

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 11/29/2000



State of Oregon
**Department of
Environmental
Quality**

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AGENDA

ENVIRONMENTAL QUALITY COMMISSION MEETING

November 29, 30, and December 1, 2000
Heathman Hotel and DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon

Notes:

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

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. on Friday, December 1, 2000 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.

Heathman Hotel
1001 SW Broadway
Portland, Oregon
Wednesday, November 29, 2000
Beginning at 10:00 a.m.

Environmental Quality Commission Summit with Department of Environmental Quality
Staff

Thursday, November 30, 2000
DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon
Beginning at 10:00 a.m.

A. Action Item: Contested Case No. WMC/T-ER-107 Dan's Ukiah Service

B. Action Item: Contested Case No. WMC/SW-NWR-98-249 Stark Trucking Inc.

- C. **Informational Item:** Presentation by Bonneville Power Administration Regarding Power Marketing and Water Quality
- D. **Action Item:** US Fish and Wildlife Services Request for a Waiver to the Total Dissolved Gas of the Water Quality Standard

Friday, December 1, 2000
DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon
Beginning at 8:30 a.m.

- E. **Approval of Minutes**
- F. **Informational Item:** Discussion on Total Maximum Daily Loads (TMDLs) and an Update on the Tualatin River Basin Rule
- G. **Consideration of Tax Credit Requests**
- H. **†Rule Adoption:** Acid Rain and New Source Performance Standards
- I. **†Rule Adoption:** Lane County Regional Air Pollution Authority (LRAPA) Title 34, Permit Fees and State Implementation Plan (SIP) Revision
- J. **†Rule Adoption:** Rules Regarding Open Burning
- K. **†Rule Adoption:** Mediation Confidentiality Rules
- L. **†Rule Adoption:** Repeal of the Water Quality Certification Rules for Grazing Activities
- M. **Commissioners' Reports**
- N. **Director's Report**

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

The Commission has set aside January 11-12, 2001, for their next meeting. It will be held in Bend, 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.

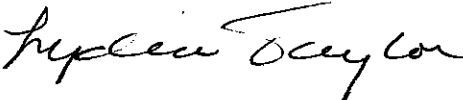
November 8, 2000

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 2, 2000

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director 

Subject: Agenda Item A, Appeal of Order for Assessment of Civil Penalty and Department Order in the Matter of Daniel Vincent dba Dan's Ukiah Service, Case No. WMC/T-ER-99-107, EQC Meeting: November 30, 2000

Statement of Purpose

Daniel Vincent appealed from the Order for Assessment of Civil Penalty and Department Order, dated February 10, 2000. The Order found Vincent liable for a civil penalty in the amount of \$57,200 for failing to obtain an underground storage tank general operating permit registration certificate and \$6,600 for failing to provide records to the Department when requested to do so.

Background

The Findings of Fact made by the hearing officer are summarized as follows:

Dan Vincent (Vincent) owned and operated three underground storage tanks (USTs) located at a gasoline station at 203 Main Street in Ukiah Oregon. Starting in 1988, the Department periodically mailed notices and information to UST owners and operators regarding the fact that all USTs needed to be either upgraded or decommissioned prior to December 1998. If the UST had not been upgraded prior to December 22, 1998, owners or operators could normally continue to dispense from the UST until March 22, 1999 in order to empty them. After the March 22, 1999 deadline, an underground storage tank general operating permit registration certificate or temporary closure of the UST was required.

Between March 23, 1999 and May 13, 1999 Vincent stored and dispensed gasoline and diesel from the USTs. On March 23, 1999, a Department inspector conducted an inspection and requested records on the USTs. Vincent refused to provide the Department with the records. A Notice of Noncompliance was issued to Vincent on April 7, 1999 which required Vincent to immediately cease dispensing fuel from his USTs and to produce the requested records. Vincent failed to produce the records. He also upgraded one of the USTs and placed the other two into closure after June 1999.

A Notice of Violation, Department Order and Assessment of Civil Penalty was issued on August 6, 1999 which found Vincent liable for two civil penalties. The first, in the amount of \$57,200 was for failure to obtain an underground storage tank general operating permit registration certificate prior to operating an UST. The USTs were operated for 52 days and a separate

Memo To: Environmental Quality Commission

Agenda Item A, Appeal of Order for Assessment of Civil Penalty and Department Order in the Matter of Daniel Vincent dba Dan's Ukiah Service, Case No. WMC/T-ER-99-107, EQC

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penalty was assessed for each day. The second, in the amount of \$6,600 was for the failure to provide access to UST records. On September 10, 1999, Vincent appealed the Notice and requested a hearing. A hearing was held on December 16, 1999. The hearing officer held that Vincent was liable for both civil penalties.

On February 24, 2000, Vincent filed a timely appeal of the Order. In his Exceptions, Vincent admits that he continued to dispense gasoline after the USTs were required to be decommissioned but states that he had verbal permission from the Department to continue to dispense fuel until the USTs were empty. Additionally he states that he is unable to pay the penalties.

Authority of the Commission with Respect to the Issue

The Commission has the authority to hear this appeal under OAR 340-011-0132.

Alternatives

The Commission is reviewing the proposed order, including the recommended findings of fact and conclusions of law, of the hearing and it may substitute its judgment for that of the Hearing Officer except as noted below.* This proposed order was issued under the new statutes and rules governing the Hearing Officer Panel Pilot Project.† Under these 1999 statutes, DEQ's contested case hearings must be conducted by a hearing officer appointed to the panel, and the EQC's authority to review and reverse the hearing officer's decision is limited by the statutes and the rules of the Department of Justice that implement the project.‡ The most important limitations are as follows:

- (1) The Commission may not modify the form of the proposed order in any substantial manner without identifying and explaining the modifications. §

- (2) The Commission may not modify a recommended finding of historical fact unless it finds that the recommended is not supported by a preponderance of the evidence. **
Accordingly, the Commission may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.

* OAR 340-011-0132.

† Or Laws 1999 Chapter 849.

‡ *Id.* at § 5(2); § 9(6).

§ *Id.* at § 12(2).

** *Id.* at § 12(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

Memo To: Environmental Quality Commission

Agenda Item A, Appeal of Order for Assessment of Civil Penalty and Department Order in the Matter of Daniel Vincent dba Dan's Ukiah Service, Case No. WMC/T-ER-99-107, EQC

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(3) The Commission may not consider any new or additional evidence, but may only remand the matter to the Hearing Officer to take the evidence. *

The rules implementing the new statutes also have more specific provisions addressing how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.†

In addition, there are a number of procedural provisions that have been established by the Commission's own rules. These include:

(1) The Commission will not consider matters not raised before the hearing officer unless it is necessary to prevent a manifest injustice. ‡

(2) The Commission will not remand a matter to the Hearing Officer to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing.

Attachments

- A. Appellee's Brief in Reply to Appellant's Exceptions and Brief, dated April 24, 2000
- B. Petitioner's Exceptions and Brief, dated March 29, 2000
- C. Letter from Susan Greco, dated March 1, 2000
- D. Petition for Commission Review, dated February 24, 2000
- E. Order for Assessment of Civil Penalty and Department Order, dated February 10, 2000
- F. Order Assessing Civil Penalty, dated February 10, 2000
- G. Department's Hearing Memorandum, dated December 10, 1999
- H. Exhibits from Hearing of January 28, 1999
 - 1. Notice of Contested Case Rights and Procedures
 - 2. Notice of Violation, Department Order and Assessment of Civil Penalty
 - 3. Answer and Request for Hearing
 - 4. Notice of Hearing
 - 5. Tankline
 - 6. Notification for Underground Storage Tanks and Permit Application
 - 7. Quitclaim Deed

* *Id.* at § 8; OAR 137-003-0655(4).

† OAR 137-003-0655(5); 137-003-0660.

‡ OAR 340-011-132(3)(a).

Memo To: Environmental Quality Commission

Agenda Item A, Appeal of Order for Assessment of Civil Penalty and Department Order in the Matter of Daniel Vincent dba Dan's Ukiah Service, Case No. WMC/T-ER-99-107, EQC

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8. Tax Statements
9. Site Drawing
10. Complaint Investigation Report
11. Notice of Noncompliance
12. Phone Call Logs
13. Platt Map of Ukiah

Reference Documents (available upon request)

OAR Chapter 340, Division 11, 12, 122 and 150; Chapter ORS 468

Report Prepared By: Susan M. Greco

Phone: (503) 229-5213

Date Prepared: November 2, 2000

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

State of Oregon
Department of Environmental Quality

IN THE MATTER OF:
DANIEL VINCENT,
doing business as Dan's Ukiah Service,

Respondent/Appellant.

) APPELLEE'S BRIEF
) IN REPLY TO APPELLANT'S
) EXCEPTIONS AND BRIEF

) No. WMC/T-ER-99-107
) UMATILLA COUNTY

APR 26 2000
OFFICE OF THE DIRECTOR

The Department replies to Appellant's Exceptions and Brief as follows:

I. CASE HISTORY

On August 6, 1999, the Department issued Appellant, Daniel Vincent, doing business as Dan's Ukiah Service, Notice of Violation, Department Order and Assessment of Civil Penalty (Notice) No. WMC/T-ER-99-107. The Notice assessed Appellant a \$57,200 civil penalty for violation of Oregon Administrative Rules (OAR) 340-150-0020(1), which prohibits operation of an underground storage tank (UST) after December 22, 1998, without first having obtained a general permit registration certificate from the Department, and a \$6,600 civil penalty for violating Oregon Revised Statutes (ORS) 466.765(6), which requires UST owners and permittees to allow Department agents at reasonable times to have access to records relating to USTs. Appellant appealed the Notice and requested a contested case hearing. On December 16, 1999, the Department held a contested case hearing on the matter. On February 10, 2000, the Hearing Officer issued his decision, ruling that Appellant had violated OAR 340-150-0020(1) and affirming the \$57,200 civil penalty, and ruling that Appellant had violated ORS 466.765(6) and affirming the \$6,600 civil penalty. Appellant timely appealed the Hearing Officer's decision and filed a brief in support of his appeal.

II. REPLY TO EXCEPTIONS

1. Respondents Seeking a Penalty Reduction Based on Inability to Pay Have the Responsibility to Provide the Department or Commission with Documentary Evidence Concerning the Respondent's Inability to Pay the Full Amount

Respondent takes exception to the civil penalty, based on his inability to pay. In imposing civil penalties, the Department is to consider, among other factors, the "economic and

1 financial conditions of the person incurring the penalty.” ORS 468.130(2)(c). If the Respondent
2 seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department
3 or Commission documentary evidence concerning Respondent’s inability to pay the full penalty
4 amount. OAR 340-012-0045(4).

5 Appellant raised the issue of his ability to pay at the contested case hearing. Appellant’s
6 father, Douglas Vincent, represented him at the hearing and was his only witness. Douglas
7 Vincent testified in general as to his own financial resources and provided some testimony as to
8 Appellant’s financial situation, but presented no documentary evidence of Appellant’s inability to
9 pay the full penalty amount. Lacking such evidence, the Hearings Officer correctly determined
10 that he had no authority to reduce the penalty and found Daniel Vincent liable for the full civil
11 penalty of \$63,800.

12 III. CONCLUSION

13 Because the Hearings Officer correctly applied the law to the evidence presented at
14 hearing, the Commission should uphold the Hearings Officer’s Final Order.

15 April 24, 2000
16 Date


17 Roger D. Dilts
18 Environmental Law Specialist
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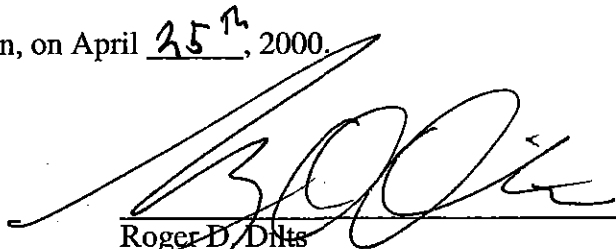
CERTIFICATE OF MAILING

I hereby certify that I served APPELLEE'S BRIEF IN REPLY TO APPELLANT'S EXCEPTIONS AND BRIEF in case no. WMC/T-ER-99-107 upon:

Susan Greco
Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

Daniel Vincent
P.O. Box 246
Ukiah , OR 97880

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid at the U.S. Post Office in Portland, Oregon, on April 25th, 2000.



Roger D. Dilts
Department of Environmental Quality

RE: Appeal to Environmental Quality Commission by Dan's Ukiah Service

In response to our fine accessment. We feel that it is grossly unfair in any amount, as we feel we have done no wrong. It is true that we pumped gas beyond the cut of date. This was done with verbal permission from the D.E.Q. office, whether they will admit it or not. The D.E.Q. office was notified approximately a month before for the cut of date. They were informed that due to bad weather, lack of traffic and hunter participation we were left more gas than we could pump out on time. They assured us there would be no problem if we pumped it out in a timely manner or as soon as possible. We also told them we were negotiating a sale of the last of our logging equipment and assured the D.E.Q. that we would be able to comply with all the new rules and regulations on completion of this transaction. This we have done.

The fact that Jim Burnes or Pacific Pride (Standard Oil) has set up a new station across the street from us in a town of about 250 people and vowed to run us out of business by fair means or foul should be taken into consideration.

We have had no spills or contamination since we have had this. This can be verified through the tests we were asked to submit. We are the oldest continueing business in this community and we have been able to stay alive because we are a mom and pop operation. Our small business was not built on profits generated by it's operation. This business was built with proceeds from the sale of the logging equipment. We realized at the time that our little town is dying and we felt that reinvestment of our funds in our community was the best thing we could do to help the town. We understand that the D.E.Q. feels that we have had ten years to prepare for this catastrophic change over, but the last ten years in our family has been a time of ill health and huge medical and doctor bills, which we can document. Dougs ill health started when he was shot in a truck high jacking. Which left him permanently disabled. Just about the time we were going to start updating our tanks he had a heart attack. Then later a Quadruple heart by ^{State of Oregon} ~~State of Oregon~~ ^{Department of Environmental Quality} ~~Department of Environmental Quality~~ But even with the disability and the whole family working together we have managed to stay self sufficient and we think an ^{asset} ~~asset~~ to our country.

Dan's Ukiah Service
P.O. Box 746
Ukiah, OR 97350
541-427-3010

RECEIVED
MAR 29 2000

OFFICE OF THE DIRECTOR

page 2

We have never taken or even applied for any state assistance of any kind. We feel this punitive assessment is unfair and even unamerican because it was instigated and promoted in an effort to control the price of gas and diesel sales in this area. Reinvesting our life savings in Ukiah's infrastructure has not been a profitable venture but we hope that in the long term the recreation industry may replace the loss of the logging in our area. For this reason and the fact that we have a son with a learning disorder we have stayed in Ukiah. We are not a popular family in Ukiah as Doug is very outspoken about all government waste and we have to work so we do not socialize much. We are also unpopular because we are color blind and the town is very much against Indians, Asians, and Mexicans.

We started to apply for the Grant money but found at the last that we just couldn't do it. We all feel very strongly that it is morale wrong to make the state or taxpayers support us or anyone else that can suport themselves.

In view of the fact that we feel we had verbal permission to go ahead and pump out our left over gas we feel that if there was any damage or injustice done that we are the injured party. As when these charges were brought against us at the direction and insistance of Burns Oil(Jim Burns) and Grannys Store (Tom Gatens) both our competitors. Since these charges were filed and adver-tized in the newspaper at the direction of the D.E.Q. We have had a considerable loss to our business. All the city, county, state and federal workers were told not to deal with us.

We further feel that in reading the constitution according to common law, there must be an injured party in order to access punitive damage. We also find in reading the constitution that any dispute of more than \$20.00 will be settled by a jury of our peers. If we cannot get this settled we intend to ask the American Civil Liberties Union to help us in any further hearings or court procedures.

Some of the problem seems to be that I ordered the D.E.Q. officer off of the property and I was not courteous to him. In my mind I was sure he came at the request of my competition.

page 3

Now I hope that this dispute can be settled without further action as the cost to us financially and the cost to you politically is really not worth further conflict.

If the D.E.Q. is really interested in the oil and gas contamination clean up in Ukiah I can show them where to drill. It has been spilled there over the last 40 to 50 years but I see no reason to damage someone even tho it would hurt our competition.

The only way we could pay a fine like this would be to sell the business. Given Ukiahs situation today this would probably not even bring enough to pay the fine.

Sincerely,

Doug V. Vint

THIS WILL ^{ASSURE} of what we are up against. PAT

125th YEAR



■ Oregon State hires Ritchie McKay to lead basketball program.

— SPORTS, Page 1B —

SATURDAY

■ March 25, 2000
■ No. 125
■ 5 Sections, 52 Pages

WEEKEND

EAST



OREGONIAN

An edition of the EAST OREGONIAN Serving Morrow, Gilliam and Umatilla counties since 1875

Ukiah's troubled future

"There's going to be lots of problems there and people are just going to say, 'I'm not going to hassle with it. I'll take my bike someplace else. So we're going to lose people there, and slowly but surely our town is just going to die — wither away.'"

Dee Croteau
co-owner of the Ukiah Thicket Cafe & Bar



Dee Croteau, who with her husband Bill owns the Ukiah Thicket Cafe & Bar, says that government restrictions on U.S. Forest Service land is killing off businesses in this remote small town. Ukiah is virtually surrounded by Forest Service land.

Staff photo by Mick Peterson

Ukiah businesses being choked out by federal forest regulations

By NICK PETERSON
of the East Oregonian

UKIAH — Government regulations on national forest service lands are choking the life out of the businesses in this remote town of 250 people, according to Dee Croteau.

Croteau and her husband, Bill, own the Ukiah Thicket Cafe & Bar, one of four Main Street businesses in town.

The "roadless initiative" of the Clinton administration could be the final blow for the businesses at remain, Croteau said.

If they shut down the roads in this area, then that's it, we're out of here, no ifs, ands, or buts," Croteau said. "Everybody will be putting locks on their doors."

The roadless plan suspends road construction or maintenance on large tracts of federal Forest Service land, and even includes removing some existing

roads. It also restricts off-road travel.

More than 60 million acres of forest service land nationwide is affected, with more than 2 million acres of that in Oregon, including large portions of the Umatilla and Wallowa-Whitman national forests.

Ukiah, is virtually surrounded by national forest service lands, and the businesses there survive mainly on the traffic generated by people who use the forests for either recreation or a means of livelihood — including loggers, ranchers, hunters, hikers, mushroom pickers, and ATV and snowmobile enthusiasts.

When asked what percent of her business comes from people using the Forest Service lands, Croteau doesn't hesitate.

"That's easy — I would say 97 percent. And if you ask any of the businesses around here, they'll say the same thing."

Croteau isn't sure where all of

the regulations come from, but she does know any time activity gets restricted in the forest it takes another bite out of her already meager business and hurts the town.

It began with the cutting back of logging on the Forest Service lands, she said.

"This town used to thrive before they put all the restrictions on the logging."

The Croteaus have lived in Ukiah for five years and bought the Thicket Cafe & Bar four years ago.

"When we first bought this place there was another restaurant across the street," Croteau said. "We both did what we could to stay above water."

But last year that restaurant had to close because of a lack of business, and the Croteaus also had to cut back.

"We worked with less bodies

Roadless area restrictions limit access to forest lands

In October 1999 President Clinton announced his "Memorandum on Roadless Areas," an executive initiative which is intended to limit public access to large tracts of National Forest Service lands.

The President noted that there are more than 40 million acres classified as "roadless" in the 192 million acres of National Forest Service land.

"In weighing the future of these lands, we are presented with a unique historic opportunity," Clinton said. "Accordingly, I have determined that it is in the best interest of our nation and of future generations, to provide strong and lasting protection for these forests, and I am directing you (the National Forest Service) to initiate administrative proceedings to that end."

The President charged the Forest Service with developing a proposal that would determine which lands to include and

See Roadless areas/2A

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By JOHN HU
Associated Pr

WASHINGTON
Northwest condition for carbon dioxide to an environmental report released Monday.

Not all of the report is about the environment from California. In many places, it is improving old-growth forests elsewhere in North America.

The report, released by the Environmental Protection Agency, is the original "state of the environment" report done every five years.

The group report, called the "state of the environment" report, defines the entire group definition state, Montana, and eastern Alaska and Canada.

"The report is not very high, but it isn't doing the report's things around the world.

One of the problems is sprawl, with a decrease in Washington state every acre or so of Idaho lose report said.

The report by 2.2 million since 1990 years at the environment.

There are also trucks and carbon dioxide. That's a problem in that area, region is said.

But the bright spots are invasive species in the five cleanest estuaries group four.

See Ukiah/2A

Ukiah divided by allegations of misman

surrounded by Forest Service land.

Staff photo by Nick Peterson

WHEN NO ONE ELSE CARES MY DOG STILL LOVES ME



Ukiah businesses being choked out by federal forest regulations

By NICK PETERSON of the East Oregonian

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See Ukiah/2A

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See Roadless areas/2A

report, called the document the first state-of-the-environment report for the entire Northwest, a region the group defines as including Washington state, Oregon, Idaho, western Montana, northern California, southern Alaska and British Columbia, Canada.

"The overall prognosis is that we're not very healthy — our environment isn't doing too well," said John Ryan, the report's author. "We need to turn things around quickly."

One of the biggest problems is sprawl, which has doubled its pace from a decade ago, the report found. Washington loses an acre to development every 7.5 minutes, Oregon loses an acre once every 17 minutes, and Idaho loses one every 22 minutes, the report said.

The region's population has grown by 2.2 million, or nearly 17 percent, since 1990, and will double in 32 years at that rate, Northwest Environment Watch said.

There are another 1.5 million cars and trucks on the road since 1990 and carbon dioxide emissions are up 13 percent. Grazing was so prevalent that unaltered grassland in the region is extremely rare, the group said.

But the 116-page report points to bright spots. While cargo ships dump invasive species into estuaries, Washington's Willapa Bay is one of the cleanest and least degraded large estuaries in the lower 48 states, the group found.

Irrigators, leadership divided by allegations of mismanagement

■ Personal attacks cloud an already confusing issue

By TERI MEEUWSEN of the East Oregonian

IRRIGON — Several water canal users here claim the West Extension Irrigation District is mismanaged and hindered by conflicts of interest.

Management and the board of directors respond that users are failing to look at the whole picture.

But both sides agree the clash is getting uglier, and that already tattered communication lines are stretched even thinner by personal attacks.

For the last couple of years, a group of canal users from Boardman, Irrigon and Umatilla have claimed that while

the district's spending and fees have gone up, maintenance work on the 84-year-old canal that serves 10,400 acres of water rights has gone undone. Lack of attention to cracks in the canal could cause bigger problems in the future, critics say.

But the district manager and the board said that fixing the canal and other capital improvements must be balanced with other priorities, such as conforming to state and local policies.

"I bet 99.8 percent of them don't understand how complicated it is to get their water to them," said District Manager Bev Bridgewater.

Some canal users don't see it that way.

Money, money, money

Many canal users think the increases in assessments for their water rights

have been unfair. For some water rights, the price per acre above a base amount went from about \$30 to \$39 over four years.

The reasons for the increase include capital improvements and other regulatory projects, or making the fees legal, Bridgewater said.

Some users expressed concerns that there was more cash on hand before Bridgewater became district manager, but now they must continue to pay increased assessments and are not seeing enough improvements on the canal.

Bridgewater said the cash carryover when she arrived had to be used to keep assessments down to where they are now. It was used in part for capital improvements to pumps that are at least 30 years old and canal lines, as

See Irrigators/3A



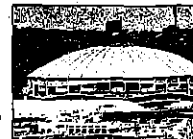
Eugene White, the director for division 1 of the West Extension Irrigation District, points to some of the cracked and worn pieces of the 84-year-old canal. White said he supports the canal users in the differences between the group and the management.

Staff photo by Teri Meeuwsen

EO Poll

With the cost of gas putting a hole in wallets and checking accounts, we wanted to know if the prices would affect your summer vacation plans. Here's what you said (91 people cast their votes online):

■ Definitely 43% ■ Probably 19% ■ Possibly 10% ■ No 26% ■ Unsure 2%



Kingdome

The Seattle stadium meets its demise on Sunday. — Page 5B —

Mostly sunny

Weather forecast, 2A

Inside

■ Business 7B ■ Editorial 6A
■ Classified 1C ■ Local 3A
■ Comics 4B ■ Obituaries 5A
■ Community 6B ■ Records 5A
■ Dear Abby 4B ■ Sports 1B

THIS will also give you an idea of what we are up against. PAT



■ Oregon State hires Ritchie McKay to lead basketball program.
— SPORTS, Page 1B —

SATURDAY
■ March 25, 2000
■ No. 125
■ 5 Sections, 52 Pages

WEEKEND

EAST



OREGONIAN

OREGONIAN Serving Morrow, Gilliam and Umatilla counties since 1875 50 CENTS

Ukiah's troubled future

There's going to be lots of problems there and people are just going to say, 'I'm not going to stay. I'll take my bike someplace else. So we're going to lose people there, and slowly but surely our town is just going to die — wither away.'

Dee Croteau
co-owner of the Ukiah Thicket Cafe & Bar



Businesses being choked out by federal forest regulations

roads. It also restricts off-road travel.
More than 60 million acres of forest service land nationwide is affected, with more than 2 million acres of that in Oregon, including large portions of the Umatilla and Willowa-Whitman national forests.
Ukiah, is virtually surrounded by national forest service lands, and the businesses there survive mainly on the traffic generated by people who use the forests for either recreation or a means of livelihood — including loggers, trappers, hunters, hikers, mushroom pickers, and ATV and snowmobile enthusiasts.
When asked what percent of her business comes from people using the Forest Service lands, Croteau doesn't hesitate.
"That's easy — I would say 97 percent. And if you ask any of the businesses around here, they'll say the same thing."
Croteau isn't sure where all of

the regulations come from, but she does know any time activity gets restricted in the forest it takes another bite out of her already meager business and hurts the town.
It began with the cutting back of logging on the Forest Service lands, she said.
"This town used to thrive before they put all the restrictions on the logging."
The Croteaus have lived in Ukiah for five years and bought the Thicket Cafe & Bar four years ago.
"When we first bought this place there was another restaurant across the street," Croteau said. "We both did what we could to stay above water."
But last year that restaurant had to close because of a lack of business, and the Croteaus also had to cut back.
"We worked with less bodies

Roadless area restrictions limit access to forest lands

In October 1999 President Clinton announced his "Memorandum on Roadless Areas," an executive initiative which is intended to limit public access to large tracts of National Forest Service lands.
The President noted that there are more than 40 million acres classified as "roadless" in the 192 million acres of National Forest Service land.
"In weighing the future of these lands, we are presented with a unique historic opportunity," Clinton said. "Accordingly, I have determined that it is in the best interest of our nation and of future generations, to provide strong and lasting protection for these forests, and I am directing you (the National Forest Service) to initiate administrative proceedings to that end."
The President charged the Forest Service with developing a proposal that would determine which lands to include and

See Ukiah/2A

See Roadless areas/2A

Northwest's environment gets mixed reviews

■ The region has grown by 2.2 million since 1990
By JOHN HUGHES
Associated Press

WASHINGTON — Several Pacific Northwest ecosystems are in critical condition from sprawl, grazing and carbon dioxide emissions, according to an environmental report to be released Monday.
Not all of the news is bad, according to the report that attempts to document the "state of the Northwest" from California to Alaska. Air quality in many Northwest cities has been improving and the region has more old-growth forests than anywhere else in North America.
The report by Seattle-based Northwest Environment Watch, an environmental research group, updates the original "state of the Northwest" report done in 1994.
The group, in releasing the original report, called the document the first state-of-the-environment report for the entire Northwest, a region the group defines as including Washington state, Oregon, Idaho, western Montana, northern California, southeastern Alaska and British Columbia, Canada.

"The overall prognosis is that we're not very healthy — our environment isn't doing too well," said John Ryan, the report's author. "We need to turn things around quickly."
One of the biggest problems is sprawl, which has doubled its pace from a decade ago, the report found. Washington loses an acre to development every 7.5 minutes, Oregon loses an acre once every 17 minutes, and Idaho loses one every 22 minutes, the report said.
The region's population has grown by 2.2 million, or nearly 17 percent, since 1990, and will double in 32 years at that rate, Northwest Environment Watch said.
There are another 1.5 million cars and trucks on the road since 1990 and carbon dioxide emissions are up 13 percent. Grazing was so prevalent that unaltered grassland in the region is extremely rare, the group said.
But the 116-page report points to bright spots. While cargo ships dump invasive species into estuaries, Washington's Willapa Bay is one of the cleanest and least degraded large estuaries in the lower 48 states, the group found.

News in brief

Maintenance bites into Yellowstone budget

YELLOWSTONE NATIONAL PARK, Wyo. (AP) — To reduce a \$700 million maintenance backlog, Yellowstone officials plan to spend three times as much on repairs and upkeep this year as on wildlife and resource protection.

