comment rule language has been changed to:

(2)(b)(B) Issuance of a renewal WPCF individual permit, regulated by OAR 340-045, including a renewal of a WPCF permit for an on-site sewage system with a design flow of 20,000-greater than 5,000 gallons per day or greater, regulated by OAR 340-071, ~~unless otherwise specified in this rule~~

Proposed rule language:

(2)(c)(E) Issuance of a new WPCF individual permit including a WPCF permit for an on-site sewage system with a design flow greater than 5,000 gallons per day regulated by OAR 340-071 unless otherwise specified in this rule

Based on staff comment rule language has been changed to:

(2)(c)(E) Issuance of a new WPCF individual permit, regulated by OAR 340-045, including a new WPCF permit for an on-site sewage system with a design flow greater than of 520,000 gallons per day or greater, regulated by OAR 340-071, ~~unless otherwise specified in this rule~~

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Proposed rule language:

(6) Public Participation. For on-site disposal systems with a design flow of 5,000 gallons per day or greater, public participation will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits.

Based on staff comment rule language has been changed to:

(6) Public Participation. For on-site sewage disposal systems with a design flow of 5,000 gallons per day or greater, public participation will be in accordance with OAR Chapter 340, Division 45 as it applies to WPCF permits.

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