"It seems a little strange," spokeswoman Marsha Karle said. "But with maintenance there are so many things that affect the public directly."

Of the park's \$30.2 million budget for fiscal year 2000, 41 percent, or \$12.5 million, will be spent to plow roads, take care of campgrounds and maintain trails, boardwalks and roads.

About \$4 million, or 14 percent, will go toward resource preserva-

tion, including studies of bears, wolves and fish.

Frustrated driver blocks train with car

WALBRIDGE, Ohio (AP) — A man who watched two trains cross the road in front of him drove his car onto the tracks to stop a third slow-moving train, authorities said. Instead, it smacked into the vehicle.

Ronald Wolf, 58, wasn't injured as the train pushed his car about 6 feet Thursday, State Highway Patrol Trooper Mike Samson said. He had waited 20 minutes for the first two trains before driving around other cars and the crossing gates.

"He said he got fed up and decided he'd had enough," Samson

said.

Wolf was cited with failure to yield. Samson said he understood the frustration.

"On the way to the accident, I got stopped by a train," Samson said.

Report: Grounded stern may be stuck for good

SALEM, Ore. (AP) — A report to the state by salvors says the beached stern of the New Carlissa can't be towed to sea for burial and that dismantling it would pose enormous risks to human life.

Their findings, in a report to the Oregon Division of State Lands, point more strongly than ever to an unstated option: leaving it where it is.

State officials and the New Carlissa's representative, Bill Mil-

wee, said a second opinion would be sought on the feasibility of dismantling the disintegrating hulk, which is stuck in the sand near Coos Bay.

Milwee stopped short of recommending that the 98-foot stern section be left in place, saying that is a decision for the state of Oregon to make. But he made it clear he would like the state to consider it.

"Leaving it in place is certainly one of the options," he said. "The risks (of dismantling the stern) are very severe. I'm certainly reluctant to kill anybody out there."

"The state's position is still that the wreck be removed," said Paul Cleary, director of the Division of State Lands. "But I think everyone's saying, 'Let's go into this with our eyes open.'"

Ukiah

Continued from 1A

and cut down on our payroll. My husband and I spent more time here in order to make both ends meet," Croteau said.

Then restrictions on commercial activity in the Tower Fire area shut down mushroom picking and the cutting of salvage timber cut down on their business.

Croteau said they did have a good hunting season, but there again, in between private property owners that post their land and outfitters that come in and lease hunting and fishing rights from

property owners and lock everybody else out, the area is losing a lot of its hunting traffic.

"We have hunters that have been coming over here to hunt for years, and all of a sudden they're mad as hell because they can't get into their place," Croteau said. "So what do they do? They leave."

The spike-only hunting regulations, imposed by the state, also hurt, Croteau said. And now restrictions on the ATV 4-wheeler use in the roadless areas is striking another blow.

"There's going to be lots of problems there and people are

just going to say, 'I'm not going to hassle with it. I'll take my bike someplace else,'" Croteau said.

"So we're going to lose people there, and slowly but surely our town is just going to die — wither away."

When asked what can be done to stop the direction the town is heading, Croteau shrugs her shoulders.

"I don't know. That's just it. We feel helpless about it," Croteau said. "I don't know if there's anything that can make a difference right now. People can make their comments to the people who are supposed to be listening, but I

think the decision has already been made and it's totally out of our hands."

"I'm really scared that between this administration and the upcoming administration they are going to totally change our lives here forever, and we don't have any control of it whatsoever," Croteau said. "But we're not going to give up. We may have to close our doors, but we're not going to give up."

Nick Peterson can be reached at 1-800-522-0255 (ext. 1-232 after hours) or e-mail: npeterson@east-oregonian.com.

Roadless areas

Continued from 1A

"how best to preserve our forests' large roadless areas." A draft environmental impact statement, subject to public comment, is expected next month, and a proposal by the fall.

Proponents of the President's initiative say the proposed revision in Forest Service policy reflects changes in public opinion and demand and use of National Forest resources. They say it considers not only the possible economic and social benefits associated with road construction and use, but also scientific information about the adverse environmental

impacts of road construction.

But critics of the initiative say that by redefining "roadless" in the Forest Service's guidelines, the President intends to lock up as wilderness as much as 60 million acres, including prime recreational areas, and a number of existing roads and trails that have been in use for decades.

Included in that initiative is over two million acres in Oregon in the Umatilla, Wallowa-Whitman, Umpqua, Malheur, Deschutes, Fremont, Mt. Hood, Ochoco, Rogue River, Siskiyou, Siuslaw, Willamette and Winema national forests.

Critics say the Clinton strategy

includes four key elements:

- a broad and nebulous definition of "roadless;"
• planned destruction and suspended maintenance of many roads, and in so doing making more areas roadless;
• banning of off-road travel; and
• increasing restrictions on timber harvest and reductions in mining.

Forest Service Chief Mike Dombeck has issued press releases claiming he will maintain the multi-use policies of past successful forest management. But some property rights groups claim the Clinton plan virtually mandates reductions in, and in some

cases elimination of, human activities in the forest.

In a speech to the Commonwealth Club of California in January Dombeck is reported as saying, the 383,000 miles of roads crisscrossing national forests and grasslands once were considered essential for implementing the agency's "multi-use" strategy of encouraging mining, logging, grazing and recreation.

But today "we're moving from an era where roads were considered a capital improvement to now, where they are a liability," Dombeck said.

hor Tom Clancy of his interest in art of their



Tom Clancy

Sheila K. Sachs, the baseball fan s a Marylander,"

ffer Love Hewitt hoes of the late e portrays in an



Jennifer Love Hewitt

ng in the movie. ne of Your Life" — say and king ae Rubi. out

e model was said. "She said ve years of doing id I'd been laying her!"

perform as released from after colliding

une is Beck s final song, y night at Wembd with Justin

ed internal fit to continue his n the northern r.

THEIR® FORECAST

National weather radio frequencies Pendleton, 162.4000. Hermiston, 162.425

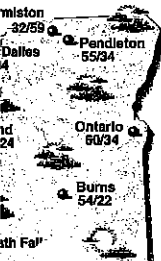
Internet Homepage http://www.wrh.noaa.gov/pendleton

Road condition information 1-800-977-6368

accuweather.com

Five-Day Forecast for the Pendleton and Hermiston areas

today's highs and tonight's lows.



Weather forecast box: Clouds and limited sun; a shower. 55°

Weather forecast box: Turning out mainly clear. 60°

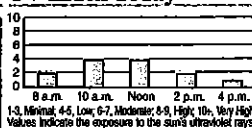
Weather forecast box: Mostly sunny and pleasant. 60°

Weather forecast box: Clouds and limited sun; showers possible. 60°

Weather forecast box: Partly sunny and windy. 63°

Weather forecast box: Sunshine and a few clouds. 55°

UV Index Today



13. Min:45, Low: 6.7, Mid:6.9, High: 10, Very High

Regional Cities

Table with columns: City, Today (HI, Lo, W), Sun. (HI, Lo, W). Lists cities like Astoria, Baker, Bend, Brookings, Burns, Eugene, etc.

Regional Weather

Coastal Oregon: Mostly cloudy this morning with a few widely separated showers... Eastern and Central Oregon: Mostly cloudy this morning with a light shower... Western Washington: Plenty of clouds this morning with a couple of showers around... Eastern Washington: Clouds and occasional sunshine... Cascades: Patchy fog early; clouds and occasional sunshine... Northern California: Clouds and sunshine today; the most clouds will be at the coast...

Sun and Moon

Table with columns: Sunrise today, Sunset tonight, Moonrise today, Moonset today, Last, New, First, Full, dates (Mar 27, Apr 4, Apr 11, Apr 18)

National Summary

The storm that was in the Midwest yesterday will shift eastward today, spreading showers and thunderstorms to the Ohio Valley. In the wake of this front, high pressure will settle into the Midwest, but it will be rather windy. Another front moves into the Northwest with showers for western Washington.

National Weather





Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

TDD (503) 229-6993

March 1, 2000

Daniel Vincent
Dan's Ukiah Service
P.O. Box 246
Ukiah OR 97880

RE: Appeal to Environmental Quality Commission

Dear Mr. Vincent:

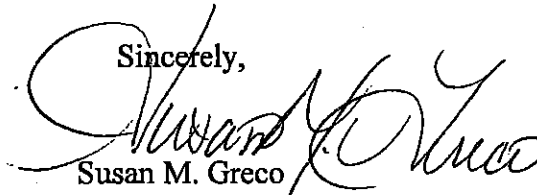
On February 24, 2000, the Environmental Quality Commission received your timely request for administrative review by the Commission in DEQ Case No. WMC/T-ER-99-107.

Pursuant to OAR 340-011-0132, you must file exceptions and brief within thirty days from the filing of the request (March 23, 2000). The exceptions should specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, the Department will file its answer brief within 30 days. I have enclosed a copy of the applicable administrative rules.

To file exceptions and briefs, please send to Susan Greco, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204 with copies to Roger Dilts, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201.

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

Sincerely,



Susan M. Greco
Rules Coordinator

cc: Roger Dilts, NWR

To Susan Green.

This is an appeal in case NO-WMC/T-ER-99-107
to Dan Vincent.

Dan Vincent

State of Oregon
Department of Environmental Quality

RECEIVED
FEB 24 2000

OFFICE OF THE DIRECTOR

Ref No.: G60247
Case No: 00-GAP-00005
Case Type: DEQ

STATE OF OREGON

Dec Mailed: 02/10/00
Mailed by: SLS

HEARING DECISION

DAN'S UKIAH SERVICE
DANIEL VINCENT, DBA
PO BOX 246
UKIAH OR 97880 0246

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

ROGER DILTS
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

SUSAN GRECO

The following **HEARING DECISION** was served to the parties at their respective addresses.

Held by: Employment Department Hearings Section
875 Union Street NE
Salem, OR 97311

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

IN THE MATTER OF:

ORDER FOR ASSESSMENT
OF CIVIL PENALTY AND DEPARTMENT
ORDER

Daniel Vincent, dba Dan's Ukiah
Service,

NO. WMC/T-ER-99-107
UMATILLA COUNTY

Respondent.

HISTORY OF THE CASE

The Department of Environmental Quality (DEQ) issued a Notice of Violation, Department Order, and Assessment of Civil Penalty on August 6, 1999, under Oregon Revised Statutes (ORS) Chapters 183, 466 and 468, and Oregon Administrative Rules (OAR), OAR Chapter 340, Divisions 11 and 12, to Daniel Vincent, dba Dan's Ukiah Service (respondent).

On or about September 8, 1999, respondent filed an answer and requested a hearing.

A hearing was held in Pendleton, Oregon on December 16, 1999 before Ken L. Betterton, hearing officer. Doug Vincent, respondent's father, represented respondent. Respondent did not appear at the hearing. Roger Dilts, environmental law specialist, represented DEQ.

Duane Smith, Jim Burns, Tom Gatens, Bud Roman and Doug Vincent testifies as witnesses in the hearing.

ISSUES

(A) Did respondent violate OAR 340-150-0020(1) by storing gasoline and diesel fuel in underground storage tanks and periodically dispensing such fuels from the tanks without first obtaining an underground storage tank general operating permit registration certificate?

(B) Did respondent violate ORS 466.765(6) by not permitting a DEQ representative to have access to records to underground storage tanks owned by respondent?

FINDINGS OF FACT

(1) Dan Vincent (respondent) owned and operated a gasoline station located at 203 Main Street, Ukiah, Oregon, known as Dan's Ukiah Service. (2) Ukiah is a small town about 50 miles south

of Pendleton, Oregon. (3) Respondent owned the station since at least 1989. (4) Respondent's father, Doug Vincent, helped him operate the station. (5) Respondent owned three underground storage tanks (USTs) at the station. (6) The USTs were covered by asphalt and bedded in sand beneath the ground. (7) Respondent registered the USTs with DEQ on August 8, 1989.

(8) Starting in 1988, DEQ periodically mailed notices and information to owners of USTs in Oregon, including respondent, informing them about new laws requiring owners of USTs to meet upgrade requirements for spill, overfill and corrosion protection by the end of 1998. (9) Respondent received one or more of such notices and information packets over the years. (10) Respondent knew well before December 1998 about the laws requiring owners of USTs to meet upgrade requirements for spill, overfill and corrosion protection.

(11) Respondent's permit to operate USTs ended on December 22, 1998, as did the permits of other owners of USTs. (12) If owners of USTs could not decommission their USTs by completely emptying them by the deadline of December 22, 1998, DEQ allowed owners to normally dispense fuel in their USTs until March 22, 1999.

(13) On January 13, 1999 DEQ notified owners of USTs, including respondent, that if they could not decommission their USTs by December 22, 1998, they could normally dispense gasoline and diesel from their USTs until March 22, 1999, in order to empty them.

(14) Respondent did not decommission his USTs by December 22, 1998. (15) Respondent continued to store gasoline and diesel fuel in one or more of his USTs, and periodically dispensed fuel to retail customers between December 23, 1998 and March 22, 1999.

(16) Respondent did not decommission his USTs by the March 22, 1999 deadline.

(17) After March 22, 1999 respondent either had to obtain an underground storage tank general operating permit registration certificate from DEQ to continue operation, or complete temporary closure of the USTs.

(18) Between March 23, 1999 and May 13, 1999, respondent stored gasoline and diesel fuel in one or more of the USTs at his station and periodically dispensed gasoline and diesel from the USTs to retail customers.

(19) On April 7, 1999 DEQ notified respondent in writing with a Notice of Noncompliance immediately to cease dispensing fuel from his USTs because such dispensing violated the law.

(20) On March 23, 1999, a DEQ inspector visited respondent's station during regular business hours and requested to see respondent's records on his USTs. (21) Respondent and his father both refused to turn over any records on the USTs.

(22) In the April 7, 1999 Notice of Noncompliance, DEQ directed respondent to produce records on his USTs, but again respondent refused.

(23) Respondent owns the land on which the station and the USTs were located.

(24) Respondent never had any tank and piping tightness test records for 1996 through 1998, nor did he have any inventory control and monthly reconciliation records for the period January 1998 to June 1999.

(25) Respondent upgraded one of the three USTs to meet federal standards after June 1, 1999, and put the other two tanks in extended closure status after June 1999.

(26) DEQ had a financial assistance program for owners of USTs to ease the financial burden of decommissioning USTs. (27) DEQ especially wanted to see gas stations remain in rural areas, like respondent's, for the convenience of citizens in those areas. (28) DEQ could award money grants of 80 percent of the cost to upgrade USTs, up to a maximum of \$80,000. (29) Owners of USTs did not have to repay the grant money.

(30) Between \$8,000 and \$12,000 is normally needed to upgrade one UST, like the ones owned by respondent.

(31) DEQ mailed respondent materials several times explaining the grant program. (32) DEQ also explained the grant program to respondent or his father by telephone. (33) Respondent knew about the financial assistance program, but refused to apply for financial assistance.

(34) Respondent never provided any financial information to DEQ on his inability to pay a fine amount.

ULTIMATE FINDINGS OF FACT

(1) Respondent stored gasoline and diesel fuel in USTs between March 23, 1999 and May 13, 1999, and periodically dispensed such fuels from the USTs without first obtaining an underground storage tank general operating permit registration certificate.

(2) Respondent refused after March 22, 1999 to allow a DEQ representative to have access to records relating to USTs owned by respondent.

APPLICABLE LAW

OAR 340-150-0020(1) states that after December 22, 1998, any person who installs, operates or decommissions an underground storage tank [UST] must first obtain an underground storage tank general permit registration certificate * * * from the Department [DEQ].

OAR 340-150-0010(13) defines "operate" to mean, depositing a regulated substance into, storing a regulated substance in or dispensing a regulated substance from an underground storage tank.

OAR 340-150-0002 adopts 40 CFR 280.12 and defines "regulated substance," to include petroleum based substances such as motor fuels.

OAR 340-150-0002 also adopts 40 CFR 280.12 and defines an "underground storage tank" to mean, any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected therefore) is 10 percent or more beneath the surface of the ground.

ORS 466.765(6) provides that the owner or the permittee of an underground storage tank shall permit department employees or a duly authorized and identified representative of the department at reasonable times to have access to and to copy all records relating to underground storage tanks.

ORS 466.994(1) and (2) make each day of a violation of a rule adopted under ORS 466.706 through 466.845 a separate violation. OAR 340-150-0020 is adopted under the authority of ORS 466.706 through 466.845.

CONCLUSIONS AND REASONS

Issue A:

Respondent violated OAR 340-150-0020(1). Respondent knew he needed to obtain an underground storage tank general operating permit registration certificate after December 22, 1998. DEQ allowed existing operators until March 22, 1999 to empty their existing USTs of gasoline and diesel fuels in the normal course of business. Respondent either needed to obtain an underground storage tank general operating permit registration certificate from DEQ to continue to operate the USTs, or to complete temporary closure of the USTs by March 22, 1999. Respondent did neither. He continued to dispense fuels to retail customers between March 23, 1999 and May 13, 1999. Respondent knowingly violated the law on each of those days. Each day is a separate violation under ORS 466.994(1) and (2).

Because each day of violation of OAR 340-150-0020(1) is a separate violation, respondent's total fine becomes significant after 52 days of violation. Respondent could have sought to have his fine reduced under OAR 340-012-0045(3) and (4) due to an inability to pay the full fine. However, respondent made no effort to provide DEQ with any evidence prior to the hearing as to his financial condition. Respondent did not even appear at the hearing. Respondent's father represented respondent, and testified in general about his own modest financial resources, as well as provided some oral evidence as to respondent's financial situation. However, respondent's father is not the party to the proceeding. Respondent's financial situation is the important component, not the father's. Indeed the father was hostile both prior to the hearing and during the hearing about providing information and any documentation to support his and respondent's position.

Without some effort by respondent and/or his father to comply with OAR 340-012-0045(3) and (4), I lack authority to examine factors that might reduce respondent's fine based on an inability to pay the full amount.

Issues B:

Respondent violated ORS 466.765(6). On March 23, 1999 a DEQ representative asked respondent or his father during regular business hours to furnish records for the USTs owned by respondent. Respondent refused to provide the records. DEQ mailed respondent a Notice of Noncompliance on April 7, 1999 informing respondent that denial of access to UST records was a violation of law, and asked respondent to produce the records. However, respondent continued to refused to provide the records, knowing that the law required him to do so.

DEPARTMENT ORDER

Respondent kept no records for tank and piping tightness tests for 1996 through 1998. He also kept no inventory control and monthly reconciliation records for January 1998 through June 1999. Respondent cannot produce records that don't exist.

Respondent has upgraded one UST and placed the other two USTs in extended temporary closure to DEQ's satisfaction.

The Department Order requested by DEQ in its Notice of Violation dated August 6, 1999 either cannot be complied with or has been complied with satisfactorily. The Department Order portion of the Notice no longer has any efficacy.

CIVIL PENALTY

DEQ calculated the penalties in accordance with Oregon Administrative Rule, Chapter 340, Division 12. I accept DEQ's calculation of the civil penalties for the two violations as set forth in the Notice of Assessment of Civil Penalty and Department Order (Exhibit 2). Respondent is liable for a civil penalty of \$57,200.00 for the violations in Issue A, and a civil penalty of \$6,600.00 for the violation in Issue B, for a total penalty of \$63,800.00.

ENVIRONMENTAL QUALITY COMMISSION

Dated this 10th day of February, 2000


KEN L. BETTERTON
Hearing Officer

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

IN THE MATTER OF:

Daniel Vincent, dba Dan's Ukiah
Service,

ORDER ASSESSING
CIVIL PENALTY
NO. WMC/T-ER-99-107
UMATILLA COUNTY

Respondent.

ORDER

IT IS HEREBY ORDERED that respondent, Daniel Vincent, dba Dan's Ukiah Service, is liable for a civil penalty of \$63,800.00, plus interest pursuant to ORS 82.010, from the date this order is signed until paid. If the civil penalty remains unpaid for more than ten (10) days from the date this order is signed, this order may be filed with any County Clerk and execution shall issue thereon.

If a party wishes to appeal this order, the party has thirty (30) days from the date this order is signed to appeal the order to the Environmental Quality Commission. *See* Oregon Administrative Rule (OAR) 340-11-132. If a party wishes to appeal the decision of the Environmental Quality Commission, the party has sixty (60) days from the date of service of the order by the Commission to file a petition for review with the Oregon Court of Appeals. (*See* ORS 183.480 *et seq.*)

ENVIRONMENTAL QUALITY COMMISSION

Dated this 10th day of February, 2000



KEN L. BETTERTON
Hearing Officer

Oregon

**DEPARTMENT OF
ENVIRONMENTAL
QUALITY**

ENFORCEMENT SECTION

December 10, 1999

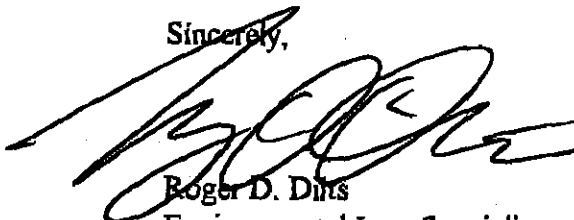
**Judge Betterton
via FAX**

**Mr. Douglas Vincent
Dan's Ukiah Service
203 Main Street
Ukiah, OR 97880**

**Re: In the Matter of: Daniel Vincent dba
Dan's Ukiah Service
Hearing Memorandum
Agency Case No. WMC/T-ER-99-107
Ref. No. G60247**

Attached please find the Department's Hearing Memorandum in the referenced case, which is set for hearing at 9:30 a.m. December 16, 1999, at the Umatilla County Courthouse, 216 SE Fourth Street, Room 20, Pendleton, Oregon

Sincerely,



**Roger D. Ditts
Environmental Law Specialist**



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

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

3 **IN THE MATTER OF:**
 4 **DANIEL VINCENT,**
 4 **doing business as Dan's Ukiah Service,**

5 **Respondent.**

)
) **DEPARTMENT'S**
) **HEARING MEMORANDUM**

)
) **No. WMC/T-ER-99-107**
) **UMATILLA COUNTY**

7 **This Hearing Memorandum is offered in support of the Notice of Violation, Department**
 8 **Order, and Assessment of Civil Penalty, dated August 6, 1999, issued to Dan Vincent dba Dan's Ukiah**
 9 **Service by the Department of Environmental Quality.**

10 **I. FACTS**

11 1. **Respondent owns and operates a gasoline service station located at 203 Main Street,**
 12 **Ukiah, Oregon, known as "Dan's Ukiah Service."**

13 2. **Respondent owns three underground storage tanks (USTs) located at Dan's Ukiah**
 14 **Service.**

15 3. **Between 1988 and 1998, the Department sent mailings to Respondent warning of the**
 16 **legal requirement to upgrade the USTs and to obtain permits for operating the USTs after December**
 17 **23, 1999.**

18 4. **Respondent did not obtain an underground storage tank general permit registration**
 19 **certificate for the USTs prior to May 13, 1999.**

20 5. **Between March 23, 1999, and May 13, 1999, Respondent stored gasoline and diesel**
 21 **fuel in one or more of the USTs at Dan's Ukiah Service, and periodically dispensed such fuels from the**
 22 **USTs to retail customers.**

23 6. **By Notice of Noncompliance issued April 7, 1999, the Department informed**
 24 **Respondent that continued operation of USTs at Dan's Ukiah Service was a violation of the law and**
 25 **requested that Respondent immediately cease dispensing fuel from the USTs.**

26 7. **On March 23, 1999, during regular business hours, Mr. Duane Smith, an employee of**
 27 **the Department, requested access to records relating to USTs at Dan's Ukiah Service, and informed**

1 Respondent through his station manager and agent, Douglas Vincent, of his legal duty to produce the
2 records.

3 8. Respondent's agent denied Mr. Smith access to records of the USTs.

4 9. By Notice of Noncompliance dated April 7, 1999, the Department informed
5 Respondent that denial of access to UST records was a violation of the law and requested that
6 Respondent produce such records.

7 10. Respondent failed to respond to the Department's request for records.

8 II. APPLICABLE LAW

9 Oregon Administrative Rules (OAR) 340-150-0020(1) states:

10 After December 22, 1998, any person who installs, operates or decommissions an underground storage
11 tank must first obtain an underground storage tank general permit registration certificate ... from the
12 Department.

13 OAR 340-150-0010(13) defines "operate" to mean:

14 depositing a regulated substance into; storing a regulated substance in or dispensing a regulated
15 substance from an underground storage tank.

16 40 CFR 280.12, adopted by reference at OAR 340-150-0002, defines "Regulated substance"
17 to include:

18 petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived
19 from crude oil..., such as motor fuels....

20 40 CFR 280.12, adopted by reference at OAR 340-150-0002, defines "underground storage
21 tank" to mean:

22 any one or combination of tanks (including underground pipes connected thereto) that is used to
23 contain an accumulation of regulated substances, and the volume of which (including the volume of
24 underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

25 Oregon Revised Statutes (ORS) 466.765 provides:

26 In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.706 to
27 466.845 and 466.994, the owner or the permittee of an underground storage tank shall: ... (6) Permit
department employees or a duly authorized and identified representative of the department at
reasonable times to have access to and to copy all records relating to underground storage tanks.

III. VIOLATIONS

1
2 1. Respondent violated OAR 340-150-0020(1). Specifically, beginning March 23, 1999,
3 and continuing each and every day through May 13, 1999, Respondent stored gasoline and diesel in
4 underground storage tanks at Dan's Ukiah Service and periodically dispensed such fuels from the tanks
5 without first obtaining an underground storage tank general operating permit registration certificate.

6 2. Respondent violated ORS 466.765(6). Specifically, on March 23, 1999, Respondent
7 did not permit a Department representative to have access to records relating to underground storage
8 tanks owned by the Respondent.

IV. DEPARTMENT ORDER

9
10 Pursuant to its authority under ORS 466.810, after investigating the USTs at Dan's Ukiah
11 Service, the Department determined that the operation of the USTs violated ORS 466.765 and failed
12 to comply with OAR 340-150-0020(1), issued under ORS 466.705 - 466.995. The Department
13 further determined that protection of public health, safety, welfare and the environment necessitated the
14 issuance of an order to the Respondent with the following requirements:

15 1. Within five days of receipt of this Notice provide the Department with copies of the
16 following records relating to the USTs at Dan's Ukiah Service:

- 17 a. documentation of tank and piping tightness tests for 1996, 1997, and 1998;
18 b. Inventory Control and Monthly Reconciliation records for each month from
19 January 1998 through June 1999.

20 2. Within five days of receipt of this Notice, complete Temporary Closure of all UST
21 systems at Dan's Ukiah Service as follows:

22 a. cap and secure all lines (except vent lines), pumps, manways, and ancillary
23 equipment (including disconnecting dispensers from the USTs);

24 b. provide corrosion protection for all tanks during Temporary Closure;

25 c. if any tank does not remain empty, as defined at 40 CFR 280.70(a),

26 Respondent must perform required release detection procedures for that tank during
27 Temporary Closure.

1 3. Respondent shall provide access to a Department representative to verify compliance
2 with item 2. Respondent shall contact the Department within two days of completing Temporary
3 Closure requirements and arrange for verification within two days.

4 Respondent timely appealed the issuance of the order and requested a contested case hearing
5 on the order.

6 V. CIVIL PENALTY CALCULATION

7 *Violation 1*

8 Using procedures set forth in OAR Chapter 340 Division 12, the Department calculated a civil
9 penalty in the amount of \$57,200 for Violation 1. Specifically, the Department calculated
10 Respondent's civil penalty as follows:

11 **Classification:** The violation is a Class 2 violation pursuant to OAR 340-012-0067(2)(c),
12 which establishes the classification for "Failure to obtain a permit prior to the installation or operation
13 of an underground storage tank."

14 **Magnitude:** The magnitude of the violation is minor pursuant to OAR 340-012-
15 0045(1)(a)(B)(ii) because the violation did not cause an actual adverse impact on the environment.
16 Pursuant to OAR 340-012-0042(1)(d) the base penalty for a Class 2, minor magnitude UST violation
17 is \$500.

18 **Cause:** The violation was caused by Respondent's flagrant conduct. Respondent was
19 informed by the Department in writing on numerous occasions of the legal requirement to have permits
20 to operate the USTs after December 23, 1998. Respondent was also informed by Notice of
21 Noncompliance on April 7, 1999, that continued operation of the USTs was in violation of the law.
22 These notices gave Respondent actual knowledge of the law. Despite such knowledge, Respondent
23 consciously continued to operate the USTs. Therefore, the R factor for this violation should be 10.

24 **Cooperativeness:** Respondent was uncooperative and did not take any action to correct the
25 violation after being requested by the Department to cease operation in the April 7, 1999, Notice of
26 Noncompliance. The C factor for this violation should be 2.

27

Penalty calculation:

$$\text{Penalty} = \text{base penalty} + [(0.1 \times \text{base penalty}) \times (P+H+O+R+C)] + \text{EB}$$

$$\text{Penalty} = \$500 + [(0.1 \times \$500) \times (0+0+0+10+2)] + \$0$$

$$\text{Penalty} = \$500 + [\$50 \times 12] + \$0$$

$$\text{Penalty} = \$500 + \$600 + \$0$$

$$\text{Penalty} = \$1,100$$

Respondent repeated the violation on each of the 52 days between March 23 and May 13, 1999. Pursuant to ORS 468.140(2) each day of violation constitutes a separate offense. Therefore, Respondent's total civil penalty for the 52 violations is \$57,200.

Violation 2

Using procedures set forth in OAR Chapter 340 Division 12, the Department calculated a civil penalty in the amount of \$6,600 for violation 2. Specifically, the Department calculated Respondent's civil penalty as follows:

Classification: The violation is a Class 1 violation pursuant to OAR 340-012-0067(1)(f), which establishes the classification for "Failure to provide access to premises or records when required by law, rule, permit or order."

Magnitude: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B) because the violation is not assigned a selected magnitude. Pursuant to OAR 340-012-0042(1)(d) the base penalty for a Class 1, moderate magnitude UST violation is \$3,000.

Cause: The violation was caused by Respondent's flagrant conduct. After being told of the legal requirement to provide UST records, Respondent's agent refused to provide the records when requested by a Department employee. By Notice of Noncompliance, the Department informed Respondent that continued refusal to provide UST records was a violation of the law. These verbal and written notices gave Respondent actual knowledge of the law. Despite such knowledge, Respondent consciously refused to provide UST records. Therefore, the R factor for this violation should be 10.

1 **Cooperativeness:** Respondent was uncooperative and did not take any action to correct the
 2 violation after being requested by the Department to provide UST records in the April 7, 1999, Notice
 3 of Noncompliance. The C factor for this violation should be 2.

4 **Penalty calculation:**

5 $\text{Penalty} = \text{base penalty} + [(0.1 \times \text{base penalty}) \times (P+H+O+R+C)] + \text{EB}$

6 $\text{Penalty} = \$3,000 + [(0.1 \times \$3,000) \times (0+0+0+10+2)] + \0

7 $\text{Penalty} = \$3,000 + [\$300 \times 12] + \$0$

8 $\text{Penalty} = \$3,000 + \$3,600 + \$0$

9 $\text{Penalty} = \$6,600$

10 **VI. WITNESSES AND EVIDENCE**

11 The Department will prove the facts asserted above by testimony of Duane Smith and Jim
 12 Byrnes, and through documentary evidence.

13 **VII. CONCLUSION**

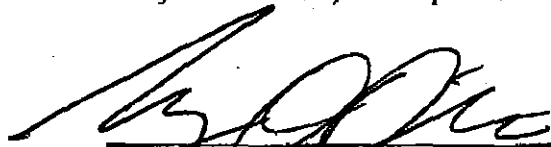
14 The Department will prove that Respondent stored gasoline and diesel fuel in his USTs and
 15 dispensed those fuels from those tanks for at least 52 days without having first obtained the required
 16 underground storage tank general operating permit registration certificate. The Department will prove
 17 that Respondent knew that such operation of the USTs was in violation of the law and that Respondent
 18 flagrantly violated the law by continuing to operate the USTs. The Department will further prove that
 19 Respondent failed to correct the violation when requested to do so.

20 The Department will also prove that Respondent refused to provide access to UST records
 21 when requested by a Department employee. Finally, the Department will prove that Respondent's
 22 refusal to provide the records was a flagrant act, committed with actual knowledge of the law and that
 23 Respondent did not correct the violation when requested.

24 The Department will also prove the necessity for the order, and request that the order be
 25 upheld.

26 Dec 10, 1999

27 Date


 Roger D. Dilts, Environmental Law Specialist

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

Notice of Contested Case Rights and Procedures

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 (the Oregon Administrative Procedures Act) and Oregon Administrative Rules (OAR) of the Department of Environmental Quality (DEQ), Chapters 137 and 340.
2. Right to an attorney. You may represent yourself at the hearing, or be represented by an attorney or other representative, such as a partner, officer, or an employee. A representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. The hearings officer will decide whether to grant such a request. About half of the parties are not represented by an attorney. DEQ will be represented by an authorized agent, called an environmental law specialist.
3. Presiding Officer. The person presiding at the hearing is known as the hearings officer. The hearings officer will rule on all matters that arise at the hearing. The hearings officer is an administrative law judge for the Employment Department, under contract with the Environmental Quality Commission to perform this service. The hearings officer is not an employee, officer or representative of the agency and does have the authority to make a final independent determination based only on the evidence at the hearing.
4. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the hearings officer will have the opportunity to ask questions of all witnesses. DEQ will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.
5. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

Page Two--Notice of Contested Case Rights and Procedures

6. **Burden of presenting evidence.** The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical or written evidence, as well as your own testimony.
7. **Admissible evidence.** Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the hearings officer will rely on it in reaching a decision.

There are four kinds of evidence:

- a. **Knowledge of DEQ.** DEQ may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ take "official notice" of any fact and you will be given an opportunity to contest any such facts.
 - b. **Testimony of witnesses.** Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
 - c. **Writings.** Written documents including letters, maps, diagrams and other written material may be received in evidence.
 - d. **Experiments, demonstrations and similar means used to prove a fact.** The results of experiments and demonstrations may be received in evidence.
8. **Objections to evidence.** Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
 - a. The evidence is unreliable;
 - b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
 - c. The evidence is unduly repetitious and duplicates evidence already received.

Page Three--Notice of Contested Case Rights and Procedures

9. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the hearings officer may grant you additional time to submit such evidence.
10. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the hearings officer. A copy of the tape is available upon payment of a minimal amount, as established by the Department of Environmental Quality (DEQ). A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.
11. Appeal. If you are not satisfied with the decision of the Hearings Officer, you have 30 days to appeal his decision to the Environmental Quality Commission. If you wish to appeal its decision, you have 60 days to file a petition for review with the Oregon Court of Appeals from the date of service of the order by the Environmental Quality Commission. See ORS 183.480 et seq.

e-s s.k.
2
Oregon

EXHIBIT #

August 6, 1999

CERTIFIED MAIL Z 440 760 442

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Mr. Daniel Vincent
Dan's Ukiah Service
P.O. Box 246
Ukiah, OR 97880

Re: Notice of Violation, Department Order, and
Assessment of Civil Penalty
No. WMC/T-ER-99-107
Umatilla County

Dear Mr. Vincent:

On March 23, 1999, Duane Smith, an Environmental Specialist in the Department's underground storage tank (UST) program visited your gas station in Ukiah. Mr. Smith's visit was in response to a citizen complaint that you were selling fuel out of a UST that was not permitted by the Department for operation. During his visit you admitted that you were storing fuel in your USTs and continuing to dispense fuel from your tanks. Mr. Smith informed you that March 22, 1999, was the last day to operate USTs that did not meet federal technical standards. You continued to operate the USTs at your station through at least May 13, 1999.

During his visit, Mr. Smith also requested to see records pertaining to your USTs that you are required to keep. You refused to provide those records. Your father then forced Mr. Smith from your station while brandishing a large stick and threatening to beat Mr. Smith. When Mr. Smith tried to explain his legal right to inspect the records, your father threatened to shoot Mr. Smith and forced him to leave in fear of his life.

On April 7, 1999, the Department issued you a Notice of Noncompliance (NON) informing you that continued operation of your USTs and withholding records was illegal, and requesting that you close the USTs and submit the records. You failed to comply with these requests.

All previously issued temporary UST permits expired on December 23, 1998. Tank owners who wish to continue operating USTs must obtain an underground storage tank general permit registration certificate for operation from the Department. These certificates are issued only for USTs that meet the federal technical standards. Tank owners and operators throughout Oregon spent significant amounts of money upgrading or replacing their tanks to meet the



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

DEQ-1



deadline. Tank owners who did not wish to upgrade their tanks were considered to be in Temporary Closure and were allowed to continue dispensing any fuel remaining in their tanks for 90 days after December 23, 1998. That 90-day period ended March 22, 1999. At that time all USTs that did not meet standards were to have been closed.

By storing gasoline and diesel in your USTs and by dispensing these fuels after the March 22, 1999, deadline, you have violated Oregon law. You also violated the law by refusing to provide required records to the Department. These violations are made much more serious by your knowing refusal to comply after being informed verbally and in writing that your actions were illegal. I am particularly disturbed by the threats of violence and death toward a Department employee during the performance of his duties.

You are liable for a civil penalty assessment because you violated Oregon law. In the enclosed Notice, I have assessed a civil penalty of \$63,800. I have assessed a separate penalty for each day of illegal UST operation. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-12-045. The Department's findings and civil penalty determination are attached to the Notice as Exhibits 1 and 2.

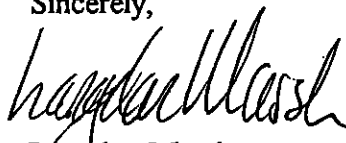
Appeal procedures are outlined in Section VI of the Notice. If you fail to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against you.

If you wish to discuss this matter, or if you believe there are mitigating factors that the Department might not have considered in assessing the civil penalty, you may request an informal discussion by attaching your request to your appeal. Your request to discuss this matter with the Department will not waive your right to a contested case hearing.

I look forward to your cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, you may be assessed additional civil penalties. Copies of referenced rules are enclosed.

If you have any questions about this action, please contact Roger Dilts with the Department's Enforcement Section in Portland at (503)229-5692 or toll-free at 1-800-452-4011, enforcement extension 5692.

Sincerely,



Langdon Marsh
Director

e:\winword\dansukiah\cvrltr

Enclosures

cc: Duane Smith, Eastern Region, Pendleton Office, DEQ

Daniel Vincent

Case No. WMC/T-ER-99-107

Page 3

Stephanie Hallock, DEQ

Mike Kortenhof, DEQ

Bud Roman, DEQ

Waste Management and Cleanup Division, DEQ

Oregon Department of Justice

U.S. Environmental Protection Agency

Environmental Quality Commission

Umatilla County District Attorney

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

3	IN THE MATTER OF:	)	NOTICE OF VIOLATION,
4	DANIEL VINCENT,	)	DEPARTMENT ORDER, AND
4	doing business as Dan's Ukiah Service,	)	ASSESSMENT OF CIVIL
5		)	PENALTY
5	Respondent.	)	No. WMC/T-ER-99-107
6		)	UMATILLA COUNTY

7 **I. AUTHORITY**

8 This Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and
9 Order) is issued to Respondent, Daniel Vincent, by the Department of Environmental Quality
10 (Department) pursuant to Oregon Revised Statutes (ORS) Chapters 183, 466, and 468, and Oregon
11 Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

12 **II. FINDINGS**

- 13 1. Respondent owns and operates a gasoline service station located at 203 Main Street,
14 Ukiah, Oregon, known as "Dan's Ukiah Service."
- 15 2. Respondent owns three underground storage tanks (USTs) located at Dan's Ukiah
16 Service.
- 17 3. Respondent held a temporary permit for the USTs at Dan's Ukiah service until
18 December 22, 1998.
- 19 4. On December 23, 1998, Respondent's temporary permit to operate the USTs
20 terminated pursuant to OAR 340-150-0021(1).
- 21 5. Respondent's USTs were temporarily closed on December 23, 1998.
- 22 6. Respondent continued to dispense fuel from the USTs pursuant to Department policy
23 that allowed such tanks that were temporarily closed to dispense fuel until March 22, 1999.
- 24 7. After March 23, 1999, Respondent was required either to obtain an underground
25 storage tank general operating permit registration certificate from the Department to continue
26 operation, or to complete temporary closure of the USTs.

27 ///

1 8. Respondent did not obtain an underground storage tank general operating permit
2 registration certificate for the USTs at Dan's Ukiah Service.

3 9. Respondent did not complete temporary closure by capping and securing all lines
4 (except vent lines), pumps, and ancillary equipment, as required after three months of temporary
5 closure.

6 10. Respondent stored gasoline and diesel fuel, regulated substances, in the USTs at his
7 service station from March 23, 1999, through May 13, 1999.

8 11. During the period March 23 through May 13, 1999, Respondent's station was open for
9 business and Respondent periodically dispensed fuel to retail customers from the USTs.

10 12. On March 23, 1999, during regular business hours, Mr. Duane Smith, an employee and
11 a representative of the Department, requested access to records relating to USTs at Dan's Ukiah
12 Service.

13 13. Respondent denied Mr. Smith access to records of the USTs.

14 III. VIOLATIONS

15 Based upon the above, the Department finds that Respondent has violated Oregon's laws and
16 rules as follows:

17 1. Respondent violated OAR 340-150-0020(1). Specifically, beginning March 23, 1999,
18 and continuing each and every day through May 13, 1999, Respondent stored gasoline and diesel in
19 underground storage tanks and periodically dispensed such fuels from the tanks without first obtaining
20 an underground storage tank general operating permit registration certificate. This is a Class II
21 violation pursuant to OAR 340-012-0067(2)(c).

22 2. Respondent violated ORS 466.765(6). Specifically, on March 23, 1999, Respondent
23 did not permit a Department representative to have access to records relating to underground storage
24 tanks owned by the Respondent. This is a Class I violation pursuant to OAR 340-012-0067(1)(f).

25 ///

26 ///

27 ///

1 IV. DEPARTMENT ORDER

2 Based upon the foregoing FINDINGS and VIOLATIONS, Respondent is hereby ORDERED

3 TO:

4 1. Within five days of receipt of this Notice provide the Department with copies of the
5 following records relating to the USTs at Dan's Ukiah Service:

- 6 a. documentation of tank and piping tightness tests for 1996, 1997, and 1998;
7 b. Inventory Control and Monthly Reconciliation records for each month from
8 January 1998 through June 1999.

9 2. Within five days of receipt of this Notice, complete Temporary Closure of all UST
10 systems at Dan's Ukiah Service as follows:

- 11 a. cap and secure all lines (except vent lines), pumps, manways, and ancillary
12 equipment (including disconnecting dispensers from the USTs);
13 b. provide corrosion protection for all tanks during Temporary Closure;
14 c. if any tank does not remain empty, as defined at 40 CFR 280.70(a),
15 Respondent must perform required release detection procedures for that tank during
16 Temporary Closure.

17 3. Respondent shall provide access to a Department representative to verify compliance
18 with item 2. Respondent shall contact the Department within two days of completing Temporary
19 Closure requirements and arrange for verification within two days.

20 V. ASSESSMENT OF CIVIL PENALTIES

21 The Director imposes civil penalties for the violations cited in Section II, paragraphs 1 and 2 as
22 follows:

<u>Violation</u>	<u>Penalty Amount</u>
1	\$57,200
2	\$6,600

26 Respondent's total civil penalty is \$63,800.

27 ///

1 The findings and determination of Respondent's civil penalty pursuant to OAR 340-12-045 are
2 attached and incorporated as Exhibit Nos. 1 and 2.

3 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

4 Respondent has the right to have a formal contested case hearing before the Environmental
5 Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which
6 time Respondent may be represented by an attorney and subpoena and cross-examine witnesses. **The**
7 **request for hearing must be made in writing, must be received by the Department's Rules**
8 **Coordinator within twenty (20) days from the date of service of this Notice and Order, and**
9 **must be accompanied by a written "Answer" to the charges contained in this Notice and Order.**

10 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this
11 Notice and Order, and shall affirmatively allege any and all affirmative claims or defenses to the
12 assessment of this civil penalty that Respondent may have and the reasoning in support thereof. Except
13 for good cause shown:

- 14 1. Factual matters not controverted shall be presumed admitted;
- 15 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or
16 defense;
- 17 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in
18 subsequent pleading or stipulation by the Department or Commission.

19 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of the**
20 **Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for
21 hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

22 Failure to file a timely request for hearing and Answer may result in the entry of a Default
23 Order for the relief sought in this Notice and Order.

24 Failure to appear at a scheduled hearing or meet a required deadline may result in a dismissal of
25 the request for hearing and also an entry of a Default Order.

26 The Department's case file at the time this Notice and Order was issued may serve as the
27 record for purposes of entering the Default Order.

1 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

2 In addition to filing a request for a contested case hearing, Respondent may also request an
3 informal discussion with the Department by attaching a written request to the hearing request and
4 Answer.

5 VIII. PAYMENT OF CIVIL PENALTY

6 The civil penalty is due and payable ten (10) days after the Order imposing the civil penalty
7 becomes final by operation of law or on appeal. Respondent may pay the penalty before that time.
8 Respondent's check or money order in the amount of \$63,800 should be made payable to "State
9 Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental
10 Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

11
12
13 8-6-99
14 Date

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Langdon Marsh
Langdon Marsh, Director

EXHIBIT 1
WMC/T-ER-99-107

**FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045**

- VIOLATION 1:** Operation of USTs without first obtaining an operating permit
- CLASSIFICATION:** This is a Class II violation pursuant to OAR 340-012-0067(2)(c).
- MAGNITUDE:** The magnitude of the violation is minor pursuant to OAR 340-012-0045(1)(a)(B)(ii). The Department finds that dispensing fuel from the unpermitted USTs did not have an actual adverse impact on the environment.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$
- "BP" is the base penalty which is \$500 for a Class II minor magnitude violation in the matrix listed in OAR 340-12-042(1).
- "P" is Respondent's prior significant action(s) and receives a value of 0, because Respondent has no prior significant actions.
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0, because Respondent has no prior significant actions.
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0, because each violation lasted a single day. Respondent was in violation from March 23, 1999, through May 13, 1999. Each day of violation is assessed a separate penalty.
- "R" is the cause of the violation and receives a value of 10, because the violation was caused by Respondent's flagrant acts. On March 23, 1999, Duane Smith of the Department visited Respondent's station and informed him that operation of the USTs after that date was illegal without a permit to operate from the Department. On April 7, 1999, the Department sent Respondent a Notice of Noncompliance (NON) based on the March inspection. The NON stated that operation of the USTs after March 23, 1999, was illegal and informed Respondent that he was to immediately cease dispensing fuel from the USTs. Respondent consciously continued to operate the USTs at his station with the actual knowledge that such operation was in violation of the law.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 2, because Respondent was uncooperative and failed to take reasonable efforts to correct the violation. The Department requested in the April 7 NON that Respondent cease operation, yet Respondent failed to do so.
- "EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of \$0, because any economic benefit Respondent realized was likely *de minimis*, and the Department need not recover such amounts.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 10 + 2)] + \$0 \\ &= \$500 + [\$50 \times 12] + \$0 \\ &= \$500 + \$600 + \$0 \\ &= \$1,100 \end{aligned}$$

Respondent operated the USTs 52 days between March 23, 1999 and May 13, 1999. The Department assesses a civil penalty of \$57,200 based on these 52 separate daily violations.

EXHIBIT 2
WMC/T-ER-99-107

**FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045**

VIOLATION 2: Failure to provide access to UST records.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), because there is no selected magnitude for this violation.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

"BP" is the base penalty which is \$3,000 for a Class I moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant action(s) and receives a value of 0, because Respondent has no prior significant actions.

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0, because Respondent has no prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0, because the violation lasted a single day.

"R" is the cause of the violation and receives a value of 10, because the violation was caused by Respondent's flagrant acts. On March 23, 1999, Duane Smith of the Department visited Respondent's station and requested access to records of Respondent's UST. Respondent refused to provide access to the records and summoned his father, Douglas Vincent. Mr. Smith informed Douglas Vincent of the legal requirement to provide the records, whereupon Douglas Vincent forced Mr. Smith to leave the site with threats of death.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 2, because Respondent was uncooperative and failed to take reasonable efforts to correct the violation. The Department requested in an April 7, 1999, Notice of Noncompliance that Respondent provide documentation of tank and piping tightness tests and inventory control records, yet Respondent failed to do so.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of \$0, because the Department lacks information on which to base a reasonable determination of economic benefit.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 10 + 2)] + \$0 \\ &= \$3,000 + [\$300 \times 12] + \$0 \\ &= \$3,000 + \$3,600 + \$0 \\ &= \$6,600 \end{aligned}$$

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2. Additional services. Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following service for an extra fee:

1. Addressee's Address
2. Restricted Delivery

3. Article Addressed to:

**MR. DANIEL VINCENT
DAN'S UKIAH SERVICE
PO BOX 246
UKIAH OR 97880**

4a. Article Number 2440 760442
WMCIT-ER-99-107

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery 8-23-99

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

8. Addressee's Address (Only if requested and fee is paid)

BOX 246
UKIAH OR 97880

PS Form 3811, December 1994

102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

I heret

+ Orders

Notice of Assessment of Civil Penalty Case No. WMCIT-ER-99-107

**MR. DANIEL VINCENT
DAN'S UKIAH SERVICE
PO BOX 246
UKIAH OR 97880**

by mailing a true copy of the above by placing it in a sealed envelope, with postage

Oregon, on 8-17-99

PS Form 3800, April 1995

Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail. (See reverse)
 Sent to
**MR. DANIEL VINCENT
DAN'S UKIAH SERVICE
PO BOX 246
UKIAH OR 97880**

Z 440 760 442

Deborah Nesbit
Department of Environmental Quality

Mr. Roger Dilts
Dept. of Environmental Quality
2020 S.W. Fourth Suite 400
Portland, Oregon 97201

3
RECEIVED
SEP 10 1999
STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY

Dear Mr. Dilts:

We intend to appeal the civil penalty no. WCM/T-ER-99-107 as it is both unjust and excessive. We notified your office in Dec. that we had too much gas to sell by your deadline. We explained to you at the time that we have about 4 or 5 months that we don't sell 100 gallons a month, as we are virtually closed in for the winter with very little traffic, but were assured this shouldn't be a problem. The excess gas was acquired in anticipation of a larger elk hunt than we had. This was due to government interference in the hunting season.

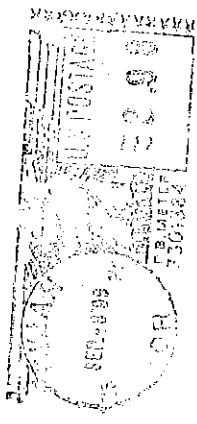
We cannot pay, we will not pay and we would not pay even if we could because we feel we have done nothing wrong. Our feelings in this matter is that our constitutional rights forbid government or government agencies from depriving us of our right to make a living. We have had NO spills or any contaminations since we have owned this property.

Your agency seems to make a big thing out of the fact that we didn't want any part of your grant. This seemed to create a feeling of hostility with all government workers. We feel that all government give aways are wrong. It would be the height of hypocrisy to accept anything that the tax payers would have to pay for. If we have to we intend to pursue this to the highest court possible. We also find we have tremendous public support in our telling government NO. Stay out of our lives and our business.

We have done everything within our financial power to comply with all the rules and regulations as stated by D.E.Q. and will continue to do so. We have always felt that no one has the right to foul the land. But we also deeply resent the fact that any government agency with appointed officials not elected have the power to become complete dictators without regard to conditions or situations that they either ignore or fail to understand. This situation was brought on us without consideration of the facts or circumstances, We hope it can be resolved in a timely manner without more financial loss plus bitterness and hatred.

Ray Hunt
MANAGER OF DAN'S UTAH SERVICE

R E C E I V E D
SEP 10 1999
STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY



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d hatred.

J
IA's UTAH Service

The Return of the Return Address
CERTIFIED

P 557 829 111

MAIL

*Vincent
P.O. Box 246
Elkhart, Or. 97888*

*Mr Roger Dillts
2020 SW Fourth Street 400
Portland, Or 97201*

Ref No: 60247
Agency Case No: WMCTER99107
Case Type: DEQ

Date Mailed: 10/27/99
Mailed By: TJA

STATE OF OREGON

DAVID # 4

NOTICE OF HEARING

DAN'S UKIAH SERVICE
DANIEL VINCENT, DBA
PO BOX 246
UKIAH OR 97880 0246

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE
PORTLAND OR 97204 1334

ROGER DILTS
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

HEARING DATE AND TIME

THURSDAY, DECEMBER 16, 1999
9:30 AM PT

HEARING PLACE

UMATILLA COUNTY COURTHOUSE
216 SE 4TH ST ROOM 20
PENDLETON OREGON

ADMINISTRATIVE LAW JUDGE

BETTERTON

*If you have questions prior to your hearing, call toll-free: 1-800-311-3394.
If you are calling from the Salem area, please use: 947-1515.*

BE PROMPT AT TIME OF HEARING. INQUIRE IN LOCATION'S LOBBY AREA REGARDING HEARING ROOM. If you need directions, call the above number.

The issue(s) to be considered are:
SEE ATTACHED FOR ISSUES.

Held by: Employment Department Hearings Section
875 Union Street NE
Salem, OR 97311

Issues

Did respondent violate OAR 340-150-0020(1) by storing gasoline and diesel in underground storage tanks and periodically dispensing such fuels from the tanks without first obtaining an underground storage tank general operating permit registration certificate?

Did respondent violate ORS 466.765(6) by not permitting a Department of Environmental Quality (DEQ) representative to have access to records relating to underground storage tanks owned by respondent?

PS Form 3811, December 1994

SENDER:
 Complete items 1 and/or 2 for additional services.

I also wish to receive the _____ services (for an _____ fee):

Addresssee's Address _____
 Restricted Delivery _____
 Postmaster for fee. _____

10/27/99

PS Form 3800, April 1995

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	10/27/99

PS Form 3811, December 1994

Domestic Return Receipt

PS Form 3811, December 1994

SENDER:
 Complete items 1 and/or 2 for additional services.

I also wish to receive the _____ services (for an _____ fee):

Addresssee's Address _____
 Restricted Delivery _____
 Postmaster for fee. _____

10/27/99

PS Form 3800, April 1995

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	10/27/99

PS Form 3811, December 1994

Domestic Return Receipt

P 481 561 696

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail (See reverse).

Sent to Dan's Ukiah Service
 Street & Number G 60247
 Post Office, State, & ZIP Code Betherton

Postage \$
 Certified Fee
 Special Delivery Fee
 Restricted Delivery Fee
 Return Receipt Showing to Whom & Date Delivered
 Return Receipt Showing to Whom, Date, & Addressee's Address
 TOTAL Postage & Fees \$
 Postmark or Date 10/27/99

PS Form 3800, April 1995

10/27/99

PS Form 3800, April 1995

Thank you for using Return Receipt Service.

Addresssee's Address _____
 Restricted Delivery _____
 Postmaster for fee. _____

10/27/99

PS Form 3800, April 1995

Thank you for using Return Receipt Service.

Thank you for using Return Receipt Service.



TANKLINE

Reporting on Issues and Activities Concerning Underground Storage Tank Management

FALL 1995-
WINTER 1996

ISSUE NO.

12

Department of
Environmental Quality
Underground Storage
Tank Program

811 S.W. Sixth Avenue
Portland, OR 97204



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The 1998 compliance deadline for meeting upgrade requirements for spill, overfill and corrosion protection is approaching.

EXHIBIT # 5



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The 1995 legislature has authorized DEQ to extend the essential services grant program for an additional two years.



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DEQ is considering strengthening requirements of its service provider/supervisor licensing program in light of recent enforcement actions.



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All petroleum-contaminated sites are candidates for cost recovery by DEQ.

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DEQ
EXHIBIT NO. 5



FEDERAL PROGRAM

DON'T WAIT UNTIL 1998

Why you should
upgrade or
replace early.

The terms "upgrading" and "upgrade" mean adding spill, overfill, and corrosion protection to existing USTs, including retrofitting piping.

More information on how you can meet upgrade requirements is contained in the EPA booklet "DON'T WAIT UNTIL 1998."

If you would like to obtain a copy of the booklet, please call the toll free UST helpline at 1-800-742-7878, or dial direct, 503-229-5733. Copies may also be obtained from your local regional office.

Under Subtitle I of the Resource Conservation and Recovery Act, Congress directed the U.S. Environmental Protection Agency (EPA) to establish regulatory programs that would prevent, detect, and clean up releases from underground storage tank systems (USTs) containing petroleum or hazardous substances. Subtitle I required EPA to develop regulations to protect human health and the environment from leaking USTs. To date, states have reported over 280,000 leaking USTs.

Upon adoption of the federal underground storage tank rules in December 1988, a ten year clock began to tick on upgrade requirements for spill and overfill prevention and corrosion control on existing tank systems, including piping. Even though more than six years have elapsed, DEQ records show that less than 20% of tank owners have upgraded or replaced existing, active systems. This is consistent with information generated by ten other states. Concerned with the apparent lack of progress, EPA has begun discussions with the states on ways to inform and educate tank owners on the approaching deadline.

Underground storage tank systems installed before December 22, 1988, are required to be upgraded by December 22, 1998. These older tank systems are referred to as "existing USTs."

Federal and state rules require your existing tanks to meet the following upgrade requirements by December 22, 1998:

- Spill protection
- Overfill protection
- Corrosion protection

LEAK DETECTION AND FINANCIAL RESPONSIBILITY (INSURANCE) IS REQUIRED NOW!

All interim deadlines for leak detection and financial responsibility, except financial responsibility for tanks owned by Indian tribes on Indian lands, have passed. Tank owners in Oregon should already be in compliance with these requirements.

You must choose one of the following actions for an existing UST:

- Add spill, overfill, and corrosion protection by December 22, 1998
- Close the existing UST by December 22, 1998
- Replace the closed existing UST with a new UST

DON'T LET 1998 ARRIVE BEFORE YOU ARE READY!

You should act as soon as possible. Without the protection provided by upgrading or replacing, your UST is more likely to leak, damage the environment, and leave you with costly cleanups. In addition, if your existing USTs have not been upgraded or properly closed by the 1998 deadline, you can be cited for violations and fined. Delaying upgrading may also cost you money. As December 1998 nears, increased customer demand to upgrade, close, or replace USTs may result in higher charges for these services.

QUICK COMPLIANCE CHECKLIST

You should be in compliance with the "upgrade" requirements if you can check off the major items below for each of your existing UST systems by December 1998:

- Spill protection provided by a catchment basin
- Overfill protection provided by an automatic shutoff device, overfill alarm, or ball float valve
- Corrosion protection for the tank provided by one of the following:
 - Steel tank has corrosion-resistant coating AND cathodic protection
 - Tank made of noncorrodible material (such as fiberglass)
 - Steel tank clad with (or enclosed in) noncorrodible material
 - Uncoated steel tank has cathodic protection system
 - Uncoated steel tank has interior lined with noncorrodible material
 - Uncoated steel tank has cathodic protection AND interior lined with noncorrodible material
- Corrosion protection for piping provided by one of the following:
 - Uncoated steel piping has cathodic protection
 - Steel piping has a corrosion-resistant coating AND cathodic protection
 - Piping made of (or enclosed in) noncorrodible material
- If you have decided not to upgrade your existing UST system with the items above, you have to properly close the UST system.
- If you subsequently install a new UST system, the new installation must meet all the regulatory requirements at the time of installation.

TANKS ON INDIAN LANDS

The U.S. Environmental Protection Agency has made a final ruling on the administration of underground storage tanks on Indian reservations. EPA will retain sole jurisdiction regardless of the type of land ownership, whether it be taxable fee patent land, or tribal trust or individually allotted Indian lands. If your tank is on Indian land and you have been working with DEQ, you must now work directly with

EPA's Seattle Regional Office. If you need to register tanks on Indian lands, obtain permits for them (at no cost), or provide the 30-day notice prior to closure, please contact Katherine Holt at (206) 553-2580 or (800) 424-4EPA, ext. 2580. If you have a compliance-related issue or need to report a suspected/known release, please contact Geoff Keeler at (206) 553-1089 or (800) 424-4EPA, ext. 1089.



UST FINANCIAL ASSISTANCE

UST FINANCIAL ASSISTANCE EXTENDED THROUGH 1997

The 1995 Legislature authorized DEQ to administer the essential services grant program for two more years. In 1993, lottery funds were provided to fund approximately 50 projects in rural and remote areas of Oregon.

To date, DEQ has approved 61 projects for grant funding. This is eleven more projects than anticipated. Fifty projects are complete and the remainder are under construction or scheduled to begin construction soon. DEQ was able to fund the additional projects due to the efforts of owners and contractors to minimize costs. DEQ also kept the costs of administering the fund and providing technical assistance to just 15%.

DEQ estimates that there may be 100 additional rural stations that qualify for and are in need of financial assistance. The 1995 legislature allocated two million in lottery dollars to fund 25 more projects. Applications will be approved on a first-come, first-served basis.

Projects are located in almost every county in Oregon; almost half are east of the Cascades. Most are owned by people who have lived in their communities for many years and run the station along with a grocery store, cafe, motel, or even a post office. They want to stay in business because they know they are needed. Some are the only source of retail gasoline or diesel within 25 or more miles.

The essential services grant program allows tanks to be replaced with either underground storage tanks or aboveground storage tanks (ASTs). ASTs must have the approval of the State Fire Marshal and local officials. Over one-third of the 61 projects currently funded have chosen to install ASTs.

The average cost of a project is \$71,000 for equipment and \$18,000 for cleanup. However, a sizable number of projects have been completed for significantly less money with little or no cleanup required. The mid-range project costs are \$62,000 for equipment and \$5,000 for cleanup. Several projects have totaled under \$40,000.

Owners hire the contractor, manage their projects and disburse payments. With very limited budgets, owners carefully plan their projects. They learn the regulations, talk to other owners who have done projects in the program, select contractors who will listen and work with them, shop carefully for the most cost effective equipment, perform some of the labor themselves if possible, and otherwise find ways to cut costs.

GRANT ELIGIBILITY REQUIREMENTS AND FINANCIAL ASSISTANCE AVAILABLE

Tank owners, tank operators or property owners are eligible for an essential services grant if the facility meets the following program requirements:

1. Must currently be an UST motor fuel retailer, or have retailed UST motor fuel after 12/22/88, and also be the tank owner, property owner or permittee of the UST facility in DEQ records.
2. The facility is the only retail UST facility in an incorporated city or is located nine miles or more in any direction from the nearest retail UST facility. The above facilities need not be active; rather they must have been active since 12/22/88 and intend to resume retailing motor fuel in the future.

3. The tank owner of the facility must own no more than 12 USTs in Oregon.
4. The tank owner must be able to show financial need by meeting financial ratio requirements.
5. The applicant must enter into an agreement that the grant will be repaid in full if the property or business is sold within the first five years, unless the buyer agrees to keep the motor fuel retail facility open for the remainder of the five year period.

If an application is approved for funding, the applicant will receive a 75% essential services grant of up to a maximum grant of \$75,000 for the following project work:

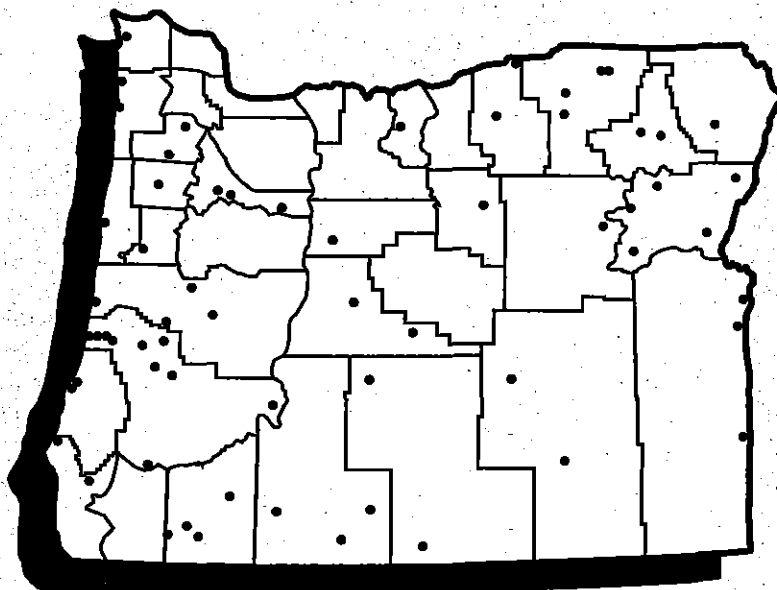
1. Installation of pollution control equipment such as corrosion protection, spill

and overfill devices and leak detection devices on underground tanks (including replacement of underground tanks with aboveground or vaulted underground tanks).

2. Investigation and cleanup of petroleum-contaminated soils and groundwater.
3. Installation of Stage I and II vapor collection systems, including hoses and nozzles (Stage II vapor recovery is not required by law in most rural areas, but is eligible if installed).

For information and an application, please call Barbara Anderson, Financial Assistance Coordinator, (503) 229-5870 in Portland, or use the toll-free UST HELPLINE, 1-800-742-7878.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANKS
FINANCIAL ASSISTANCE PROJECTS JULY 1995**





OREGON PROGRAM

UST PERMIT FEES

UST Permit fees are the primary source of funding for DEQ's UST program.

In 1988, the Department required all owners of regulated tanks to apply for an underground storage tank permit. As required by Oregon Administrative Rule, DEQ currently assesses all permittees a \$35.00 per year per tank fee. The \$35.00 fee is currently one of the lowest underground storage tank fees in the nation. This fee is the primary source of funding for DEQ's UST program. The fee pays for maintaining a current database of permitted tanks, preparing and distributing publications and other outreach materials, providing technical assistance by phone and in person, and for conducting compliance inspections and enforcement actions. In 1994 alone, the number of compliance/technical assistance activities was 10,617, including 1,165 inspections, 8,329 technical assistance calls and 1,123 office visits.

The Department currently permits 10,636 tanks, down 47% from a total of 20,015 tanks permitted since 1988. As the number of tanks continues to decline due to decommissioning, the funding for the UST compliance program also declines. Approximately 10% of fees owed the Department are currently delinquent. In light of the continuing decrease in revenues, collection of these overdue fees is critical to the operation of the program.

DEQ is sending collection letters to permittees and tank owners who have ongoing delinquent accounts. The letter warns that unless the fee is paid within 30 days, the permittee will be issued a notice of noncompliance for violation of Oregon Administrative Rule 340-150-110. Failure to pay the delinquent fees may result in referral to the Department's Enforcement Section with a recommendation to proceed with formal enforcement action, including a civil penalty assessment. Accounts not paid within 30 days will be transferred to the Oregon Department of Revenue for collection.

Some permittees and tank owners may not realize that they owe past due fees. The guidelines which apply to fee collection are as follows:

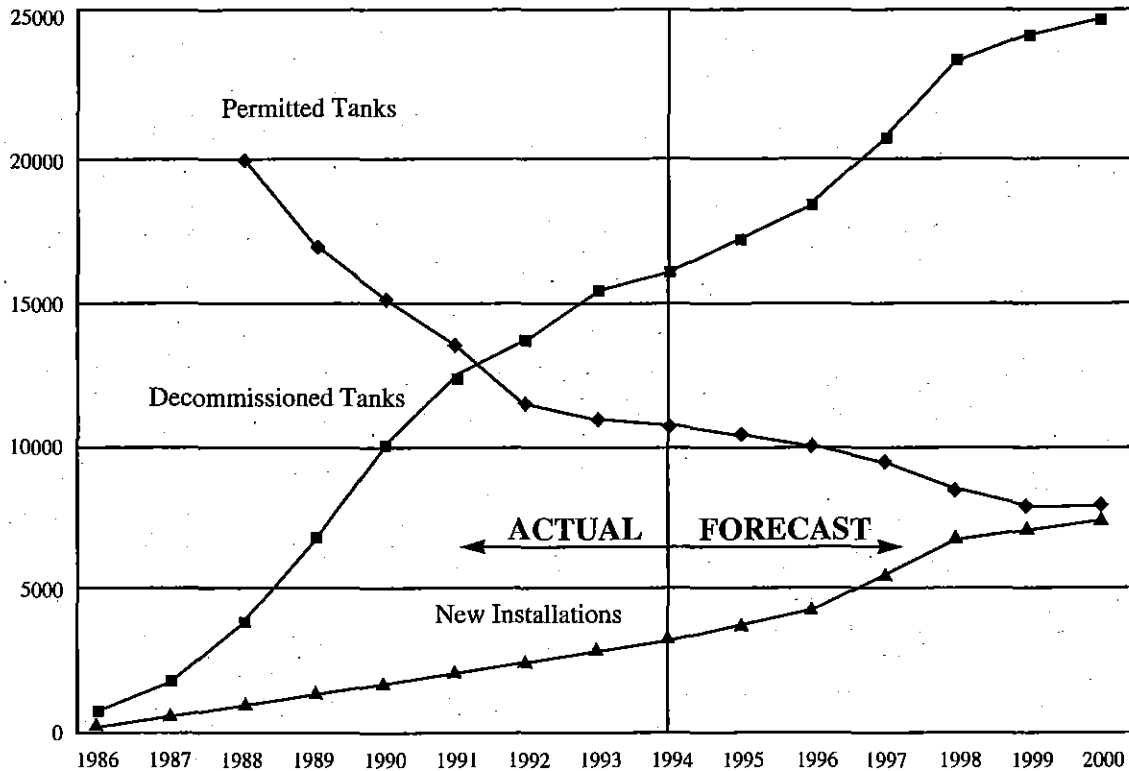
1. The full fees are owed for each calendar year, or part of a calendar year, during which an underground storage tank has not been permanently decommissioned. (Decommissioning generally involves removing the tank from the ground.) For example, if you decommission your tanks January 15, 1995, you will be assessed the full compliance fee for 1995 of \$35.00 per tank.
2. In order for the Department to recognize a permanent decommissioning, a UST Decommissioning/Service Change Report and a Decommissioning Checklist must be submitted to the

Department within 30 days following completion of the work. Until the required reports are received, the tank status remains active and is subject to the annual compliance fee. Therefore, if you removed your tanks in 1994 but did not submit the required reports until 1995, you will owe the full 1995 compliance fee.

3. If you purchase a property with delinquent permit compliance fees, you will be billed for the past due fees. Tank fees are assessed on a per tank, per year basis regardless of ownership. The current owner or permittee is responsible for paying the delinquent fees. A buyer of property with tanks should determine if the facility owes back fees. Prior knowledge of delinquent fees allows the buyer the opportunity to include the payment of delinquent fees by the seller as a condition of the sale.

To find out whether a tank facility owes delinquent fees, please call the toll-free UST HELPLINE at 1-800-742-7878 or dial direct, (503) 229-5733. Your call will be returned within 24 hours. Please have the UST facility number available when you call.

CHANGES IN UST POPULATION



This graph shows the actual and forecasted changes to Oregon's UST population. DEQ currently permits 10,636 tanks, down 47% from a total of 20,015 tanks permitted since 1988. The number of tanks is expected to continue to decline as the 1998 deadline approaches.

REPORTING REQUIREMENTS

REGIONAL OFFICE

You are required to report the following UST activities, in accordance with the specified time frames, to the REGIONAL OFFICE nearest to your facility. (Please see page 11 for a complete listing of offices.)

- Releases from an UST system— call your regional office within 24 hours.
- Notice of decommissioning, installation, or upgrade/

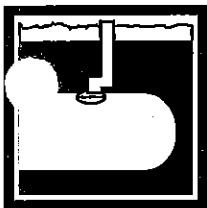
retrofit—call your regional office 3 days before beginning work.

NOTE: Upgrading includes, but is not limited to, underground piping (product, vent and vapor recovery piping), tank lining, leak detection equipment, monitoring and observation wells, and cathodic protection.

DEQ HEADQUARTERS

In addition to the regional reporting requirements, you are required to submit the following written documentation to DEQ Headquarters, 811 S.W. Sixth Avenue, Portland, OR 97204:

- 30 Day Notice prior to decommissioning or changing service
- 30 Day Notice prior to retrofitting or upgrading
- Permit Application and Fee—30 days prior to installation
- Installation Checklist—30 days following installation
- Decommissioning Checklist and Tank Decommissioning/Service Change Report—30 days following work completion



COMPLIANCE UPDATE

LEAK DETECTION COMPLIANCE RATE SOARS

As of December 1993, owners and operators of all new and existing UST systems were required by EPA and DEQ rules to provide a method or methods of release detection. Detecting leaks before a major release occurs may save a tank owner thousands of dollars in cleanup costs. It can also prevent adverse impacts to human health and the environment, including contamination of drinking water supplies. (Please refer to "TANKLINE 11" for a complete description of leak detection requirements.)

Results from the latest round of inventory audits, conducted during the first half of 1995, indicate an 84% compliance rate with leak detection requirements. The Department believes that increased technical assistance and a greater field presence contributed to the relatively high compliance rate. The 1994 results from 125 leak detection inspections conducted by the Department indicated a compliance rate of just 44%.

Concerned with the low compliance rate in 1994, DEQ's UST Section focused its resources on technical assistance, compliance monitoring and enforcement.

Over 800 retail facilities which are part of DEQ's financial assistance program received letters requesting they submit their previous two months of inventory records to the Department. The financial assistance program sites were selected for auditing as these facilities were granted an exemption by the Oregon legislature from performing tank tightness tests. The exemption expires when the program sunsets on December 31, 1996. In the meantime, the Department was concerned that these facilities had a higher risk of a release going undetected, particularly if inventory control was not being performed correctly.

Results from 811 of the facilities audited in 1995 are presented in the table below. Some inventory audits may be followed by an onsite visit and inspection, particularly those sites which fail to respond to DEQ's request for records. A total of 62 notices of noncompliance (NONs)

have been sent to tank owners or permittees who either failed to conduct leak detection or performed it incorrectly.

For facilities using the monthly inventory control method of leak detection, inadequate record keeping and failure to calculate and use the comparison number for monthly reconciliation were the most common mistakes. Other errors included not having tank charts in one-eighth inch increments, not recording the water measurement on an inventory sheet at least once a month even though the amount may be zero, not using the water volume in inventory calculations and not recording the volume before and after a delivery.

In addition to the inventory audits, DEQ is also conducting service provider and distributor audits as well as installation, decommissioning, facility compliance and UST cleanup inspections throughout 1995. In 1996, the Department is planning to conduct inventory audits on non-retail facilities. Please contact your DEQ Regional Office if you have questions or need help with leak detection.

1995 INVENTORY AUDIT RESULTS

Work Performed	Total	%
Total Facilities Audited	811	100%
Number In Compliance After Initial Mailing	338	42%
Number In Compliance After DEQ Follow-up	293	36%
Total Sites in Compliance Initially or After Follow-up	631	78%
Number NONs* For No Leak Detection Monitoring	57	7%
Number NONs (All Other Reasons)	5	0.6%
Total NONs Issued	62	8%
Additional Sites in Compliance After Responding to NON	52	6%
Total Sites in Compliance as of 7/31/95	683	84%
Total Sites Not in Compliance or Pending Response as of 7/31/95	128	16%

* Notices of Noncompliance

LICENSING PROGRAM

SERVICE PROVIDER VIOLATIONS

DEQ is considering strengthening the requirements of its service provider/supervisor licensing in light of serious violations of the law allegedly perpetrated by DEQ licensees. Alleged violations include racketeering, forgery and fraud. DEQ requires all service providers and supervisors to obtain a license from the Department prior to performing work on underground storage tanks and tank cleanup sites.

Tank owners are advised that licensing by DEQ is not a guarantee of the reputability of the firm. The license demonstrates that supervisors have knowledge of the rules and industry practices, but it can not ensure that a company will perform the work correctly. A firm's credentials should be thoroughly evaluated by the tank owner prior to retaining its services. Described below is one ongoing enforcement action against a UST licensed service provider:

On April 19, 1994, Attorney General Theodore R. Kulongoski filed an action against an Albany business enterprise, alleging that it fraudulently provided underground storage tank cleanup services throughout Oregon. The state's action is part of a multiagency investigation, involving state and federal agencies, that began in November 1993. The investigation found that at least 80 cleanup sites involved false or forged documentation.

The civil complaint was filed in Marion County Circuit Court on behalf of the state and the Department of Environmental

Quality. The complaint alleged racketeering and violations of Oregon's unlawful trade practices act and environmental laws.

The complaint was filed against Kenneth R. "Bob" Cyphers and Sharel L. Cyphers from Corvallis, Oregon. The suit also named four businesses owned and operated by Cyphers, including Hogate Drilling and Construction, Inc., UST Environmental Services, Inc., and UST Environmental Engineers, Inc., all of which operated in Albany, and Progeny Partners, LTD, which operated in Corvallis. Bob Cyphers was licensed by DEQ to supervise underground storage tank soil matrix cleanups. Hogate Drilling, UST Environmental Services, Inc. and UST Environmental Engineers, Inc. were licensed soil matrix cleanup service providers.

At the hearing, Marion County Circuit Judge Albin Norblad signed a temporary restraining order preventing Cyphers from conducting underground storage tank testing, removal and cleanup services pending a further court hearing. The order signed by the Judge also provided for the seizure of corporate assets and prevented the defendants from transferring any assets or removing any records or property.

The lawsuit alleges that the defendants violated Oregon's racketeering law by committing multiple acts of forgery and falsifying business records by submitting phony reports from nonexistent testing laboratories and forging signatures of attesting chemists. The defendants also are alleged to have falsified landfill receipts for disposal of contaminated soil when the soil

was not taken to the landfill.

The suit further charges that the defendants fraudulently obtained money from consumers and businesses for environmental testing and services that were promised but not performed. The complaint also alleges that the defendants made false representations to customers, in violation of the state Unlawful Trade Practices Act, and that they violated Oregon's environmental laws by failing to perform certain responsibilities of licensees.

According to an affidavit filed in conjunction with the complaint, investigators discovered close to 100 phony reports from two fictitious scientific laboratories, both connected to Cyphers. One "lab," Field Enviro Lab Services, was an assumed business name registered to Cyphers. The address for Field Enviro Lab was actually the location for an ice cream parlor operated by Cyphers in Corvallis. Investigators also found that a second "lab," Sierra Chromalab, was not a registered entity in Oregon and its business address was a drop box in Portland.

The lawsuit seeks to permanently prohibit Cyphers from conducting environmental cleanup services in Oregon. The lawsuit requests forfeiture of all real and personal property used in or derived from the illegal conduct, \$275,000 in civil penalties, dissolution of the corporations, revocation of all DEQ licenses and restitution for affected consumers and businesses. Also requested is three times the value of actual damages sustained by DEQ. In a related action, the Oregon Construction Contractors Board has revoked UST Environmental Services' certificate of registration to perform construction work in Oregon.



TANKLINE

TANKLINE

Fall 1995-
Winter 1996
Issue No. 12

**Underground
Storage Tank Program
Oregon Department of
Environmental Quality**
811 S.W. Sixth Ave.
Portland, Oregon 97204

Stephanie A. Holmes – Editor

This issue of TANKLINE addresses the UST program concerns of educating and informing the regulated community of important program developments. This newsletter will focus on federal and state statutory authority and regulations, legal concerns and technical developments.

TANKLINE, published periodically, is distributed free of charge to interested individuals and organizations.

UPDATE

DEQ REORGANIZATION

DEQ has undergone a reorganization which began in February 1994 and is now complete. Many headquarters staff were transferred to field office locations. The UST Cleanup and UST Compliance Sections were merged into a single section.

DEQ expects the reorganization to increase its ability to provide technical assistance and better implement the UST compliance and cleanup programs.

In addition, two new regional offices were opened. Western Region has opened a new office in Eugene and Eastern Region has opened an office in The Dalles. There are now seven regional offices to better serve the public.

EUGENE OFFICE
1102 Lincoln Street,
Suite 210
Eugene, OR 97041

UST General Information
(503) 686-7838

THE DALLES OFFICE
400 E. Scenic Drive,
Suite 307
The Dalles, OR 97058

UST General Information
(503) 298-7255



Oregon DEQ
UST Program
811 S.W. Sixth Ave.
Portland, Oregon 97204

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UNDERGROUND STORAGE TANK PROGRAM
30-DAY NOTICE OF INTENT TO DECOMMISSION
 FOR NON-UPGRADED TANKS THAT EXISTED PRIOR TO 12/23/98
TO PERMITTEE: FOR EXISTING FACILITY:

In early November 1998 we mailed you a Decommissioning Tank Status Report. The report listed tanks that we understood would be decommissioned based on DEQ records. Tanks that have not been upgraded to meet one or more of the 1998 technical standards for corrosion control or spill and overfill prevention must be decommissioned in accordance with OAR 340-150-0166 prior to December 22, 1998. Tanks which are not decommissioned (permanently closed) as of December 22, 1998 must temporarily close as of that date, submit a *30-Day Notice of Intent to Decommission* to the appropriate regional office and follow the requirements listed on page 2.

On December 22, 1998, all the outstanding UST temporary permits for underground storage tanks were terminated pursuant to Oregon Administrative Rule 340-150-0021 (1) recently adopted by the Environmental Quality Commission (EQC) on October 30, 1998. In lieu of issuing individual permits to facilities, the EQC adopted a general permit by rule to cover the conditions and requirements to decommission USTs by closure or change-in-service (converting from storing a regulated substance to a non-regulated substance). Copies of the draft general permit to decommission were mailed to all permittees and tank owners in August 1998. The EQC adopted the decommissioning rules as proposed without any substantive changes.

You have received this *30-Day Notice of Intent to Decommission* as our records indicate the tanks listed below do not meet the 1998 technical standards for corrosion control or spill and overfill prevention. Tanks that do not meet the 1998 technical standards are not eligible to receive a general permit to operate and are not authorized to receive deposits of regulated substances, such as motor fuel, on or after December 23, 1998.

TANKS TO BE DECOMMISSIONED

Tank ID Number	Tank Permit Number	Tank ID Number	Tank Permit Number	Tank ID Number	Tank Permit Number

DECOMMISSIONING REQUIREMENTS:

Listed below is a summary of the requirements to manage the tanks listed on Page 1 in accordance with the *General Permit To Decommission USTs* by permanent closure or change-in-service pursuant to OAR 340-150-0166.

If your tanks have already been removed or filled, but the tanks are listed under "Tanks to be Decommissioned" it is likely that one or more of the requirements listed below have not been met. Please contact your regional office for assistance. Also contact your regional office in the case of other discrepancies with our records.

REQUIREMENTS TO MANAGE A TANK IN TEMPORARY CLOSURE:

- a. Immediately submit a *30-Day Notice of Intent to Decommission* (Page 3 of this mailing),
- b. Maintain and operate the UST's corrosion control system,
- c. If the USTs are not empty – continue leak detection, and
- d. After 3 months (or no later than March 22, 1999) cap all lines, pumps, manways, and ancillary equipment, except vent lines.

REQUIREMENTS TO PERMANENTLY CLOSE YOUR TANK:

- a. Contact your local DEQ regional office 3 days before starting any decommissioning work (regional map and phone numbers are listed on page 4),
- b. Complete permanent closure or a change-in-service within twelve months (or no later than December 22, 1999),
- c. Until permanent closure or change-in-service is achieved, continue to comply with all temporary closure requirements listed in the Item above (b, c and d),
- d. Conduct a site assessment to determine if a spill or release has occurred,
- e. Report any confirmed release to your DEQ regional office pursuant to OAR 340-122-0220, and
- f. Submit the *UST Decommissioning/Change-in-Service Report* and *Decommissioning Checklist* no later than 30 days of completing the closure or change in service.

FUEL DISPENSING POLICY FOR TEMPORARILY CLOSED TANKS:

We realize that not everyone proceeding to decommission tanks was able to completely empty those tanks by the close of business on December 22, 1998. To prevent potential releases from this residual product before permanent closure or change-in-service is completed, the Department is prepared to use enforcement discretion during temporary closure (until March 22, 1999) to allow normal dispensing of this residual product. At the bottom of this page is a block to certify this intent to empty the tanks expeditiously, but by no later than March 22, 1999 when all lines and pumps need to be capped.

If you were not able to empty all the product from your tank please sign the following statement and return this page with your 30-day notice to decommission to the appropriate regional office listed on Page 4.

I was not able to empty all products from my tanks by December 23, 1998. As a method of emptying these tanks for the purpose of permanent closure or change-in-service, I plan to dispense the remaining product as soon as possible during temporary closure, but by no later than March 22, 1999. I also certify that I will not deposit any additional product into the tanks on or after December 23, 1998 under penalty of law.

(Print Permittee Name)

(Permittee Signature)

(Date)

30-DAY DECOMMISSIONING NOTICE FOR TANKS NOT MEETING THE 1998 DEADLINE REQUIREMENTS

DEQ Facility I.D. Number: _____ (Please use number from page 1)

Facility Name: _____ Facility Address: _____

Work To Be Performed By: _____ License # _____
 (Permittee, Tank Owner, Property Owner or Licensed Service Provider) (Service Provider)

Phone: _____ Mobile Phone: _____

Note: If you haven't selected a licensed service provider yet, please leave blank at this time but call the appropriate regional office as soon as licensed service provider is hired. If you need a list of licensed service providers please call the UST HELPLINE 1-800-742-7878 (toll-free in Oregon) or (503) 299-6652.

YOU MUST CONTACT YOUR LOCAL DEQ REGIONAL OFFICE 3-DAYS BEFORE STARTING ANY DECOMMISSIONING WORK. (Regional map and phone numbers are listed on page 4)

Will tank removal or potential cleanup affect adjacent property or Right-of-Way property? Yes _____ No _____

Date decommissioning is scheduled to begin: _____

TANK ID #	DEQ-UST PERMIT #	TANK SIZE IN GALLONS	PRODUCT: GASOLINE, DIESEL, USED OIL, OTHER?		CLOSURE OR SERVICE CHANGE?			TANK TO BE REPLACED?	
			PRESENT	NEW	TANK REMOVAL	CLOSURE IN PLACE♦	OTHER USE♦	YES*	NO

- * If decommissioned tank(s) are to be replaced by new underground storage tanks you must submit a *General Permit Registration Form to Install and Operate USTs* containing information on the new tanks 30 days before installing them.
- ♦ Submit a soil sampling plan to the DEQ regional office and receive plan approval prior to starting work if (1) tank is to be decommissioned in-place, (2) tank contents are changed to an unregulated substance, (3) tank contains a regulated substance other than petroleum, or (4) tank is changed to an unregulated use.

THIS NOTICE AND THE 3-DAY TELEPHONE NOTICE ARE REQUIRED prior to starting decommissioning work on a regulated underground storage tank (UST). Decommissioning work includes but is not limited to excavation and removal of the tank and its appurtenances, removal of underground piping (product, vent and vapor recovery piping), soil sampling, and groundwater sampling. (See 40 CFR 280.70 through 40 CFR 280.74 as amended by OAR 340-150-0003).

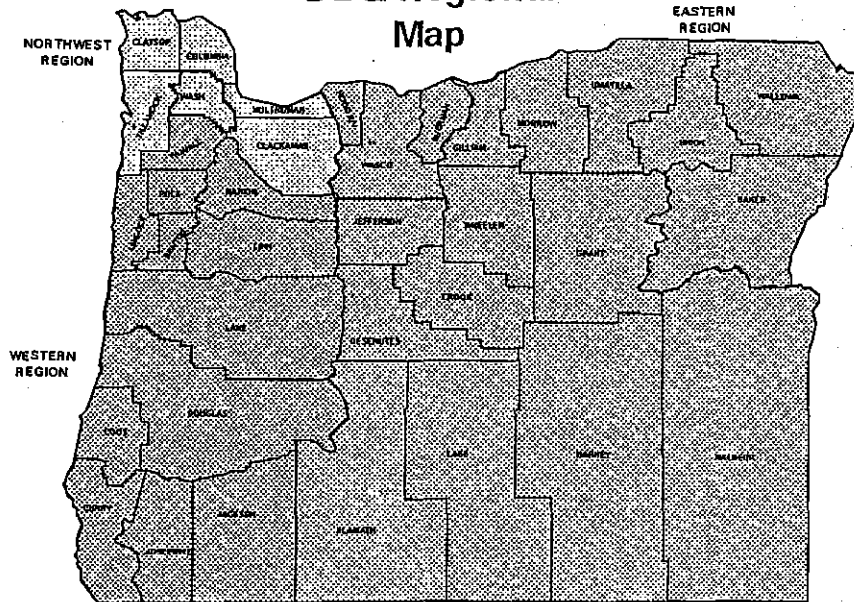
THIS NOTICE IS NOT REQUIRED for decommissioning unregulated tanks. To determine whether an underground tank is regulated please refer to 40 CFR 280.10 for UST's that are excluded or deferred from regulation, and 40 CFR 280.12 for the definition of a UST, or contact DEQ. (Examples are heating oil, and most residential or farm motor fuel tanks under 1100 gallons.)

ALL PAST DUE UST PERMIT FEES MUST BE PAID before this decommissioning notice will be accepted by DEQ.

MAKE SURE THIS FORM IS COMPLETE as a notice that is incomplete will not be accepted.

RETURN THIS FORM TO YOUR DEQ REGIONAL OFFICE LISTED ON THE REVERSE SIDE OF THIS FORM (PAGE 4).

DEQ Regional Map



**THE DEPARTMENT OF ENVIRONMENTAL QUALITY UST PROGRAM
REGIONAL OFFICE IN WHICH YOUR FACILITY IS LOCATED**

**PLEASE MAIL 30-DAY NOTICE OF INTENT TO THE
APPROPRIATE OFFICE ON THIS LIST**

NORTHWEST REGION
2020 SW 4TH AVENUE, SUITE 400
PORTLAND, OR 97201-5884
FAX (503) 229-6945
Phone: (503) 229-5263

EASTERN REGION/THE DALLES
400 E SCENIC DRIVE, BUILDING 2 - 307
THE DALLES, OR 97058
FAX (541) 298-7330
Phone: (541) 298-7255

WESTERN REGION / SALEM
750 FRONT STREET NE, SUITE 120
SALEM, OR 97310
FAX (503) 373-7944
Phone: (503) 378-8240

EASTERN REGION / PENDLETON
700 SE EMIGRANT, SUITE 330
PENDLETON, OR 97801
FAX (541) 278-0168
Phone: (541) 276-4063

WESTERN REGION / MEDFORD
201 W MAIN STREET, SUITE 2-D
MEDFORD, OR 97501
FAX (541) 776-6262
Phone: (541) 776-6136, Ext. 233

EASTERN REGION / BEND
2146 NE 4TH, # 104
BEND, OR 97701
FAX (541) 388-8283
Phone: (541) 388-6146

WESTERN REGION / EUGENE
1102 LINCOLN STREET, SUITE 210
EUGENE, OR 97401
FAX (541) 686-7551
Phone: (541) 686-7838

UST HELPLINE: 1-800-742-7878
(Toll Free in Oregon)

UNDERGROUND STORAGE TANK PROGRAM
DECOMMISSIONING TANK STATUS
 FOR HOLDERS OF TEMPORARY UST PERMITS

TO PERMITTEE:

FOR EXISTING FACILITY:

DEQ records indicate the following tanks have not been upgraded to meet one or more of the 1998 technical standards for corrosion control, spill and overfill prevention and leak detection and must be decommissioned in accordance with OAR 340-150-0166 prior to December 22, 1998. Tanks that do not meet the 1998 technical standards by December 22, 1998 must permanently close as of that date or, at a minimum, elect the temporary closure option which requires permanent decommissioning no later than December 22, 1999. Instructions on how to comply with the general permit to decommission conditions and requirements, including temporary and permanent closure or change-in-service, will be mailed to you in late December 1998.

IF INFORMATION ON YOUR TANK STATUS IS CORRECT (i.e. the following tanks do not, or will not, meet the 1998 technical standards for corrosion control, spill and overfill prevention and leak detection by December 22, 1998) **DO NOT RETURN THIS FORM.** You will be receiving further instructions about decommissioning these tanks in late December 1998.

IF OUR INFORMATION IS INCORRECT AND YOU DO INTEND TO OPERATE ONE OR MORE OF THE FOLLOWING TANKS on or after December 23, 1998, **PLEASE COMPLETE PAGE 2, THE GENERAL PERMIT REGISTRATION FORM TO OPERATE.** For any tanks listed below, just transfer the Tank ID Number and Tank Permit Number to page 2 and describe the facts pertaining to the installation, upgrading or retrofitting of the subject tanks. If necessary, please make extra copies of page 2 to register more tanks. Both the permittee and tank owner must sign the operating registration form and return it to the Department of Environmental Quality, UST Program, 811 SW 6th Avenue, Portland, OR 97204.

TANKS TO BE DECOMMISSIONED

Tank ID Number	Tank Permit Number	Tank ID Number	Tank Permit Number	Tank ID Number	Tank Permit Number

UNDERGROUND STORAGE TANK PROGRAM
GENERAL PERMIT REGISTRATION FORM TO OPERATE
FOR HOLDERS OF TEMPORARY UST PERMITS

Complete this form **ONLY** if you intend to operate any of the tanks listed as **TANKS TO BE DECOMMISSIONED** on page 1. Also include any new tanks which you have installed, **only** if you have not already received a *General Permit to Operate Registration Form* for these tanks in the mail.

This form must be mailed to the address on page 3. Both the permittee and tank owner must sign. Make a copy of this form for your records. Lastly, after mailing the form back to DEQ, please call your DEQ regional office listed on page 4 and discuss these changes you are making. It will help to speed up the processing of this registration form.

Tank ID Number	Tank Permit Number

Tank ID Number	Tank Permit Number

Tank ID Number	Tank Permit Number

Note: Failure to register and receive a *General Permit Operating Certificate* under the recently adopted rules means that after December 22, 1998 regulated substance cannot be deposited into the tanks.

1. Tank Owner* as registered with the Secretary of State, Corporations Division

 Name of Official (Please Print)

 Signature of Official Date

2. Permittee* as registered with the Secretary of State, Corporations Division

 Name of Official (Please Print)

 Signature of Official Date

I hereby register to operate the USTs described above in accordance with the conditions and requirements of the general permit pursuant to OAR 340-150-0163. I also certify that these tanks meet the 1998 technical standards for corrosion control, spill and overfill prevention and leak detection and I have arranged financial responsibility.

* If you are not registered with the Secretary of State, Corporations Division, provide the name that you currently use to identify your business to customers.

NEW GENERAL PERMIT TO DECOMMISSION USTS UNDERGROUND STORAGE TANK PROGRAM

DESCRIPTION:

On December 22, 1998 all the outstanding UST temporary permits for underground storage tanks will be terminated pursuant to Oregon Administrative Rule 340-150-0021 (1) recently adopted by the Environmental Quality Commission (EQC) on October 30, 1998. In lieu of issuing individual permits to facilities, the EQC adopted two general permits by rule, one to cover the conditions and requirements to operate USTs holding regulated substances and one to cover the conditions and requirements to decommission USTs by closure or change-in-service. Copies of the draft general permits to operate and decommission were mailed to all permittees and tank owners in August 1998.

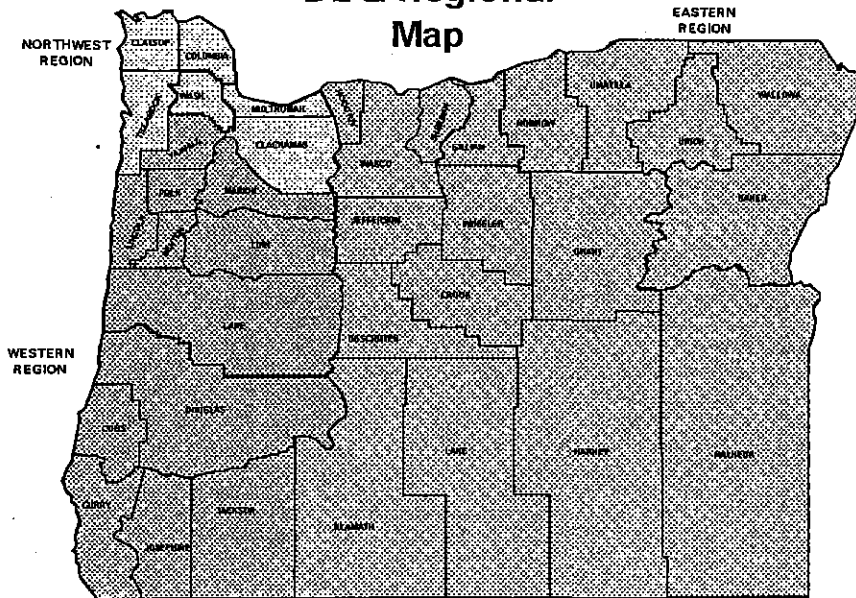
Tanks that our records indicate meet the 1998 technical standards for corrosion control, spill and overfill prevention and leak detection have been mailed a *General Permit Registration Form to Operate*. You have received this *Decommissioning Tank Status Form* as our records indicate the tanks listed on page 1 do not meet the 1998 technical standards. Tanks that do not meet the 1998 technical standards are not eligible to receive a *General Permit to Operate* and will not be authorized to receive regulated substances such as motor fuel on or after December 23, 1998.

INSTRUCTIONS:

1. According to our records; based on self-certification survey forms, non-response to self-certification survey forms or regional inspections, it is our understanding that the tanks listed on page 1 do not meet the 1998 technical standards for corrosion control, spill and overfill prevention and leak detection. As such, it will be necessary to manage these tanks in accordance with the conditions and requirements of the *General Permit to Decommission USTs* by temporary or permanent closure or change-in-service pursuant to OAR 340-150-0166.
2. If our determination in Instruction #1 is correct, no action is required at this time. Please keep these forms for your records. In late December 1998 we will mail you a decommissioning package with instructions on the decommissioning process.
3. If you plan to operate any of the tanks listed on page 1, and deposit any regulated substance into the tanks after on or after December 23, 1998, you must return page 2, a completed and signed *General Permit to Operate Registration Form* to the Department by no later than 5:00 PM on Friday December 4, 1998. If necessary, a copy of the completed form can be faxed to us at (503) 229-6954. We can not guarantee that we can process any forms received after December 4, 1998 by December 22, 1998. **Completed forms must be returned to:**

Department of Environmental Quality
UST Program
811 SW 6th Avenue
Portland, OR 97204
4. If for any reason your information does not correspond to our preliminary determination of tank status, please provide an explanation on page 2 of the form. After mailing the form to DEQ, contact the appropriate regional office listed on page 4 and discuss what changes you made on the tank status for this facility. It will speed the processing of your form.
5. If you have any other questions regarding this mailing, please call our toll-free UST Helpline at 1-800-742-7878 (In Oregon) or call direct (503) 229-6652.

DEQ Regional Map



THE DEPARTMENT OF ENVIRONMENTAL QUALITY UST PROGRAM REGIONAL OFFICE IN WHICH YOUR FACILITY IS LOCATED

NORTHWEST REGION
 2020 SW 4TH AVENUE, SUITE 400
 PORTLAND, OR 97201-5884
 FAX (503) 229-6945
 Phone: (503) 229-5263

EASTERN REGION/THE DALLES
 400 E SCENIC DRIVE, # 307
 THE DALLES, OR 97058
 FAX (541) 298-7330
 Phone: (541) 298-7255

WESTERN REGION / SALEM
 750 FRONT STREET NE, SUITE 120
 SALEM, OR 97310
 FAX (503) 373-7944
 Phone: (503) 378-8240

EASTERN REGION / PENDLETON
 700 SE EMIGRANT, SUITE 330
 PENDLETON, OR 97801
 FAX (541) 278-0168
 Phone: (541) 276-4063

WESTERN REGION / MEDFORD
 201 W MAIN STREET, SUITE 2-D
 MEDFORD, OR 97501
 FAX (541) 776-6262
 Phone: (541) 776-6136, Ext. 233

EASTERN REGION / BEND
 2146 NE 4TH, # 104
 BEND, OR 97701
 FAX (541) 388-8283
 Phone: (541) 388-6146

WESTERN REGION / EUGENE
 1102 LINCOLN STREET, SUITE 210
 EUGENE, OR 97401
 FAX (541) 686-7551
 Phone: (541) 686-7838

UST HELPLINE: 1-800-742-7878
 (Toll Free in Oregon)

**State of Oregon
Department of Environmental Quality
Underground Storage Tank Program**

Upgrade Certification Form

To:

For Facility:
UST fac. ID No.

Recognizing that preventing leaks from underground storage tanks is key to protecting groundwater quality, the United States and the State of Oregon adopted the underground storage tank regulations. In 1988, a ten year clock began to tick for upgrading underground storage tank systems (USTs). On December 22, 1998 all USTs must have spill protection, overfill protection and corrosion protection for the tanks and piping. Leak detection and financial responsibility (insurance) are required now.

Concurrent with the 1998 compliance deadline, the Department is also proposing to implement a general permit and registration certificate program to replace all existing temporary permits. Effective December 23, 1998, all existing temporary permits will be terminated. By the 23rd, all tank owners and permittees will need to register to operate under either the general permit to operate tanks or the general permit to decommission tanks by temporary or permanent closure. **To implement these proposed changes to the permit program, the Department is asking permittees to complete this upgrade certification form concerning the upgrade status of their tank system(s) and return it to the Department no later than September 20, 1998. Under a 1997 law, this information will also be used to determine the permittees 1999 annual compliance fee (\$35 for upgraded tanks, \$60 for non-upgraded tanks)**

Enclosed is a *Quick Early Compliance Checklist* designed to help you determine whether your tank systems meet the upgrade requirements. If you need further assistance, the Department recommends that you contact your DEQ licensed installation/retrofit service provider. **In order to meet the state or federal upgrade requirements, and to qualify for the lower fee, your tank system(s) must have spill protection, overfill protection, corrosion protection for the tank(s) and corrosion protection for the piping in accordance with 40 CFR 280.21 as adopted or as amended by OAR 340-150-003.**

According to our records you are currently the holder of temporary permits for the tank system(s) listed below. Please place a check mark in the YES column after those tank systems which currently meet all the upgrade requirements.

For tank systems which do not meet one or more of the upgrade requirements on the day you complete this certification, place a check mark in the NO column. (Note: Tank systems which are upgraded in the interim period between submittal of this certification and December 22, 1998, will be invoiced for the lower fee in 1999, by completing a revised certification form as part of the required installation checklist or upgrade/retrofit checklist.)

<u>Tank System</u>				<u>Upgraded?</u>	
Tank ID	Permit #	Gallons	Contents	YES	NO
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

For those who answered "no" in the box above, please identify the option or options that most closely represents your status or plans at this time:

- I plan to upgrade or replace my tanks before December 22, 1998
- I stopped using my tanks about _____
- I have sold this property (Please include name and address of new owner)
- I plan to decommission by permanent closure before December 22, 1999

Please check and sign the following upgrade certification statement and return it to the Department of Environmental Quality, UST Program, 811 SW Sixth Avenue, Portland, OR 97204.

Permittees who do not return this upgrade certification form or fail to sign it will automatically be invoiced the non-refundable \$60.00 per tank fee.

Please note in accordance with ORS 466.765 and 40 CFR 280.34 as adopted or as amended by OAR 340-150-003, you are required to cooperate fully with inspections, monitoring and testing conducted by the Department, as well as requests for document submission, testing and monitoring pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended. The information you have submitted is subject to audit and verification by the Department's Underground Storage Tank Compliance Inspectors. A false certification may result in enforcement action being taken by the Department.

I hereby certify that the information provided on this form concerning the current upgrade status of my underground storage tank system(s) is accurate.

Signature (required): _____

Date: _____

The Department appreciates your cooperation in completing and returning this form to us.

For information or assistance with this form call your regional DEQ office or the UST HELPLINE: 1-800-742-7878 (Toll Free in Oregon). Regional office phone numbers are listed on the reverse side of the enclosed *Quick Early Compliance Checklist*.

FOR DEQ USE ONLY
INSPECTOR'S VERIFICATION SIGNATURE _____

DATE _____

Quick Early Compliance Checklist

You are in early compliance with the upgrade requirements and are eligible for the lower tank fee if you can check off the four major items below for each of your *existing* UST systems:

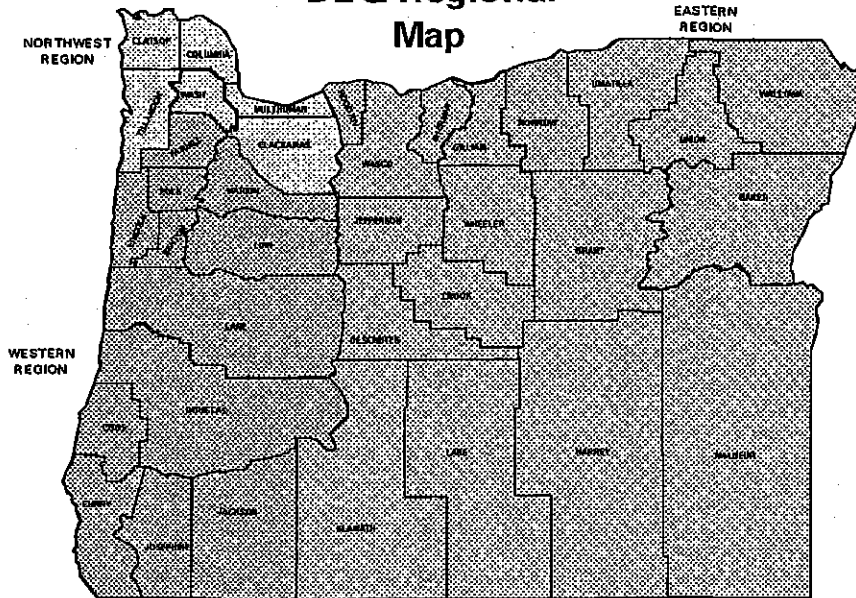
PLEASE ANSWER FOR PETROLEUM AND HAZARDOUS SUBSTANCE TANKS

- Spill protection provided by a catchment basin
- Overfill protection provided by an automatic shutoff device, overfill alarm, or ball float valve
- Corrosion protection for the tank provided by one of the following:
 - Steel tank has corrosion-resistant coating AND cathodic protection
 - Tank made of noncorrodible material (such as fiberglass)
 - Steel tank clad with (or enclosed in) noncorrodible material
 - Uncoated steel tank has cathodic protection system
 - Uncoated steel tank has interior lined with noncorrodible material
 - Uncoated steel tank has cathodic protection AND interior lined with noncorrodible material
- Corrosion protection for piping provided by one of the following:
 - Uncoated steel piping has cathodic protection
 - Steel piping has a corrosion-resistant coating AND cathodic protection
 - Piping made of (or enclosed in) noncorrodible material

PLEASE ANSWER FOR HAZARDOUS SUBSTANCE TANKS ONLY

- Hazardous Substance UST's only - Hazardous substance UST's must also have leak detection systems that include secondary containment and interstitial monitoring.

DEQ Regional Map



**RETURN COMPLETED AND SIGNED FORM TO
THE DEPARTMENT OF ENVIRONMENTAL QUALITY UST PROGRAM
REGIONAL OFFICE IN WHICH YOUR FACILITY IS LOCATED**

NORTHWEST REGION
2020 SW 4TH AVENUE, SUITE 400
PORTLAND, OR 97201-5884
FAX (503) 229-6945
Phone: (503) 229-5263

EASTERN REGION / THE DALLES
400 E SCENIC DRIVE, # 307
THE DALLES, OR 97058
FAX (541) 298-7330
Phone: (541) 298-7255

WESTERN REGION / SALEM
750 FRONT STREET NE, SUITE 120
SALEM, OR 97310
FAX (503) 373-7944
Phone: (503) 378-8240

EASTERN REGION / PENDLETON
700 SE EMIGRANT, SUITE 330
PENDLETON, OR 97801
FAX (541) 278-0168
Phone: (541) 276-4063

WESTERN REGION / MEDFORD
201 W MAIN STREET, SUITE 2-D
MEDFORD, OR 97501
FAX (541) 776-6262
Phone: (541) 776-6136, Ext. 233

EASTERN REGION / BEND
2146 NE 4TH, # 104
BEND, OR 97701
FAX (541) 388-8283
Phone: (541) 388-6146

WESTERN REGION / EUGENE
1102 LINCOLN STREET, SUITE 210
EUGENE, OR 97401
FAX (541) 686-7551
Phone: (541) 686-7838

UST HELPLINE: 1-800-742-7878
(Toll Free in Oregon)

**State of Oregon
Department of Environmental Quality
Underground Storage Tank Program**

Upgrade Certification Form

To:

For Facility:

Recognizing that preventing leaks from underground storage tanks is key to protecting groundwater quality, the United States and the State of Oregon adopted the underground storage tank regulations. In 1988, a ten year clock began to tick for upgrading underground storage tank systems (USTs). On December 22, 1998 all USTs must have spill protection, overfill protection and corrosion protection for the tanks and piping. Leak detection and financial responsibility (insurance) are required now.

The State of Oregon recently changed the annual permit compliance fee for some tanks so that the Department can continue to provide technical assistance to those upgrading their tanks. Beginning January 1, 1998, the annual UST per tank compliance fee will rise to \$60.00 for tank systems which have not been upgraded. The annual fee for permittees who meet all state or federal upgrade requirements will remain unchanged at \$35.00 per tank per year. **To implement the revised law, the Department must ask all permittees to complete this upgrade certification form concerning the upgrade status of their tank system(s) and return it to the Department no later than October 31, 1997.**

Enclosed is a *Quick Early Compliance Checklist* designed to help you determine whether your tank systems meet the upgrade requirements. If you need further assistance, the Department recommends that you contact your DEQ licensed installation/retrofit service provider. **In order to meet the state or federal upgrade requirements, and to qualify for the lower fee, your tank system(s) must have spill protection, overfill protection, corrosion protection for the tank(s) and corrosion protection for the piping in accordance with 40 CFR 280.21 as adopted or as amended by OAR 340-150-003.**

According to our records you are currently the holder of temporary permits for the tank system(s) listed below. Please place a check mark in the **YES** column after those tank systems which currently meet all the upgrade requirements. For tank systems which do not meet one or more of the upgrade requirements on the day you complete this certification, place a check mark in the **NO** column. (Note: Tank systems which are upgraded in the interim period between submittal of this certification and December 22, 1998, will be invoiced for the lower fee in 1998 and/or 1999, as applicable, by completing a revised certification form as part of the required installation checklist or upgrade/retrofit checklist.)

<u>Tank System</u>				<u>Upgraded?</u>	
<u>Tank ID</u>	<u>Permit #</u>	<u>Gallons</u>	<u>Contents</u>	<u>YES</u>	<u>NO</u>

Please check and sign the following upgrade certification statement and return it to the Department of Environmental Quality, UST Program, 811 SW Sixth Avenue, Portland, OR 97204. Permittees who do not return this upgrade certification form or fail to sign it will automatically be invoiced the non-refundable \$60.00 per tank fee.

Please note in accordance with ORS 466.765 and 40 CFR 280.34 as adopted or as amended by OAR 340-150-003, you are required to cooperate fully with inspections, monitoring and testing conducted by the Department, as well as requests for document submission, testing and monitoring pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended. The information you have submitted is subject to audit and verification by the Department's Underground Storage Tank Compliance Inspectors. A false certification may result in enforcement action being taken by the Department.

I hereby certify that the information provided on this form concerning the current upgrade status of my underground storage tank system(s) is accurate.

Signature (required): _____

Date: _____

The Department appreciates your cooperation in completing and returning this form to us.

For information or assistance with this form call your regional DEQ office or the UST HELPLINE: 1-800-742-7878 (Toll Free in Oregon). Regional office phone numbers are listed on the reverse side of the enclosed *Quick Early Compliance Checklist*.

FOR DEQ USE ONLY	
INSPECTOR'S VERIFICATION SIGNATURE	_____
DATE	_____

Notification for Underground Storage Tanks

FORM 7530-1
OMB NO. 2050-0068
APPROVAL EXPIRES 9-30-91

DEQ
EXHIBIT NO. 6

area, including time for reviewing
filing the form. Send comments
Environmental Protection Agency,
Regulatory Affairs, Office of Manage-
PA."

I.D. Number
Date Received
STATE USE ONLY
DECEMBER
DEC 15 1999

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means—

(a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. gasoline, used oil, or diesel fuel, and 2. industrial solvents, pesticides, herbicides or fumigants.

What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. tanks used for storing heating oil for consumptive use on the premises where stored;
3. septic tanks;

4. pipeline facilities (including gathering lines) regulated under the Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1975, which is an intrastate pipeline facility regulated under State laws;

5. surface impoundments, pits, ponds, or lagoons;

6. storm water or waste water collection systems;

7. flow-through process tanks;

8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Where To Notify? Completed notification forms should be sent to the address given at the top of this page.

When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

Penalties. Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.

INSTRUCTIONS

Please type or print in ink all items except "signature" in Section V. This form must be completed for each location containing underground storage tanks. If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.

Indicate number of continuation sheets attached

1

I. OWNERSHIP OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity)
DANIEL VINCENT

Street Address
CORNER MAIN & CAMAS

County
WASCO

City
WASCO State
OR ZIP Code
97140

Area Code
503 Phone Number
427-3010

Type of Owner (Mark all that apply)

Current State or Local Gov't Private or Corporate
 Former Federal Gov't (GSA facility I.D. no.) Ownership uncertain

II. LOCATION OF TANK(S)

(If same as Section I, mark box here)

Facility Name or Company Site Identifier, as applicable
DAN'S UTKIAH SERVICE

Street Address or State Road, as applicable
SAME

County
WASCO

City (nearest) State ZIP Code

Indicate number of tanks at this location 3

Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands

III. CONTACT PERSON AT TANK LOCATION

Name (If same as Section I, mark box here) Job Title Area Code Phone Number
DANIEL VINCENT Owner 503-427-3010

IV. TYPE OF NOTIFICATION

Mark box here only if this is an amended or subsequent notification for this location.

V. CERTIFICATION (Read and sign after completing Section VI.)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner or owner's authorized representative Signature Date Signed
DANIEL VINCENT Owner Daniel Vincent 8-9-89

CONTINUE ON REVERSE SIDE

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. _____ of _____ Pages _____

VI. DESCRIPTION OF UNDERGROUND STORAGE TANKS (Complete for each tank at this location.)

Tank Identification No. (e.g., ABC-123), or Arbitrarily Assigned Sequential Number (e.g., 1,2,3...)	Tank No. 1	Tank No. 2	Tank No. 3	Tank No.	Tank No.
1. Status of Tank (Mark all that apply) <input type="checkbox"/> Currently in Use <input type="checkbox"/> Temporarily Out of Use <input type="checkbox"/> Permanently Out of Use <input type="checkbox"/> Brought into Use after 5/8/86	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
2. Estimated Age (Years)					
3. Estimated Total Capacity (Gallons)					
4. Material of Construction (Mark one) <input type="checkbox"/> Steel <input type="checkbox"/> Concrete <input type="checkbox"/> Fiberglass Reinforced Plastic <input type="checkbox"/> Unknown <input type="checkbox"/> Other, Please Specify _____	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. Internal Protection (Mark all that apply) <input type="checkbox"/> Cathodic Protection <input type="checkbox"/> Interior Lining (e.g., epoxy resins) <input checked="" type="checkbox"/> None <input type="checkbox"/> Unknown <input type="checkbox"/> Other, Please Specify _____	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
6. External Protection (Mark all that apply) <input type="checkbox"/> Cathodic Protection <input checked="" type="checkbox"/> Painted (e.g., asphaltic) <input type="checkbox"/> Fiberglass Reinforced Plastic Coated <input type="checkbox"/> None <input type="checkbox"/> Unknown <input type="checkbox"/> Other, Please Specify _____	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
7. Piping (Mark all that apply) <input type="checkbox"/> Bare Steel <input checked="" type="checkbox"/> Galvanized Steel <input type="checkbox"/> Fiberglass Reinforced Plastic <input type="checkbox"/> Cathodically Protected <input type="checkbox"/> Unknown <input type="checkbox"/> Other, Please Specify _____	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
8. Substance Currently or Last Stored in Greatest Quantity by Volume (Mark all that apply) <input type="checkbox"/> a. Empty <input checked="" type="checkbox"/> b. Petroleum <input type="checkbox"/> Diesel <input type="checkbox"/> Kerosene <input type="checkbox"/> Gasoline (including alcohol blends) <input type="checkbox"/> Used Oil <input type="checkbox"/> Other, Please Specify _____ <input type="checkbox"/> c. Hazardous Substance Please indicate Name of Principal CERCLA Substance OR Chemical Abstract Service (CAS) No. Mark box <input checked="" type="checkbox"/> if tank stores a mixture of substances <input type="checkbox"/> d. Unknown	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9. Additional Information (for tanks permanently taken out of service) a. Estimated date last used (mo/yr) b. Estimated quantity of substance remaining (gal.) c. Mark box <input type="checkbox"/> if tank was filled with inert material (e.g., sand, concrete)	 <input type="checkbox"/>	 <input type="checkbox"/>	 <input type="checkbox"/>	 <input type="checkbox"/>	 <input type="checkbox"/>

RECEIVED
DEC 15 1999

State of Oregon
Dept. of Environmental Quality
Eastern Region Pendleton

HB-87

Terry 9/9

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY UNDERGROUND STORAGE TANK PERMIT APPLICATION

TANK OWNER 97138
PLEASE PRINT CLEARLY

NAME Daniel Vincent

ADDRESS P.O. Box 246
Ukiah, Oregon 97850

x Daniel Vincent
TANK OWNER SIGNATURE

DATE 8-9-89

PHONE 503-427-3010

PERMIT FEE ASSESSMENT

3 Tanks at \$25 each = \$ 75.⁰⁰
Number of tanks

AMOUNT REMITTED \$ 75.⁰⁰

RECEIVED
DEC 15 1999

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

9753

PROPERTY OWNER
PLEASE PRINT CLEARLY

NAME Daniel Vincent

ADDRESS P.O. Box 246
Ukiah, Oregon 97850

x Daniel Vincent
PROPERTY OWNER SIGNATURE

FACILITY
PLEASE PRINT CLEARLY

NAME DAN'S UKIAH Service

ADDRESS P.O. Box 246
CORNER MAIN & CAMAS
UKIAH, OR 97850

PHONE 503-427-3010

SIC Code 5541

PERMITTEE
PLEASE PRINT CLEARLY

NAME Daniel Vincent

ADDRESS P.O. Box 246
Ukiah, Or 97850

x Daniel Vincent
PERMITTEE SIGNATURE

PHONE _____

NEW INSTALLATION
(PLEASE SUBMIT THIS APPLICATION 30 DAYS PRIOR TO USING THE TANK.)

Each completed application must include the signatures of the tank owner, the property owner and the permittee.

All three signature lines must be signed.

Owner Name (from Section I) Vincent Location (from Section II) W1:49 Page No. 2 of 2 Pages

VII. CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW TANKS AT THIS LOCATION)

10. Installation (mark all that apply):

- The installer has been certified by the tank and piping manufacturers.
- The installer has been certified or licensed by the implementing agency.
- The installation has been inspected and certified by a registered professional engineer.
- The installation has been inspected and approved by the implementing agency.
- All work listed on the manufacturer's installation checklists has been completed.
- Another method was used as allowed by the implementing agency. Please specify:

11. Release Detection (mark all that apply):

- Manual tank gauging.
- Tank tightness testing with inventory controls.
- Automatic tank gauging.
- Vapor monitoring.
- Ground-water monitoring.
- Interstitial monitoring within a secondary barrier.
- Interstitial monitoring within secondary containment.
- Automatic line leak detectors.
- Line tightness testing.
- Another method allowed by the implementing agency. Please specify:

12. Corrosion Protection (if applicable)

- As specified for coated steel tanks with cathodic protection.
- As specified for coated steel piping with cathodic protection.
- Another method allowed by the implementing agency. Please specify:

TANKS ARE COVERED WITH ASPHALT & PIPES & TANKS ARE BEDDED IN SAND.

13. I have financial responsibility in accordance with Subpart I. Please specify:

Method: _____

Insurer: _____

Policy Number: _____

14. OATH: I certify that the information concerning installation provided in Item 10 is true to the best of my belief and knowledge.

Installer: DAN VINCENT 8-9-89
Name Date

Owner
Position

Company

OREGON UST SURVEY

INSTRUCTIONS

Please fill in form to the best of your knowledge. If you do not know or cannot estimate an item requested, please mark "Unknown."

RECEIVED
DEC 15 1999

Facility Name:

State of Oregon
Dept. of Environmental Quality
Eastern Region Portland

Tank Identification No. (e.g. ABC-123) or Arbitrarily Assigned Sequential Number (e.g. 1,2,3...)	TANK NO. 1	TANK NO. 2	TANK NO. 3	TANK NO.
1. Status of Tank (check one <u>ONLY</u> if applicable) If temporarily out of use, Estimated time out of use: 1 month-6 months 6 months-1 year 1 year-5 years 5 years or more Estimated date tank is to be brought back into use (mo/yr)	() () () () ()	() () () () ()	() () () () ()	() () () () ()
2. Was tank new at time of installation? (Y/N)	(YES)	(YES)	(YES)	()
3. Containment Systems (check one) Single-walled tank Double-walled tank Pit-lining system Unknown	(✓) () () ()	(✓) () () ()	(✓) () () ()	() () () ()
4. Leak Detection System (check all that apply) Visual Stock Inventory Tile drain Vapor wells Sensor instrument (specify type): In-ground detector Within walls of double-walled tank Ground water monitoring wells Continuous in piping Pressure test Internal inspection Other, specify None Unknown	() (✓) () () _____ () () () () () () () () () CHECK IN WATER IN TANKS () ()	() (✓) () () _____ () () () () () () () () () () CHECK IN WATER IN TANKS () ()	() (✓) () () _____ () () () () () () () () () () () CHECK IN WATER IN TANKS () ()	() () () () _____ () () () () () () () () () () () () () ()
5. Overfill Protection (Yes/No)	(N)	(N)	(N)	()
6. Location of Piping (check all that apply) No parts in contact with soil Parts contacting the soil which are: Unprotected metal Made of corrosion resistant materials Corrosion-resisted coated Cathodically protected Double-walled Within a secondary containment Interior lined Unknown	() () () () () () () () () () ()	() () () () () () () () () () () ALL IN SAND	() () () () () () () () () () ()	() () () () () () () () () () ()
7. History of Tank Repairs (check one except as indicated) If tank repaired, indicate date of last repairs (mo/yr) None Unknown	(✓) ()	(✓) ()	(✓) ()	() ()
8. History of Pipe Repairs (check one except as indicated) If pipe repaired, indicate date (mo/yr) None Unknown	(✓) ()	(✓) ()	(✓) ()	() ()
9. Tank Removed from the Ground Indicate date (mo/yr) (mark only if applicable — tank removed since May 1, 1988)	_____ ()	_____ ()	_____ ()	_____ ()

THANK YOU FOR YOUR ASSISTANCE

TANKS ARE BELOW GROUND WATER LEVEL & TANKS

QUITCLAIM DEED

THIS DEED is made January 2, 1992, between Umatilla County and Daniel Vincent.

WHEREAS, several real properties hereinafter described have been acquired by Umatilla County, pursuant to certain tax foreclosure proceedings commenced and prosecuted to final determination in the Circuit Court, and said county has received a deed for such properties; and

WHEREAS, the Board of County Commissioners of Umatilla County has deemed it in the best interest of said County to sell such real property to the former owner, and

WHEREAS, Daniel Vincent was the former owner of said real property and proposed to purchase this real property in an amount equal to or exceeding the delinquent property taxes and interest thereon, and

WHEREAS, on November 18, 1991, the County Commissioners of Umatilla County executed an order recorded on Reel 212 at Page 1636 of the Deed Records of Umatilla County selling to former owner, Daniel Vincent, the following described real property:

Lots 1, 2, and 3, Block D of the Original Town of Ukiah, Umatilla County, Oregon.

Excepting any and all water rights of way and roads.

The true and actual consideration for this transfer is \$7,493.21.

Until a change is requested, tax statements will be sent to Daniel Vincent, P. O. Box 246, Ukiah, OR 97880.

NOW, THEREFORE, Umatilla County, grantor, and in consideration of the several sums paid by Daniel Vincent, as aforesaid, receipt whereof is hereby acknowledged, and by virtue of the statutes of the State of Oregon in such cases made and provided does hereby grant and convey to Daniel Vincent, his heirs and assigns forever, the said real estate, hereinabove described, as fully and completely as the grantor can by virtue of the premises convey the same.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS

DEQ
EXHIBIT NO. 7

INSTRUMENT, THE PERSON ACQUIRING THE FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

IN WITNESS WHEREOF, said grantor has caused this indenture to be executed in its corporate name by its Umatilla County governing board on February 20, 1992.

Umatilla County Board of Commissioners

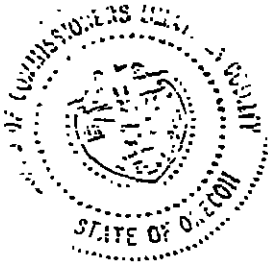
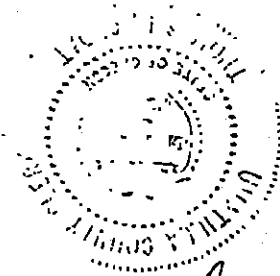
Glenn Youngman
Glenn Youngman, Chairman

William S. Hansell
William S. Hansell

Emile M. Holemah
Emile M. Holemah

ATTEST:

Thomas L. Groat
Thomas L. Groat
Umatilla County Clerk



UMATILLA COUNTY CLERK
F: 216 REG: 1242

1992 FEB 27 P 17

STATE OF OREGON, COUNTY OF UMATILLA
I Thomas L. Groat, County Clerk, certify that this
instrument was received and recorded on 02-27-92
at 12:17 in the record of document code type DE-Q

Location RC16-1240
Document number 92-169775
Fee 40.00

Thomas L. Groat
Umatilla County Clerk

received by J. McLaughlin Deputy

Foreclosed Property
D. Hawkins

VINCENT DANIEL

PC DX 246
UKLH OR 97880

1999 BALANCE DUE TOTAL TAX
 468.61 468.61

1998 BALANCE DUE TOTAL TAX
 431.06 431.06

1997 BALANCE DUE TOTAL TAX
 368.51 368.51

1996 BALANCE DUE TOTAL TAX
 371.32 371.39

TRN DATE BTCH RECEIVED
08-25-99 129 -0.10

INT/DISC JRNL RCPT# DESCRIPTION
 0.03 L 90 11145

1995 BALANCE DUE TOTAL TAX
Enter <New line> to continue...

WAIN STREET

A

W

UNDERGROUND STORAGE TANK PROGRAM

PROJECT REPORT

DATE: 3 / 23 / 1999

TIME: : AM|PM

TYPE OF REPORT:

MEMO PHONE OFFICE VISIT SITE VISIT FILE REVIEW

FACILITY: DAN'S UKIAK SERVICE FAC.ID: 9753
 FROM: Duane A. Smith
 TO: Memo to file

TELEPHONE #: () - FAX #: () -

ADDRESS: Main & Camus- Ukiah, Oregon

SUBJECT: Complaint Investigation and UST Compliance Inspection
REPORT

3-23-99 I arrived in Ukiah at approx. 10:30am to investigate an anonymous complaint that stated that Dan's Ukiah was continuing to dispense fuel from USTs that have not been upgraded. Prior to leaving the office I checked Department files and records and determined that the facility had not been issued an UST Operating Permit. Upon arrival I observed an individual working on an AST directly adjacent to the Dan's Ukiah facility. I observed that the individual was connecting piping from the tank to a dispenser mounted on the same "skid" as the AST. I drove up in the Department's white Jeep and immediately introduced myself as an inspector for the DEQ. I inquired if he was the owner of Dan's Ukiah and he responded that he was (Dan Vincent). We then discussed the set up and operation of the AST for a minute or two and then I asked if he still had fuel in the facility's USTs. He said he still had a couple of thousand gallons in both the diesel and gasoline tanks. I then asked if he was still dispensing fuel from the tanks and he stated that he was. I then informed him of the Department's "enforcement discretion" policy and that March 22, 1999 was the last day he could dispense fuel from UST that do not meet the 1998 technical standards. At this time Mr. Vincent went into a tirade about government interference and yelled towards the house across the parking lot to a person (turned out to be his father) that the DEQ said that he could no longer pump from his USTs. Upon hearing this an older man appeared and started walking towards where I was standing next to the AST. As he walked the older man began cursing at me and stated that he was going to beat me if I did not leave before he got there. At this time Dan Vincent walked away and disappeared from my view. The older man continued to curse and walked right up to me motioning with a large stick as if he was going to hit me with it. He told me I had no right to be on his property and that he would die to protect his property. He continued to wave the stick around as if to hit me with and told me to leave. I stated that state law provided the right for me to be there to inspect the USTs and he indicated that he did not care what state law said and then said he would shoot me if I did not leave and stated further that if I returned he would be doing some killing. At this point I said that I was leaving and began to walk to my car, some 30 feet away. The older man followed me, all the while making motions as if to hit with his stick, continuing to curse at me at repeating the threat to shoot me.

DEQ
EXHIBIT NO. 10

April 7, 1999

Daniel Vincent
Dan's Ukiah Service
PO Box 246
Ukiah, OR 97880

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION

CERTIFIED MAIL # Z 294 567 678
RETURN RECEIPT REQUESTED

Re: **NOTICE OF NONCOMPLIANCE**
NON # ERP-99-020
Dan's Ukiah Service
DEQ Facility #: 9753
Main & Camas
Ukiah, Oregon 97880

Dear Mr. Vincent:

The purpose of this letter is to inform you of violations of the Department of Environmental Quality's (DEQ or Department) general permit rules and requirements that pertain to underground storage tanks.

On March 23, 1999 the Department attempted to conduct an inspection at your facility in response to an anonymous complaint. The complaint stated that you were operating an underground storage tank facility in violation of Oregon law and Department of Environmental Quality rules. Before satisfactory completion of the inspection, the Department's inspector was verbally abused and forced to leave the facility under threat of death. During the brief time the inspector was onsite, you freely admitted that you were continuing to dispense fuel from your underground storage tanks that do not meet the 1998 UST technical standards and without a General Permit to Operate. At this time you also refused to provide access to records associated with the operation of your underground storage tank system.

Please be aware that under ORS 466.805, the Department may obtain a warrant to allow entry, inspection, or record copying. Because of your threats and verbal abuse, the Department may seek a warrant and police protection before returning to your property. Additionally, you should be aware that the Department has reported your threats and abusive behavior to the county District Attorney.

The violations cited in this Notice of Noncompliance (NON) are as follows:

DEQ
EXHIBIT NO. 11



700 SE Emigrant
Suite 330
Pendleton, OR 97801
(541) 276-4063 Voice/TDD
FAX (541) 278-0168
DEQ/ER-101

VIOLATION (1)

Failure to provide access to premises or records when required by law, rule, permit or order.

By not allowing access to your facility and to records pertaining to the operation and status of your UST system upon request by the Department, you are in violation of ORS 466.765 (6) and ORS 466.805.

ORS 466.765 "In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.706 to 466.845 and 466.994, the owner or the permittee of an underground storage tank shall:(6) Permit department employees or a duly authorized and identified representative of the department at all reasonable times to have access to and copy all records relating to underground storage tanks."

CORRECTIVE ACTION REQUIRED - Violation (1)

Within two (2) working days of receipt of this NON provide the Department such documentation and records necessary to determine compliance with State and Federal Release Detection requirements.

Specifically provide the following records and documents:

- (1) Documentation of tank and piping Tightness Tests for 1996, 1997 and 1998.
- (2) Inventory Control and Monthly Reconciliation records for each month beginning with January 1998, up to and including March 1999.

Violation (1) is a Class I violation and is considered a serious violation of Oregon environmental law. We are referring this violation to the Department's Enforcement Section with a recommendation to initiate formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

VIOLATION (2)

Failure to obtain a permit prior to the installation or operation of an underground storage tank.

By dispensing fuel from your UST system after March 22, 1999 without a valid Operating Permit you are in violation of the following Department rules:

- (1) OAR 340-150-0019 Compliance With UST General Permit Required,
- (2) OAR 340-150-0020 UST General Permit Registration Certificate Required, and
- (3) OAR 340-150-0040 UST General Permit Registration Form.

CORRECTIVE ACTION REQUIRED -Violation (2)

Upon receipt of this NON you are to immediately cease fuel dispensing from your UST system. If you have questions about how to comply with current State and Federal UST technical requirements and the regulatory process, please contact the Department's Eastern Region Pendleton office.

VIOLATION (3)

Failure to comply with the Conditions and Requirements of an UST General Permit for Decommissioning.

The Department has not issued a General Permit to Operate for Dan's Ukiah, nor has the Department received a General Permit Registration Form, nor any documentation that would support the fact that this facility meets current UST technical requirements. In view of these facts, Dan's Ukiah has been issued a General Permit to Decommission by default. Your system has been in Temporary Closure since December 23, 1998. The Department had an "enforcement discretion" agreement with the United States Environmental Protection Agency (USEPA) that allowed UST facilities to dispense fuel from UST systems in Temporary Closure in an effort to remove fuel from UST systems that do not meet 1998 technical standards. The enforcement agreement expired on March 22, 1999. After this date it is a violation of Department rules to dispense fuel from an UST system in Temporary Closure. Furthermore, OAR 340-150-0166 (4) (b) requires that the facility's dispensers be disconnected and all (except vent) lines capped and secured.

OAR 340-150-0166 (4) (b) states: *"When an UST system is temporarily closed for 3 months or more but less than 12 months, in addition to complying with section (4) (a) of this general permit, all lines, pumps, manways and ancillary equipment, except the vent lines, must be capped and secured as required by 40 CFR 280.70 (b)."*

40 CFR 280.70 *"(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with § 280.31, and any release detection in accordance with Subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.*

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and*
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.*

Vincent-NON

4/4

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§ 280.71-280.74, unless the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with § 280.72 before such an extension can be applied for."

CORRECTIVE ACTIVE REQUIRED - Violation (3)

Within five (5) working days after receipt of this NON, provide the Department with a written statement documenting that you have complied with State and Federal UST requirements for a facility in Temporary Closure. This includes, but is not limited to, disconnection of product dispensers and capping of product delivery piping. If you have fuel remaining in any regulated UST you must continue to perform Release Detection procedures. This statement must also include confirmation of an inspection date and time for the Department's representative to visit your facility and verify completion of Temporary Closure procedures. The confirmation inspection is to occur no later than seven (7) working days after receipt of this NON, with a minimum of 48 hours notice.

Violation (2) and Violation (3) are Class II violations and are significant violations of Oregon environmental law. Should you fail to correct the violations in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action, which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

If you have any questions regarding this matter, please contact me at (541) 278-4602.

Sincerely,



Duane A. Smith, Environmental Specialist
Underground Storage Tank Program
Eastern Region-Pendleton

Cc. Enforcement Section: DEQ
Bud Roman, Acting Manager-DEQ, The Dalles
Stephanie Hallock, DEQ Eastern Region Administrator

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete Items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Dan's Ukiah Service
ATTN: Daniel Vincent
P.O. Box 246
Ukiah, OR 97880

4a. Article Number

Z 294 567 678

4b. Service Type

- Registered
- Certified
- Express Mail
- Insured
- Return Receipt for Merchandise
- COD

7. Date of Delivery

APR 18 1999

5. Received By: (Print Name)

DAS

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X Daniel Vincent

Domestic Return Receipt

PS Form 3811, December 1994

Thank you for using Return Receipt Service.

Z 294.567 678

US Postal Service

Receipt for Certified Mail

Dan's Ukiah Service
ATTN: Daniel Vincent
P.O. Box 246
Ukiah, OR 97880

Postage	\$ 0.33
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 2.98
Postmark or Date	4/7/99

PS Form 3800 April 1995

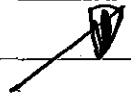
MAY 13, 1999

X 7:15-7:25 - DIRECTIONS STORE - DOLOMITE - FA.

~~3:21~~
X 3:21

(12)

X 8:58 Jim BYRNE - 969-9489



Called to say that VILCOMETS
still pumping from UST's.

X 3:37
3:55

X 9:02 B. Roman - left mess. no. 4 above.

X 4:15

(12) 9:15 B.C. Conoco - write report to file

9:30 Summary of meeting 5-12-99

(13) 9:45 FLYING J - write report to file
10:10 Summary of 5-12-99 mtg -

X 4:18

1:21 B. ROMAN

X

QUESTIONS ABOUT DAVE BARLOTT
PERMIT STATUS. BARLOTT HAS WRITTEN
LETTER TO LANCE MARSH. COMPARTMENTAL
THAT HE CANNOT FIND W/O PERMIT.

X 4:23

STOPPAGE H. HAS FILED TO BUD
BUD HAS TO CONFIRM DETAIL TO S.H.

X 4:25

X 4:30

X 1:35 B. ANDERSON

DISC. BARLOTT STATUS.

X 4:33

X 2:43 B. ROMAN.

- DIRECTIONS

X 4:37

DEQ
EXHIBIT NO. 12

LETTER TO Gordon Smith

5:10
5:25

MAY 19, 1994

969-9489

X 7:21 B. ROMAN -

X 7:57 GRANT PO. - LONG CREEK. UTC 992487

JIM WALKER - 575-0138 32.68

#11188

12-93-0270

LATHY GILLIAM -

X 8:27 FRANKO - Z BARNETT - #9669 - LEFT MESS.

BARNETT

P.O.W.

X 8:28 G.E.W. - BRIAN -

- 6945 -

- 503-655-9488 -

229-6954 -

MTG

LEADS -

X 8:35 JIM BYRNES - BYRNES OIL. 969-9489 - CELL

RO. UKI AH.

X 8:43 HUGH REED - MITCHELL - LITTLE PINE CAFE

462-3897 ← NO ANSW → 462-3733

X 8:48 S. FRANKO - HG WILL CK. W/S. HOCMOS -

X 8:54 B. ROMAN.

MITCHELL - JOHN ~~CASSELL~~ C.

503-373-1540

X 9:30 G.E.W. - CK LIST FOR C.P. BARNETT - IONE

ART - HAD WRONG FAX# - WILL PULL FILE

& RE-FAX - WILL CALL ME WHEN FAX'D.

X 7:33 HUGH. REED - 462-3897

TALKED W/ WIFE - HUGH IN BOND - HE WILL CALL.

5-18-99

(10)

X 9:36

J.R.

ITMS JUST TALKED W/ BYRNES

X 10:48

Dr

RE: UCIAM.

?

BYRNES WILL CALL LOS ANGELES, KORTENHOFF & C. MARSA.

L

L

L

9:50 S. HORNOS -

X

D. BARNETT

10:25 USE PROGRAM DISC.

X 10:26

KEN VOGLER - ENVIRONMENTAL
Dose - Group.

PL

WORKING FOR UPPER - & VOGLER

TC

10:36 RELEASE IN LA GRANDE

GO

IS

X 10:36

CHRIS JONES - EMS - CONSULTANT

FOR VOGLER - 360-825-8560

X 10:17

S. H

LOFT MESS - RE. WORK PLAN FOR S.A.

S.

HA

X 10:38

RICK MOEDEN - 523-6417

TALKED ABOUT RELEASE PKG - DOCUMENT

11:40

S.

PAPER WORK WAS REAL LATE - LAB WORK

SHOULD HIT BELOW SUC MATRIX - SHOULD

X 1:41

RIC

HAVE BEEN LOGGED AT THAT TIME -

R

WAS RECORDED AS RELEASE WITHIN 2 GOF

VIA

P.W. - HENCE - LATE RELEASE PKG.

2:15

3

X 10:46

DANA HARPER - DALOS SERVICE.

X 2:16

LIN

RE: APPLICATION FOR NEW TANK.

HOLY ROSARY -

RE

LOFT MESS. - CALL TRILLO

4-1-99.

7:30 B. ROMAN.

- DC. UKIAT.

8:00 REVIEW RPT - PAGE CARDLOCK.

8:15 FSC - W. RIGGS.

2:44 B. ROMAN -

HE TALKED W/ GEG. BONBRIGHT
 STANFIELD - BIO - INJECTION
 GEORGE WAS THINKING BIO-INJECTION
 WOULD MEAN HE DID NOT NEED
 G.W. MONITORING WELLS.

DAS TO TALK W/ ROGER DILTS.

3:19 DICK SHELDON

STANFIELD

BONBRIGHT STILL DOESN'T KNOW
 WHAT HE IS GOING TO DO
 • NOW TALKING ABOUT DECOMMISSION
 AT UMATILLA.

3:35 ROGER DILTS - 229-5692

4:55 JIM BYRNOS -

PAUL'S UKIAT STILL
 PUMPING FROM UST'S.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY

SE1/4 NW1 Sec. 14 T.5S. R.31E.W.M.

UMATILLA COUNTY

1"=100'

31 14Bd

UKIAH

TOWN PLAT OF UKIAH
SECOND ADD TO THE TOWN OF UKIAH
Aerial Photo No. NZ-10P-89

See Map 5S 31



See Map 5S 31

See Map 5S 31 14AC

SECOND ADD TO THE TOWN OF UKIAH

TOWN 80-2 OF UKIAH

ORDINANCE NO. 0397
R306-1158 VACATED

CANCELLED T L 2301 2300

1/16 Cor.

MAIN

STREET

Cor. Sec. Cor.

Map 15 189

1300 1.56 Ac.
400 1.00 Ac.

1100	7	1001	6	1000	5	1002	4
				900	901		
				3	2		

800	8	700	7	600	6	500	5	300	X
				701	E		400		2
				12	10		9		4

STREET NO. 1475	200	100
PLAZA BLOCK (PARK)		

STREET

Cancelled
T.L. 1200
2200

31 14Bd

Dec 57 13

STATE

STREET

1500	7	6	5	4
N T O W N				
3				
2				

1601	6	1700	5	1900	4	2001	3	2100	2
				1901	F		2300		A H
				12	10		9		8

2500	6	5	4	2600	2
		G			
2701		2700			
8		7			

STREET

HARTMAN

3300	1	2	3	4	5
R					

3200	1	2	3	4	5	6	7	8
				80-2		300		
				7		8		

2800	1	2	3	4
Z				

3300	10	9	8	7	6
FIRST					

3200	16	15	14	13	12	11	10	9
TO THE								

3000	8	7	6	5
Z				

BRYAN

3400	1	2	3	4	5
BRYAN					

3600	1	2	3	4	5
T O W N					

3800	1	2
3900		
2		

4200	2	4300	3	4
VAC				
VAC				

AVENUE

3800	10	9	8	7	6
T					

3700	10	9	8	7	6
U					

4000	4	3
4100		
3		

4400	8	7	6	5
VAC				
VAC				

Mc KINLEY

5000	4900	4800	4	5
W				

4700	2	3	4	5
X				

4600	1	2
4700		
2		

4500	1	2	3	4
VAC				
VAC				

PENDLETON

BRIDGE

CAMAS

ALBA

(ALBA)

See Map 55 31 14

See Map 55 31 14DB

1/16 Cor.

See Map 55 31 14

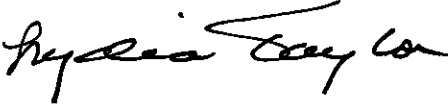
1/16 Cor.

55 31 14C

REC 13 1899

Date: November 8, 2000

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director 

Subject: Agenda Item B, Appeal of Hearing Order Regarding Assessment of Civil Penalty and Order Assessing Civil Penalty in the Matter of Stark Trucking, Inc., Case No. WMC/SW-WR-98-249, EQC Meeting: November 30, 2000

Statement of Purpose

Stark Trucking, Inc. appealed from the Hearing Order Regarding Assessment of Civil Penalty, dated May 1, 2000. The Order found Stark Trucking liable for a civil penalty in the amount of \$8,600 for establishing, maintaining and operating a solid waste site without a permit. The Order also found that Stark Trucking was in continuing violation for operating a material recovery facility without a permit.

Background

The Findings of Fact made by the Hearings Officer are summarized as follows: Stark Trucking has owned and operated a material recovery site in Salem since 1993. The operation was small initially and did not require a DEQ permit as the operation did not initially present a threat to environmental quality. In recent years, the operation has become larger, and large piles of wood chips have been allowed to accumulate on the site. The Department believes that these have presented a threat to environmental quality and also caused a fire danger. Several fires have occurred in the wood chip pile since 1998.

In 1998 the Department issued two Notices of Noncompliance to Stark Trucking which required either a completed permit application from Stark Trucking or removal of the waste pile from the site. Stark Trucking submitted an incomplete permit application to the Department on December 21, 1998. The required land use compatibility statement (LUCS) from Marion County was not included with the application. The Department offered to meet with the County and Stark Trucking to discuss the LUCS. Stark Trucking did not arrange a meeting and continued to accept waste on its site. The Department issued a Notice of Assessment of Civil Penalty and Department Order on April 28, 1999, assessing a \$8,850 civil penalty on Stark Trucking for establishing, maintaining and operating a solid waste site without a permit. The penalty included an economic benefit assessment of \$450, which was based on the savings that Stark Trucking realized by avoiding payment of the \$100

Memo To: Environmental Quality Commission

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initial permit application fee and \$350 for seven years of avoided payment of annual compliance determination fees. Stark Trucking continued to accept additional waste in 1999 after the Department's penalty was issued.

On May 13, 1999, Stark Trucking appealed the Notice and requested a hearing. A hearing was held on January 10, 2000.

The Hearings Officer held that Stark Trucking violated the Department's solid waste permit requirements by operating a solid waste site without a permit. She held that Stark Trucking was liable for a penalty but that the economic benefit of the penalty should be reduced to \$200, comprised of the \$100 permit application fee, and \$100 for unpaid annual compliance determination fees for two years. The penalty was thereby reduced to \$8,600. She further concluded that Stark Trucking was in continuing violation of the Department's rules, and ordered Stark Trucking to either 1) process or appropriately dispose of all waste material on its site and present documentation to DEQ that waste material has been removed or 2) submit a completed permit application to DEQ.

On May 23, 2000, Stark Trucking filed a timely appeal of the Final Order. Stark Trucking took exception to the Order as follows:

- (1) the finding that unprocessed waste remained on the Stark Trucking site in November 1999 (Exceptions 1 and 2);
- (2) the finding that Stark Trucking was operating a solid waste disposal site without a permit (Exceptions 3 and 4); and
- (3) the finding that Stark Trucking was liable for a civil penalty (Exceptions 5 and 6).

Authority of the Commission with Respect to the Issues

The Commission has the authority to hear this appeal under OAR 340-011-0132.

Alternatives

Appeal of Final Order:

The Commission can:

- (1) As requested by Stark Trucking, reverse that portion of the Order which held that Stark Trucking was in violation of the Department's solid waste permitting rules and is liable for a civil penalty.
- (2) As requested by the Department, uphold the Hearings Officer's determination that Stark Trucking is in violation and is liable for a civil penalty in the amount of \$8,600,

Memo To: Environmental Quality Commission

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and furthermore, affirm the Hearings Officer's finding that Stark Trucking continues to be in violation of the Department's rules and uphold the Order to either submit a completed permit application to the Department within 20 days or process or appropriately dispose of all waste material on its site and present documentation to the Department within 20 days.

The Commission is reviewing the proposed order, including the recommended findings of fact and conclusions of law, and it may substitute its judgment for that of the Hearing Officer except as noted below.^{*} This proposed order was issued under the new statutes and rules governing the Hearing Officer Panel Pilot Project.[†] Under these 1999 statutes, DEQ's contested case hearings must be conducted by a hearing officer appointed to the panel, and the EQC's authority to review and reverse the hearing officer's decision is limited by the statutes and the rules of the Department of Justice that implement the project.[‡] The most important limitations are as follows:

(1) The Commission may not modify the form of the proposed order in any substantial manner without identifying and explaining the modifications.[§]

(2) The Commission may not modify a recommended finding of historical fact unless it finds that the recommended finding is not supported by a preponderance of the evidence.^{**} Accordingly, the Commission may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.

(3) The Commission may not consider any new or additional evidence, but may only remand the matter to the Hearing Officer to take the evidence.^{††}

The rules implementing the new statutes also have more specific provisions addressing how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.^{*}

^{*} OAR 340-011-0132.

[†] Or Laws 1999 Chapter 849.

[‡] *Id.* at § 5(2); § 9(6).

[§] *Id.* at § 12(2).

^{**} *Id.* at § 12(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

^{††} *Id.* at § 8; OAR 137-003-0655(4).

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In addition, there are a number of procedural provisions that have been established by the Commission's own rules. These include:

(1) The Commission will not consider matters not raised before the hearing officer unless it is necessary to prevent a manifest injustice.[†]

(2) The Commission will not remand a matter to the Hearing Officer to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing officer.[‡]

Attachments

- A. Letter from Susan Greco to DEQ and Stark Trucking, Inc., dated August 16, 2000
- B. Department's Reply to Respondent's Proposed Order and Exception to Hearings Officer Decision, dated July 20, 2000
- C. Stark Trucking's Proposed Order and Exception to Hearings Officer Decision, dated June 21, 2000
- D. Letter from Susan Greco to Stark Trucking, Inc., dated June 2, 2000
- E. Hearing Order Regarding Assessment of Civil Penalty and Order Assessing Civil Penalty, dated May 1, 2000
- F. Exhibits from Hearing of January 10, 2000
 - 1) Notice of Hearing, Change in Hearing, and Notice of Contested Case Rights and Procedures
 - 2) Request for Hearing, Answer and Request for Informal Discussion
 - 3) Notice of Violation, Department Order, and Assessment of Civil Penalty, dated 4/28/99
 - 4) Cover Letter, dated 4/28/99
 - 5) Letter from James Sears, Marion County, dated 3/31/99
 - 6) Notice of Noncompliance, dated 7/23/98
 - 7) Seven color photographs, dated 11/12/98
 - 8) Notice of Noncompliance, dated 11/30/98
 - 9) Application for Solid Waste Permit
 - 10) Letter from Chuck Donaldson to Stark Trucking, dated 12/31/98 (Ex. 10)

^{*} OAR 137-003-0655(5); 137-003-0660.

[†] OAR 340-011-132(3)(a).

[‡] *Id.* at (4).

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- 11) Eight color photographs, dated 7/14/99
- 12) Seven color photographs, dated 11/29/99
- 13) Letter from City of Salem, dated 12/17/98
- 14) List of Material Recovery Facilities
- 15) Motion To Dismiss, City of Salem, dated 09/03/98
- 16) Criminal Information, City of Salem, dated 02/18/98
- 17) Disposal List
- 18) Color photo
- 19) Seven color photos
- 20) Color photo

Reference Documents (available upon request)

OAR Chapter 340, Division 11, 12, 100 to 110, and 120; Chapter ORS 468 and 466



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

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

August 16, 2000

Via Certified Mail

Duane Stark, President
Stark Trucking Inc.
P.O. Box 18005
Salem OR 97305

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

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RE: Case No. WMC/SW-NWR-98-249

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, November 30 and Friday, December 1, 2000. The matter will be heard in the regular course of the meeting. The meeting will be held at the Department of Environmental Quality's headquarters, 811 S.W. 6th Avenue, Room 3A in Portland, Oregon. As soon as the agenda and record is available, I will forward the same to you.

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

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

Sincerely,

Susan M. Greco
Rules Coordinator

Attachment A

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

3 IN THE MATTER OF:) REPLY TO RESPONDENT'S
4 STARK TRUCKING, INC.,) PROPOSED ORDER AND
5 an Oregon Corporation,) EXCEPTIONS TO
6 RESPONDENT) HEARINGS OFFICER DECISION
7) No. WMC/SW-NWR-98-249
8) MARION COUNTY

9 I. INTRODUCTION

10 This Reply is prompted by Stark Trucking, Inc.'s (Stark Trucking) June 21,
11 2000 Exceptions to Proposed Order, filed on the company's behalf by Duane Stark,
12 President, concerning the May 1, 2000 Proposed Order issued by the Hearings
13 Officer RE the Notice of Violation, Assessment of Civil Penalty, and Department
14 Order (Notice and Order) No. WMC/SW-WR-98-249 issued April 28, 1999, to Stark
15 Trucking, Inc., an Oregon corporation, by the Department of Environmental Quality
16 (DEQ).

17 II. RESPONSES TO STARK TRUCKING ARGUMENTS

18 1. **Background:** Respondent has been accumulating and sometimes
19 processing wood waste in a large pile, documented at 225 feet long by 125 feet
20 wide by 20 feet wide, on Respondent's property located at 3425 Blossom Street
21 N.E., Salem, Marion County, Oregon.(Findings of Fact number 2) Respondent
22 accepts construction and demolition debris, which has been not been fully source-
23 separated, at Respondent's site.(Findings of Fact number 3) Solid waste is defined in
24 Oregon Revised Statute (ORS) 459.005(24) as:

25 "useless or discarded putrescible and nonputrescible materials, including
26 but not limited to garbage, rubbish, refuse, ashes, paper and cardboard,
27 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

attachment B

1 home and industrial appliances, manure, vegetable or animal solid and
2 semisolid materials, dead animals and infectious waste as defined in
ORS 459.386.”(emphasis added)

3 As pointed out by the Hearings Officer, Oregon Administrative Rule (OAR) 340-093-
4 050(3) exempts certain classes of disposal sites from obtaining a permit, including
5 “[f]acilities which receive only source separated materials for purposes of material
6 recovery, except when the Department determines that the nature, amount or
7 location of the materials is such that they constitute a potential threat of adverse
8 impact on the waters of the state or public health[.]”(emphasis added)

9 Although Respondent’s site is a material recovery site, processing waste to
10 turn it into hog fuel, it is not exempt from the solid waste permitting requirements for
11 two reasons. First, it accepts wood waste contaminated with carpeting, painted
12 wood, nylon, and plastic, not source-separated materials.(Findings of Fact number 2)

13 Second, Respondent is also not exempt because the Department has determined
14 that the nature, amount, or location of the materials “is such that they constitute a
15 potential threat of adverse impact on the waters of the state or public
16 health.”(Finding of Fact number 3) Respondent is incorrect in saying that its
17 operation poses no environmental threat. Fires are a danger at Respondent’s waste
18 piles, and were a problem at Respondent’s site in November 1997.(Findings of Fact
19 number 2) Smoke or steam has been observed from Respondent’s large wood waste
20 pile.(Findings of Fact number 2) The waste piles also can cause runoff which can
21 seep into groundwater.(Findings of Fact number 4) Vectors are also attracted to
22 large piles of waste like those at Respondent’s site.(Findings of Fact number 4)

23 Respondent’s site is a solid waste disposal site, and must have a permit from
24 the Department, pursuant to ORS 459.205. During the contested case hearing,
25 Respondent’s President, Duane Stark, admitted that Respondent did not have a solid
26

1 waste disposal permit from the Department for its site, and did not submit a
2 completed permit application to the Department.(Findings of Fact number 4, 10)

3 2. **Exceptions 1, 2:** Respondent argues that all of the material observed in
4 1997 was removed from the site by November 1999. However, the record shows
5 that some of the waste observed on site in November 1997 was still on site in
6 November 1999.(Findings of Fact number 14) Moreover, even if Respondent's
7 assertion was correct, it would not change the requirement that Respondent have a
8 solid waste permit from the Department for its solid waste material recovery
9 operation

10 3. **Exceptions 3, 4:** Stark Trucking argues that its operation is not a solid
11 waste disposal site and is exempt from solid waste permitting requirements, as a
12 material recovery operation. However, as pointed out above, it does not meet the
13 criteria (source-separated material only; no potential environmental harm) to have an
14 exception from the Department's solid waste permitting requirements.

15 4. **Exception 5:** Respondent argues that it does not need a permit for its
16 site, and that no penalty should be issued, as Respondent's operation "has remained
17 constant since 1993" when a permit was not required. The record shows that the
18 operation change considerably from 1993 to 1997, with a much greater quantity of
19 wood waste on site. Respondent also argues that since Respondent purchased
20 processing equipment for the operation in 1997, "the volume of unprocessed debris
21 has steadily decreased" and that it "is unfair and unrealistic to change the rules after
22 someone has started a business and made a substantial monetary investment." The
23 rules have not changed, just Respondent's operation. The quantity of waste on the
24 site increased greatly from 1993 to 1998. Respondent ordered equipment for
25 processing as a business decision. Respondent had not applied for or obtained a
26 Permit from the Department before ordering the equipment.

1 Further, Respondent's argument about financial repercussions from its ordering
2 equipment ignore the fact that Respondent has chosen, as a business decision, to not
3 do what is required to get a conditional use permit from the City of Salem.
4 Respondent's decision has caused its failure to obtain the Land Use Compatibility
5 Statement needed to complete Respondent's permit application with the
6 Department.(Findings of Fact 8, 9) Respondent testified on the record that the cost
7 of meeting the City of Salem's requirements would be in the thousands of dollars,
8 and that Respondent did not want to pay this, and did not believe it should have to
9 do so. The record shows that the Department offered more than once to participate
10 in a meeting with Respondent and the City of Salem, but that Respondent failed to
11 take the initiative to set up such a meeting.(Findings of Fact 9)

12 Respondent's arguments about the financial consequences of the permit
13 requirements also neglect to mention that Respondent has been making money from
14 operating its site without a permit for more than two years, since the Department's
15 May 1998 inspection. Respondent has not been under permitting requirements and
16 has not paid permit fees. Respondent has accepted for disposal on its property many
17 truckloads of waste, including wood, metal, and concrete, in exchange for cash
18 compensation of \$200 per 30-yard truckload.(Findings of Fact number 3)
19 Respondent is continuing to operate its business without a permit and has indicated it
20 plans to do so into the future.

21 5. **Exception 6:** Respondent also mentions that several of its competitors
22 do not have solid waste permits for their material recovery operation. The
23 Department has informed Respondent that it is willing to investigate any other alleged
24 violations reported by Respondent. No names were supplied before Respondent filed
25 its Proposed Exceptions, and the Department will investigate Respondent's recent
26 allegations as its resources permit. The competitors' conduct, however, does not
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1 site on its property in Salem, Oregon, and that the penalty for this violation as
2 amended by the Hearings Officer was correctly calculated according to law.

3 IV. PROPOSED ULTIMATE FINDINGS

4 The record provides sufficient proof to find that Stark Trucking has established
5 and maintained an unpermitted solid waste disposal site on its property in Salem,
6 Oregon, in violation of ORS 459.205(1). Respondent is in continuing violation of
7 this law.

8 V. PROPOSED CONCLUSIONS AND REASONS

9 Based upon the foregoing reasoning, the Department concludes that
10 Respondent has established and maintained a solid waste disposal site in violation of
11 OAR 340-093-0050 and ORS 459.205(1). A solid waste disposal site permit is
12 required for Respondent's waste at the site. Respondent does not have a permit
13 from the Department. The civil penalty imposed by the hearings officer is supported
14 by both the law, and the facts in the record. Respondent is found to be in continuing
15 violation of OAR 340-093-0050 and ORS 459.205(1), and Respondent's waste pile
16 poses a threat to environmental quality until it is promptly and properly processed or
17 removed and disposed of.

18 VI. PROPOSED COMMISSION ORDER

19 Based on the foregoing FINDINGS AND CONCLUSIONS OF LAW, it is hereby
20 Ordered that the Hearings Officer's decision dated May 1, 2000 is affirmed.

21 Respondent is ORDERED TO:

- 22 1. Either submit a complete permit application to DEQ within 20 days, or else
23 process or dispose properly off-site all material at the site within twenty days
24 from the date of this order. Any disposal shall be to a Department-approved solid
25 waste disposal site.
26
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1 2. Send receipts and photographic documentation of the waste disposal within 20
2 days to Cathie Davidson, DEQ Western Region, 750 Front Street N.E., Suite 120,
3 Salem, OR 97301.
4

5 Respectfully submitted,

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8 _____
Date

8 _____
Larry Cwik
9 Environmental Law Specialist
Oregon Department of Environmental Quality
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CERTIFICATE OF FILING AND SERVICE

1
2 I hereby certify that on the 20th of July, 2000, I filed RESPONSE TO BRIEF
3 OF PETITIONER AND EXCEPTIONS TO HEARINGS OFFICER DECISION with the
4 Environmental Quality Commission by first class mail, postage prepaid, deposited in
5 Portland, Oregon and addressed to:

6 Oregon Environmental Quality Commission
7 C/O Susan Greco, Rules Coordinator
8 811 S.W. Sixth Avenue
9 Portland, OR 97204

10 I hereby further certify that on the same date, I served a true and correct
11 copy of the same by first class mail, postage prepaid, deposited in Portland, Oregon
12 and addressed to:

13 Duane Stark, President
14 Stark Trucking, Inc.
15 P.O. Box 18005
16 Salem, OR ~~97219~~
17 ~~97305~~

18 DATED this 20th day of July, 2000.



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Larry Cwik
Statewide Enforcement Section
Department of Environmental
Quality

Received
JUN 21 2000

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

OFFICE OF THE DIRECTOR

IN THE MATTER OF:	)	PROPOSED ORDER
	)	RE: ASSESSMENT
STARK TRUCKING, INC.,	)	OF CIVIL PENALTY
An Oregon corporation,	)	No. WMC/SW-WR-98-249
	)	MARION COUNTY
Respondent)	

EXCEPTIONS TO PROPOSED ORDER

We believe the proposed order # WMC/SW-WR-98-249 should be overturned for the following reasons.

Exception # 1

The Hearings Officer found that in July 1999 the wood waste pile was at least as large as it was in May 1998. This is not the fact. Our Exhibit # 17 which the Hearings Officer refused to admit, clearly shows the sale of hog fuel to Smurfit in March, April, May and June of 1998, and March and April of 1999.

The Hearings Officer further states that in November 1999 a large wood waste pile remained on the site. This is not the fact. Our exhibit #17 clearly shows a significant sale of jog fuel in the summer and fall of 1999. No unprocessed material remained on site in November 1999. Only a small amount of hog fuel that became to wet remained.

Exception #2

The Hearings Officer states that at the time of the hearing we were still processing wood waste that had been present on the site since November 1997. That is not the fact. From November 1999 until present we have been processing material on an on going bases as it is received.

Exception #3

The Hearings Officer states that we established, operated and maintained a disposal site without first obtaining an appropriate permit from the Department of Environmental

Attachment C

Quality. That is not the fact. First of all we do not operate a disposal site. We do not dispose of anything on this site. Further more we were told on numerous occasions by the Department of Environmental Quality that we didn't need a permit. It was only after we had spent over \$ 600,000.00 on processing equipment that the Department of Environmental Quality decided we should have a permit.

Exception # 4

OAR 340-093-0050(3) exempts certain classes of disposal site from obtaining a permit, including "facilities which receive only source separated materials for purposes of material recovery, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health.

This site was exempt for these vary reasons. This site does not have an adverse impact on water of the state, we have no storm sewer or any water runoff. We have berms on the west and north side of our property. We do not pose a threat to public health or harbor rats or other vectors.

Exception #5

The Hearings Officer states that we should pay a civil penalty because we established, maintained and operated a disposal site without first obtaining a permit. However the record clearly shows that when we started the operation we didn't need a permit. In fact we were told several times by the Department of Environmental Quality (Bob Barrows, Cathy Davidson and Chuck Donaldson) that there was no permit required.

The Hearings Officer states that our operation has grown to a point that we now need a permit. The fact is our operation has remained quite constant since 1993. However since we did not own any processing equipment the volume of the debris grew. Since 1997 when we purchased our own equipment the volume of unprocessed debris has steadily decreased.

I believe it is unfair and unrealistic to change the rules after someone has started a business and made a substantial monetary investment.

Exception #6

The Department of Environmental Quality believes we have had some economic benefit by not having a permit. I find that hard to understand given the fact that none of my competitors in Marion County have Material Recovery Permits (Emery & Sons, Clayton-Ward, Garrison Pallet, Oregon Pallet, Garten Foundation, Wadsworth, and many others). Some of my competitors simply haul material to the country and burn it or bury it in gravel pits. Even after complaints to the Department of Environmental Quality this practice continues.

Conclusions

This site has been exempt and should remain exempt. We receive only source separated materials with a very slight amount of contaminates.

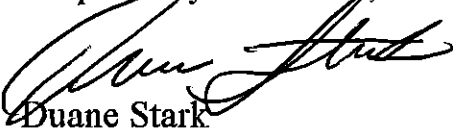
We do not create a public nuisance, health hazard, air or water pollution or any other problems.

We believe we are a public benefit because we keep several hundred tons of material per year out of the landfill. Also by recycling timbers, steel beams, boards, doors and windows, firewood, hog fuel, and other materials we reduce the need to cut new trees from our forests and reduce our dependency on foreign energy.

We believe the role of the Department of Environmental Quality, the City of Salem and Marion County should be encouraged and promote small recycling businesses such as ourselves and others and not to hassle and fine us.

Please review the entire record and my comments before making a final judgment.

Respectfully Submitted,



Duane Stark

Pres. Stark Trucking, Inc.



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

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

June 2, 2000

Duane D. Stark, President
Stark Trucking Inc.
P.O. box 18005
Salem OR 97305

RE: Appeal to Environmental Quality Commission

Dear Mr. Stark:

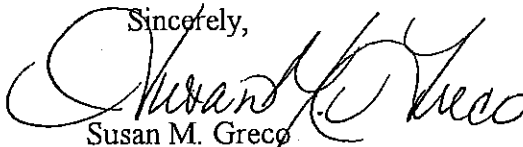
On May 26, 2000, the Environmental Quality Commission received your timely request for administrative review by the Commission in DEQ Case No. WMC/SW-WR -98-249.

Pursuant to OAR 340-011-0132, you must file exceptions and brief within thirty days from the filing of the request (June 26, 2000). The exceptions should specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, the Department will file its answer brief within 30 days. I have enclosed a copy of the applicable administrative rules.

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

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

Sincerely,



Susan M. Greco
Rules Coordinator

cc: Larry Cwik, NWR

attachment D



DEQ-1

Ref No.: G60228

**STATE OF OREGON
HEARING OFFICER PANEL**

Dec Mailed: 05/01/00

Case No: 00-GAP-00027

Mailed by: SLS

Case Type: DEQ

HEARING DECISION

STARK TRUCKING, INC.
DUANE STARK, PRESIDENT
PO BOX 18005
SALEM OR 97305 8005

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE
PORTLAND OR 97204 1334

LARRY CWIK
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

SUSAN GRECO

The following **HEARING DECISION** was served to the parties at their respective addresses.

Held by: Hearing Officer Panel, Employment Department
875 Union Street NE
Salem, OR 97311

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

IN THE MATTER OF:	)	PROPOSED ORDER
	)	RE: ASSESSMENT
STARK TRUCKING, INC.,	)	OF CIVIL PENALTY
An Oregon corporation,	)	No. WMC/SW-WR-98-249
	)	MARION COUNTY
Respondent)	

HISTORY

A Notice of Violation, Department Order, and Assessment of Civil Penalty was issued on April 28, 1999 by the Department of Environmental Quality (DEQ) pursuant to Oregon Revised Statutes (ORS) Chapter 183 and 468, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On May 13, 1999, Duane Stark, President, appealed the Notice on behalf of respondent, Stark Trucking, Inc.

A hearing was held on January 10, 2000 in Portland before hearing officer Daina Upite. Respondent was represented by Duane Stark who appeared as a witness. Larry Cwik, environmental law specialist, represented DEQ. Bob Barrows appeared as a witness for DEQ. Les Carlough, DEQ Enforcement Section Manager, was present as an observer.

At the hearing, Exhibits 1-20 were offered, marked and admitted into the record. Only page 1 of Exhibit 17 was admitted into the record. The parties have copies of all exhibits.

At the hearing, the parties waived their right to notice of issue number 2, set forth below. The record closed with the close of the hearing on January 10, 2000.

ISSUES

1. Has respondent established, maintained and operated a solid waste disposal/material recovery site at respondent's facility without a permit, by disposing of wood waste, scrap metal waste, and concrete waste on the ground at the facility, in violation of ORS 459.205(1) and OAR 340-093-0050(1)?
2. If so, should a civil penalty be assessed under OAR 340 chapter 12?

FINDINGS OF FACT

1. Respondent owns and operates a material recovery facility located at 3425 Blossom Street NE, Salem, Oregon in Marion County, and has done so since April 1993. No DEQ permit was required for the facility in 1993 because the operation did not pose an environmental threat.
2. A fire occurred at the site in November 1997. As a result of a complaint from the Salem Fire Department stemming from the fire, DEQ staff inspected the site in May 1998. The site

contained a large pile of wood waste, approximately 225 feet long, 125 feet wide and 20 feet high, equal to approximately 6,000 cubic yards of material. Smoke or steam was emitting from areas of the pile. The site also contained piles of concrete and metal.

3. Respondent accepts construction and demolition debris, which has been partially source-separated. For the debris he receives, respondent charges \$200 per 30-yard truckload. Respondent separates the remaining contaminants on site and disposes of them in a landfill. Contaminants include carpeting, painted wood, nylon, and plastic. Between September 1997 and August 1999, respondent disposed of 231 tons of waste in landfills. (Ex. 17). Respondent processes the remaining wood waste and sells it for hog fuel to industrial users. Between January 1998 and December 2, 1999, respondent sold 6,837 tons of hog fuel. (Ex. 17).

4. The large size of the wood waste pile observed in May 1998 posed potential environmental hazards with respect to surface and groundwater contamination, fires, and harborage of rats and other vectors. Water pollution concerns include surface water run-off and tannins from the wood waste pile leaching into groundwater. DEQ staff advised respondent that he must obtain a solid waste disposal site permit from DEQ for his operation. Respondent did not have a DEQ permit in May 1998.

5. Respondent continued to operate his business and did not obtain a permit from DEQ. On July 23, 1998, DEQ sent respondent a Notice of Noncompliance (NON) advising him that his continued operation of a material recovery facility without an appropriate permit was a significant violation of Oregon environmental law and could result in assessment of a civil penalty. DEQ also advised respondent that no enforcement action would be taken provided that respondent either (1) submitted a complete permit application by August 30, 1998, or (2) stopped performing material recovery activities and removed all existing materials from the site by October 20, 1998. (Ex. 6).

6. Respondent did not take either action as directed by DEQ, but continued to receive material and operate his material recovery facility. DEQ staff inspected the site in November 1998 and observed material recovery activities on the site. (See Ex. 7).

7. On November 30, 1998, DEQ issued a second NON because respondent had not complied with the correction schedule set forth in the July 23, 1998 NON. DEQ directed respondent to immediately stop receiving solid waste onto his site, including construction and demolition waste; remove and properly dispose of all solid waste on the site, including all yard debris and wood material, within 60 days; and submit receipts to DEQ from the disposal site that accepted the wastes. DEQ also advised that formal enforcement action would be initiated, which could include a civil penalty for each day of violation. (Ex. 8).

8. On or about December 21, 1998, respondent submitted an incomplete application for a solid waste disposal site permit. (Ex. 9). On December 31, 1998, DEQ advised respondent that his permit application was incomplete. DEQ advised respondent that he needed to obtain a conditional use permit from the City of Salem, as indicated on the Land Use Compatibility Statement (LUCS) portion of the application. DEQ advised respondent to submit a completed application within 90 days. (Ex. 10).

9. The City of Salem required a conditional use permit for respondent's operation. Respondent refused to apply for a conditional use permit due to the high cost of meeting the conditions that the city would likely impose, and because he believes a conditional use permit should not be required for his operation. Without a LUCS showing local land use approval, DEQ will not

accept a permit application. DEQ staff offered to meet with respondent and city officials to try to resolve the local land use issues, but respondent never arranged such a meeting.

10. Respondent did not submit a completed permit application. Respondent continued to receive wastes and conduct material recovery operations.

11. On April 28, 1999, DEQ issued a Notice of Violation, finding that respondent violated environmental statutes and rules by establishing, maintaining and operating a solid waste disposal/material recovery site without a permit. DEQ ordered respondent to immediately initiate actions to correct the violations and fully comply with Oregon law. Specifically, DEQ ordered respondent, within 15 days, to submit either a completed permit application or a written plan for appropriately disposing of the solid waste on his site within 120 days. DEQ also assessed a civil penalty of \$8,850. (Ex. 3).

12. Respondent did not comply with DEQ's order but continued to receive waste material and operate his material recovery facility. In July 1999, the wood waste pile was at least as large as it was in May 1998. In November 1999, large wood waste piles remained on the site, but the piles were smaller than they had been previously. In November 1999, respondent was also accepting yard debris from the public at his site.

13. Beginning in August 1997, respondent purchased equipment at a cost of over \$600,000 that enabled him to process the wood waste material he received at his facility. Respondent did not process any wood waste prior to 1997. Most of the wood waste processing and removal has occurred after March 1999.

14. Currently, respondent is able to fully process and sell wood waste within a few days of receipt. At the time of hearing, respondent had one 400 cubic yard pile of wood waste that he cannot sell until spring after the pile dries out, at which time it will require additional processing before it can be sold as hog fuel. At the time of the hearing, respondent was still processing wood waste that has been present on his site since November 1997.

ULTIMATE FINDINGS OF FACT

Respondent established, operated and maintained a disposal site without first obtaining an appropriate permit from DEQ in violation of ORS 459.205(1).

Respondent is liable for a civil penalty for violating ORS 459.205(1).

APPLICABLE LAW

ORS 459.205(1) provides:

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

ORS 459.005(8) defines "disposal site" as "land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to * * * energy recovery facilities[.]"

ORS 459.005(24) defines "solid waste" as "all useless or discarded putrescible and nonputrescible materials, including but not limited to * * * useless or discarded commercial, industrial, demolition or construction materials[.]"

ORS 459.005(16) defines "material recovery" as "any process of obtaining from solid waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be reused or recycled for some purpose." *See also* OAR 340-093-0030(56).

OAR 340-093-0030(57) defines "material recovery facility" as a "solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected."

ORS 459.215 provides, in material part:

"(1) By rule and after public hearing, the Environmental Quality Commission may prescribe criteria and conditions for excluding classes of disposal sites from the permit requirements of ORS 459.205. Disposal sites so excluded shall be limited to those which, because of the nature or volume of solid waste handled, are not likely to create a public nuisance, health hazard, air or water pollution, or other serious problem[.]

"(2) By rule and after public hearing the commission may establish classes of disposal sites that qualify for exclusion under this section."

OAR 340-093-0050(1) provides:

"Except as provided by section (3) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department."

OAR 340-093-0050(3) exempts certain classes of disposal sites from obtaining a permit, including "[f]acilities which receive only source separated materials for purposes of material recovery, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health[.]" OAR 340-093-0050(3)(f).

OAR 340-097-0120(2)(c)(C) provides for a permit application processing fee of \$100 for material recovery facilities receiving less than 10,000 tons of solid waste per year. OAR 340-097-0120(3)(b)(C) provides for an annual permit compliance fee of \$50 per year for material recovery facilities accepting less than 10,000 tons of solid waste per year.

ORS 459.995 provides, in material part:

"(1)(a) Any person who violates ORS 459.205 * * * or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or

recycling of solid wastes, as defined by ORS 459.005 * * * shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.

Former OAR 340-012-0045, the Civil Penalty Determination Procedure, is incorporated herein by reference. Also incorporated herein by reference are *former* OAR 340-012-0042, 340-012-0065, and 340-012-0090.

REASONING AND CONCLUSIONS

Respondent established, operated and maintained a disposal site without first obtaining a permit from DEQ.

Respondent's business involves the receipt of solid waste, including wood waste such as construction debris, which the respondent processes and sells as hog fuel to industrial users. This type of facility is a "disposal site" that requires a DEQ permit under ORS 657.205(1). *See also* ORS 459.005(8), (24). Because respondent receives solid waste, then processes the material so that it can be used for another useful purpose as hog fuel, respondent is engaged in material recovery. ORS 459.005(16); OAR 340-093-0030(56). Respondent's site is properly classified as a material recovery facility. OAR 340-093-0030(57).

Under ORS 459.215, certain classes of disposal sites may be exempt from obtaining a permit under ORS 459.205(1), provided that they are not likely to create a public nuisance, health hazard, air or water pollution or other serious problem. Material recovery facilities that receive only source separated materials are exempt from the permit requirement, except if DEQ determines that "the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health." OAR 340-093-0050(3)(f).

This exemption to the permit requirement does not apply to respondent's facility because respondent did not receive only source separated materials. In addition to source separated material, respondent also received construction debris that contained contaminants such as painted wood, plastic, nylon, and carpeting. Respondent had to remove the contaminants on site and dispose of them appropriately in a landfill.

The exemption also does not apply because the volume of material received constitutes a potential threat to water quality and public health. Respondent's site has contained wood waste piles as large as 6,000 cubic yards. This volume of material has been present on the site for over a year, from at least May 1998 until at least July 1999. Although the volume of material was somewhat reduced by November 1999, it remained substantial. Even though respondent can currently process wood waste quickly, so that the finished product can leave the site within a few days after receipt of the waste material, at least one 400 cubic yard pile of wood waste will remain on the site for several months. Moreover, at the time of the hearing in January 2000, respondent was still processing some wood waste that had been on the site since November 1997.

This volume of material on the site raises environmental and public health concerns with respect to potential water pollution, harboring of vectors such as rats, and the risk of fire. A fire has already occurred on the site in November 1997. Therefore, the risk of fire raises a present public health concern. With respect to water pollution and vector control issues, DEQ may require a permit when the potential for environmental hazards exists. It is not necessary to establish that respondent's operation has actually caused water pollution or is harboring vectors before DEQ may require a permit. Considering the volume of material processed and maintained on the site, DEQ's concern

about the potential for water pollution and harborage of vectors is reasonable. For these reasons, any exemption to the permit requirement of ORS 459.205(1) does not apply in this case.

Respondent's business has been in operation since at least 1993. However, in 1993, the nature and volume of the operation did not require a permit. By May 1998, respondent's operation had grown to the point that a permit was required under ORS 459.205(1). Respondent did not and has not obtained a permit from DEQ. Nevertheless, respondent has continued to maintain and operate his material recovery facility. Therefore, respondent violated ORS 459.205(1).

CIVIL PENALTY

Pursuant to ORS 459.995, a civil penalty may be imposed for a violation of ORS 459.205. DEQ imposed a civil penalty in the amount \$8,850, based on the calculations set forth in "Exhibit 1" of the Notice of Violation (Ex. 3).

DEQ's calculation of the basic civil penalty is correct regarding class and magnitude, so respondent is liable for a base penalty of \$6,000 for violating ORS 459.205. *See former* OAR 340-012-0045, 340-012-0042(1)(j), 340-012-0065(1)(b), and 340-012-0090(4)(a). This is a Class 1 violation under *former* OAR 340-012-0065(1)(b) because respondent established, maintained and operated a disposal site without first obtaining a permit. The magnitude of the violation is "major" under *former* OAR 340-012-0090(4)(a) because respondent disposed of over 400 cubic yards of material. Therefore, the appropriate base penalty is \$6,000. *Former* OAR 340-012-0042(1).

The aggravating factors for "O" and "R" are reasonable. With respect to factor "O", the violation occurred on more than one day after May 1998, so a value of +2 is appropriate. *Former* OAR 340-012-0045(1)(c)(C). With respect to factor "R", respondent was at least negligent in failing to comply with DEQ's requirements. Despite repeated verbal and written contact with DEQ between May 1998 and December 1998, respondent continued to operate his facility in violation of ORS 459.205(1). Therefore, respondent's conduct was at least negligent, and a value of +2 is appropriate.

DEQ also considered economic benefit in assessing the civil penalty. DEQ found that respondent has realized an economic benefit of \$450 as a result of noncompliance by avoiding the costs of permit fees. DEQ calculated the costs of permit fees as follows: \$100 for the permit application fee and \$50 per year for the seven years from 1993 through 1999 for annual permit compliance fees. The permit application fee cost is reasonable and consistent with OAR 340-097-0120(2)(c)(C). However, respondent was not required to have a DEQ permit in 1993, so he has not been liable for annual compliance fees since 1993. DEQ first notified respondent that he needed a permit in May 1998. Therefore, respondent has avoided annual compliance fees only in 1998 and 1999. Consequently, respondent avoided paying \$200 for permit fees, which is a reasonable economic benefit amount.

Respondent is liable for a civil penalty in the amount of \$8,600, based on the following calculation: $\$6,000 + [(.01 \times \$6,000) \times (2+2)] + \$200 = \$6,000 + (\$600 \times 4) + \$200 = \$6,000 + \$2,400 + \$200 = \$8,600$.

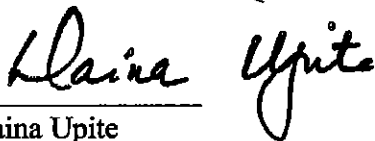
DEPARTMENT ORDER

At the time of the hearing, respondent continued to be in violation of ORS 459.205(1) since he was continuing to operate a material recovery facility without a DEQ permit. Therefore, it is

appropriate to enforce the Department Order portion of the Notice of Violation. Respondent shall, within 20 days after the date of this order, either (1) present to DEQ documentation, including receipts and photographs, showing that all waste material has been processed or appropriately disposed off site, or (2) submit a complete permit application to DEQ.

Dated this 1st day of May, 2000.

ENVIRONMENTAL QUALITY COMMISSION

A handwritten signature in cursive script that reads "Daina Upite". The signature is written in black ink and is positioned to the right of a horizontal line.

Daina Upite
Hearing Officer

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

IN THE MATTER OF:	)	PROPOSED ORDER
	)	RE: ASSESSMENT
STARK TRUCKING, INC.,	)	OF CIVIL PENALTY
An Oregon corporation,	)	No. WMC/SW-WR-98-249
	)	MARION COUNTY
Respondent)	

ORDER

IT IS HEREBY ORDERED that respondent Stark Trucking, Inc. is liable for a civil penalty in the amount of \$8,600, plus interest pursuant to Oregon Revised Statute (ORS) 82.010, from the date this order is signed below until paid; and that if the civil penalty remains unpaid for more than ten (10) days, this order may be filed with the County Clerk and execution shall issue therefor.

IT IS FURTHER ORDERED that respondent Stark Trucking, Inc. shall, within 20 days of the date of this order, either (1) process or appropriately dispose of all waste material on its site and present documentation to DEQ that waste material has been removed; or (2) submit a complete permit application to DEQ

Dated this 1st day of May, 2000.

ENVIRONMENTAL QUALITY COMMISSION



Daina Upite
Hearing Officer

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

Appeal Rights

OAR 340-011-0132 provides:

“(1) Commencement of Review by the [Environmental Quality] Commission:

“(a) Copies of the hearing officer’s Order will be served on each of the participants in accordance with OAR 340-011-0097. The hearing officer’s Order will be the final order of the Commission unless within 30 days from the date of service, a participant or a member of the Commission files with the Commission and serves upon each participant a Petition for Commission Review. A proof of service should also be filed, but failure to file a proof of service will not be a ground for dismissal of the Petition.

“(b) The timely filing and service of a Petition is a jurisdictional requirement and cannot be waived.

“(c) The timely filing and service of a sufficient Petition will automatically stay the effect of the hearing officer’s Order.

“(d) In any case where more than one participant timely serves and files a Petition, the first to file will be considered to be the Petitioner and the latter the Respondent.

“(2) Contents of the Petition for Commission Review. A Petition will be in writing and need only state the participant’s or a Commissioner’s intent that the Commission review the hearing officer’s Order.

“(3) Procedures on Review:

“(a) Petitioner’s Exceptions and Brief – Within 30 days from the date filing of the Petition, the Petitioner shall file with the Commission and serve upon each participant written exceptions, brief and proof of service. The exceptions will specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the Petitioner relies. Matters not raised before the hearing officer will not be considered except when necessary to prevent manifest injustice.

“(b) Respondent’s Brief – Each participant will have 30 days from the date of filing of the Petitioner’s Exceptions and Brief in which to file with the Commission and serve upon each participant an answering brief and proof of service. If multiple Petitions have been filed, the Respondent will also file his exceptions as required in (2)(a) at this time.

“(c) Reply Brief – Each participant will have 20 days from the date of filing of a Respondent’s Brief in which to file with the Commission and serve upon each other participant a reply brief and proof of service.

“(d) Briefing on Commission Invoked Review – Where one or more members of the Commission wish to review a hearing officer’s Order and no participant has timely served and filed a Petition, the Chairman will promptly notify the participants of the issue that the

Commission desires the participants to brief. The Chairman will also establish the schedule for the filing of briefs. The participants will limit their briefs to those issues. Where the Commission wishes to review a hearing officer's Order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

“(e) Extensions – The Chairman or the Director may extend any of the time limits contained in this section. Each extension request will be in writing and be served upon each participant. Any request for an extension may be granted or denied in whole or in part.

“(f) Failure to Prosecute – The Commission may dismiss any Petition if the Petitioner fails to timely file and serve any exceptions or brief required by these rules.

“(g) Oral Argument – Following the expiration of the time allowed the participants to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

“(4) Additional Evidence: A request to present additional evidence will be submitted by motion and be accompanied by a statement specifying the reason for the failure to present the evidence to the hearing officer. If the Commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to a hearing officer for further proceedings.

“(5) Scope of Review – The commission may substitute its judgment for that of the hearing officer in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0665.”

See the Statement of Mailing accompanying this order for the addresses of DEQ, the Environmental Quality Commission, and the participants.

Further Appeal: If a party wishes to appeal the Commission's decision, the party has 60 days from the date of service of the order of the Commission to file a petition for review with the Oregon Court of Appeals. *See* ORS 183.480 *et seq.*

Ref No: G60228
Case Type: DEQ
Agency Case No: WMCSWWR98249
Issued By SALEM

EMPLOYMENT DEPARTMENT
HEARINGS SECTION

Date Mailed: 12/17/99
Mailed By: LMV

CHANGE IN NOTICE OF HEARING

STARK TRUCKING INC.
DUANE STARK, PRESIDENT
PO BOX 18005
SALEM OR 97305 8005

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE
PORTLAND OR 97204 1334

LARRY CWIK
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

SUSAN GRECO

THE HEARING SCHEDULED FOR:

ADMINISTRATIVE LAW JUDGE: LEE LB
DATE: MONDAY, JANUARY 10, 2000
TIME: 9:30 AM PT
PLACE OF HEARING: DEPT OF ENVIRONMENTAL QUALITY
2020 SW 4TH
4TH FLOOR - CONFERENCE ROOM A
PORTLAND OR

HAS BEEN CHANGED TO:

ADMINISTRATIVE LAW JUDGE: UPITE
DATE: MONDAY, JANUARY 10, 2000
TIME: 9:30 AM PT
PLACE OF HEARING: DEPT OF ENVIRONMENTAL QUALITY
2020 SW 4TH
4TH FLOOR - CONFERENCE ROOM A
PORTLAND

*If you have questions prior your hearing, call: 1-888-577-2422.
If you are calling from the Salem area, please use: 378-2329.*

BE PROMPT AT TIME OF HEARING. INQUIRE IN LOCATION'S LOBBY AREA REGARDING HEARING ROOM. If you need directions, call: 1-800-311-3394.

EXHIBIT # 1-1

Ref No: G60228
Agency Case No: WMCSWWR98249
Case Type: DEQ

Date Mailed: 12/16/99
Mailed By: TJA

STATE OF OREGON

NOTICE OF HEARING

STARK TRUCKING INC.
DUANE STARK, PRESIDENT
PO BOX 18005
SALEM OR 97305 8005

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE
PORTLAND OR 97204 1334

LARRY CWIK
DEQ ENFORCEMENT SECTION
2020 SW 4TH AVE STE 400
PORTLAND OR 97201 4959

HEARING DATE AND TIME

MONDAY, JANUARY 10, 2000
9:30 AM PT

HEARING PLACE

DEPT OF ENVIRONMENTAL QUALITY
2020 SW 4TH
4TH FLOOR - CONFERENCE ROOM XA
PORTLAND OREGON

ADMINISTRATIVE LAW JUDGE

LEE LB

*If you have questions prior to your hearing, call toll-free: 1-800-311-3394.
If you are calling from the Salem area, please use: 947-1515.*

BE PROMPT AT TIME OF HEARING. INQUIRE IN LOCATION'S LOBBY AREA REGARDING HEARING ROOM. If you need directions, call the above number.

The issue(s) to be considered are:

SEE ATTACHED FOR ISSUES

EXHIBIT # 1-2

Held by: Employment Department Hearings Section
875 Union Street NE
Salem, OR 97311

ISSUE FOR STARK TRUCKING INC.

Has Respondent established, maintained and operated a solid waste disposal/material recovery site at Respondent's facility without a permit, by disposing of wood waste, scrap metal waste, and concrete waste on the ground at the facility in violation of ORS 459.205(1) and OAR 340-093-0050(1)?

EXHIBIT # 1-3

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Hearings officer. The person presiding at the hearing is known as the hearings officer. The hearings officer is an employee of the Central Hearing Officer Panel under contract with the Environmental Quality Commission. The hearings officer is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the hearing officer that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the hearings officer of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the hearings officer will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the hearings officer a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.

7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the hearings officer will have the opportunity to ask questions of all witnesses. DEQ or the hearings officer will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the hearings officer. DEQ or the hearings officer may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the hearings officer take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the hearings officer may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the hearings officer. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The hearing officer has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*



STARK TRUCKING, INC.

P.O. BOX 18005
SALEM, OREGON 97305
(503)393-6662

RECEIVED
MAY 18 1999

STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY

May 13, 1999

Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

RE: REQUEST FOR HEARING

To the Department Rules Coordinator:

Stark Trucking, Inc. hereby requests a formal contested hearing before the Environmental Quality Commission regarding the Notice of Violation, Assessment of Civil Penalty and Department Order No. WMC/SW-WR-98-249.

Thank you,

Duane Stark, President
Stark Trucking, Inc.

931-1097 = cell

EXHIBIT # 2-1

Attachment F2



STARK TRUCKING, INC.

P.O. BOX 18005
SALEM, OREGON 97305
(503)393-6662

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

IN THE MATTER OF:	)	ANSWERS TO NOTICE OF VIOLATION,
STARK TRUCKING, INC.,	)	ASSESSMENT OF CIVIL PENALTY AND
an Oregon Corporation,	)	DEPARTMENT ORDER
Respondent.	)	NO. WMC/SW-WR-98-249
		MARION COUNTY


Stark Trucking, Inc. hereby "Answers" to the charges contained in this Notice and Order:

1. Respondent owns and operates a material recovery business located at 3425 Blossom Dr. N.E. in Salem, Oregon.
2. Respondent has operated this business since approximately 1993 to the present.
3. The piles of debris observed at the Respondent's site include an estimated 2,000 tons of wood debris, approximately 100 tons of scrap metal and approximately 7,000 tons of concrete. (the wood debris pile was not smoldering, rather it was steaming in several areas).
4. Respondent does not have a solid waste/disposal/material recovery permit for Respondent's site.
5. Respondent denies that there have been several fires caused by the wood debris pile, however, there was one (1) fire caused by spontaneous combustion.
6. Respondent was sent a Notice of Noncompliance on July 23rd and on November 30th.
7. In December 1998 Respondent submitted as complete as possible a solid waste disposal/material recovery permit application to the Department. Marion County Solid Waste did not respond to our request for the completed form submitted in January 1999 until May 12, 1999 (copy of response attached).
8. The Department notified Respondent by letter dated December 31, 1998, that the application was incomplete, however, we have not been able to complete the application due to unresolved problems with the City of Salem and to the non response from Marion County Solid Waste.

EXHIBIT # 2-2

9. In Answer to the Department's allegation of violation of Oregon's Laws and Rules:

Since approximately 1993, Stark Trucking, Inc. has operated a material recycling site at this location. Stark Trucking, Inc. does not dispose of any wood waste, scrap metal, concrete or any other material at this site. All material has been or will be recycled with the exception of carpet and plastic which is hauled to Riverbend Landfill for disposal.



Duane Stark, President
Stark Trucking, Inc.

EXHIBIT # 23

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

3 IN THE MATTER OF: 4 STARK TRUCKING, INC., 5 an Oregon corporation, 6 Respondent.))))))	NOTICE OF VIOLATION DEPARTMENT ORDER AND ASSESSMENT OF CIVIL PENALTY No. WMC/SW-WR-98-249 MARION COUNTY
---	----------------------------	--

I. AUTHORITY

This Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and Order) is issued to Respondent, Stark Trucking, Inc., an Oregon corporation, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) Chapters 183 and 468, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. FINDINGS

1. Respondent owns or operates a solid waste disposal/material recovery site and business located at 3425 Blossom Street, N.E., Salem, Oregon.

2. Respondent has operated the site from at least 1993 through the present.

3. On May 5, 1998, Cathie Davidson and Bob Barrows of the Department's Western Region visited Respondent's site and observed piles containing an estimated 2,396 tons of wood waste, in a pile 225 feet long x 120 feet wide x 20 feet high; 595 tons of scrap metal waste, in a pile 50 feet x 50 feet x 6 feet high; and 7,040 tons of concrete, in a pile 150 feet long x 60 feet wide x 20 feet high. The wood waste pile was smoldering in several areas.

4. Respondent does not have a solid waste disposal/material recovery permit for Respondent's site.

1 1. Immediately initiate actions necessary to correct all of the above-cited
2 violations and come into full compliance with Oregon state law.

3 2. Within 15 days of receipt of this Order, submit to the Department
4 either the missing permit application materials/information or submit for approval a
5 written disposal plan for the unpermitted solid waste piles. The plan should provide
6 for appropriate disposal of the waste at a permitted solid waste disposal site, within
7 120 days after receipt of the Order.

8 3. Within 10 days of completion of the Department-approved waste
9 disposal, send receipts and photographic documentation of this to the Department.
10 All submissions required by this Order should be sent to: Cathie Davidson, DEQ
11 Western Region, 750 Front Street, N.E., Suite 120, Salem, OR 97310.

12 V. ASSESSMENT OF CIVIL PENALTY

13 The Director imposes a \$8,850 civil penalty for the violation cited above.

14 The findings and determination of Respondent's civil penalty pursuant to OAR
15 340-012-0045 are attached and incorporated as Exhibit No. 1.

16 V. OPPORTUNITY FOR CONTESTED CASE HEARING

17 Respondent has the right to have a formal contested case hearing before the
18 Environmental Quality Commission (Commission) or its hearings officer regarding the
19 matters set out above, at which time Respondent may be represented by an attorney
20 and subpoena and cross-examine witnesses. The request for hearing must be made in
21 writing, must be received by the Department's Rules Coordinator within twenty (20)
22 days from the date of service of this Notice and Order, and must be accompanied by a
23 written "Answer" to the charges contained in this Notice and Order.

24 In the written Answer, Respondent shall admit or deny each allegation of fact
25 contained in this Notice and Order, and shall affirmatively allege any and all affirmative
26
27

1 claims or defenses to the assessment of this civil penalty that Respondent may have
2 and the reasoning in support thereof. Except for good cause shown:

- 3 1. Factual matters not controverted shall be presumed admitted;
- 4 2. Failure to raise a claim or defense shall be presumed to be a waiver of
5 such claim or defense;
- 6 3. New matters alleged in the Answer shall be presumed to be denied
7 unless admitted in subsequent pleading or stipulation by the Department or
8 Commission.

9 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of**
10 **the Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a
11 request for hearing and an Answer, Respondent will be notified of the date, time and
12 place of the hearing.

13 Failure to file a timely request for hearing and Answer may result in the entry of
14 a Default Order for the relief sought in this Notice and Order.

15 Failure to appear at a scheduled hearing or meet a required deadline may result
16 in a dismissal of the request for hearing and also an entry of a Default Order.

17 The Department's case file at the time this Notice and Order was issued may
18 serve as the record for purposes of entering the Default Order.

19 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

20 In addition to filing a request for a contested case hearing, Respondent may
21 also request an informal discussion with the Department by attaching a written
22 request to the hearing request and Answer.

23 VIII. PAYMENT OF CIVIL PENALTY

24 The civil penalty is due and payable ten (10) days after the Order imposing the
25 civil penalty becomes final by operation of law or on appeal. Respondent may pay the
26 penalty before that time. Respondent's check or money order in the amount of
27

1 \$8,850 should be made payable to "State Treasurer, State of Oregon" and sent to the
2 Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue,
3 Portland, Oregon 97204.

4
5 4-28-99

6 Date

Langdon Marsh, Director

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

- VIOLATION:** Operating an unpermitted solid waste/material recovery site.
- CLASSIFICATION:** This is a Class 1 violation pursuant to OAR 340-012-0065(1)(b).
- MAGNITUDE:** The magnitude of the violation is major pursuant to OAR 340-012-0090(4)(a)(A) as the volume of solid waste disposed of exceeds 400 cubic yards.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$
- "BP" is the base penalty, which is \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0042(1).
- "P" is Respondent's prior significant action(s) and receives a value of 0, as there is no prior significant action as defined in OAR 340-012-0030(14).
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of 0, as there is no prior significant action as defined in OAR 340-012-0030(14).
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of +2 as the violation was repeated on more than one day.
- "R" is the cause of the violation and receives a value of +2, as Respondent's violation was negligent. Respondent is aware of the Department's solid waste regulatory requirements, from Department meetings and letters to Respondent in May, July, November, and December 1998, and has failed to exercise its duty to take steps to comply with these requirements.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 0, as Respondent has taken some action to comply with the Department's requests, but not all steps necessary to correct the violation.
- "EB" is the approximate dollar sum of the economic benefit that the Respondent has gained through noncompliance, from avoiding the costs of a solid waste permit from the Department for Respondent's solid waste facility, and receives a value of \$450. This is derived from \$100 for the permit application fee, not submitted to date, and \$350 for seven years of the \$50 annual compliance determination fee not paid to date, for the years 1993-1999. Failure to immediately obtain the required solid waste disposal site permit from the Department may result in the imposition of an additional civil penalty for additional economic benefit to the

Respondent, for the delay in paying the costs of lawful disposal of the waste currently at Respondent's facility.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6000) \times (0 + 0 + 2 + 2 + 0)] + \$450 \\ &= \$6,000 + [\$600 \times 4] + \$450 \\ &= \$6,000 + \$2,400 + \$450 \\ &= \$8,850 \end{aligned}$$

April 28, 1999

CERTIFIED MAIL

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Duane D. Stark
President and Registered Agent
Stark Trucking, Inc.
PO Box 18005
Salem, Oregon 97305

Re: Notice of Violation, Assessment of
Civil Penalty and Department Order
No. WMC/SW-WR-98-249
Marion County

On May 5, 1998, staff of the Department of Environmental Quality (Department) Western Region Salem office inspected Stark Trucking, Inc.'s property at 3425 Blossom Street, NE, Salem, Oregon. The Department's inspectors, Bob Barrows and Cathie Davidson, observed large piles of wood waste, scrap metal, and concrete. The pile of wood waste was smoldering in several spots. The piles contained an estimated 2,396 tons of wood waste, in a pile 225 feet long x 120 feet wide x 20 feet high; 595 tons of scrap metal waste, in a pile 50 feet x 50 feet x 6 feet high; and 7,040 tons of concrete, in a pile 150 feet long x 60 feet wide x 20 feet high.

Stark Trucking does not have a DEQ solid waste disposal/material recovery permit for this type of operation and is therefore in violation of Oregon law. The Department understands that your company has been accepting waste and has been operating as a material recovery facility since April 1993. You told DEQ staff that your operation was a reclamation site, and that it had a conditional use permit from the City of Salem. At that time it was not necessary for you to obtain a DEQ solid waste permit for your operation because the material collected at the property was being moved off site on a regular basis.

In both 1997 and 1998, the Department received complaints of fires at the facility caused by the wood waste pile. Currently, the wood waste pile is a health and safety hazard. The Department's inspectors explained to you, during the May 1998 inspection, that the solid waste operation on the property must have a DEQ solid waste permit. After the inspection, Ms. Davidson allowed some time for Stark Trucking to voluntarily comply with DEQ's requirements. When Stark Trucking did not remove the waste nor obtain the required permit, the Department sent Stark Trucking Notices of Noncompliance for the violations on July 23rd and November 30, 1998. The first of these gave an August 30, 1998, deadline to come into compliance, through either submittal of a complete permit application or removal of all of the waste.



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

DEQ-1



EXHIBIT # 4
(3 pages)

attachment F-4

After the second Notice, Stark Trucking submitted an incomplete permit application to the Department in December 1998. The Department notified Mr. Stark on December 31, 1998, that the application was incomplete, and requested that the missing information, and missing fees, be supplied by March 31, 1999. There has been no response to date, and the large waste piles remain on the property.

In addition to the fire and safety concerns related to the wood waste pile, the Department is also concerned about potential run-off from the site to surface waters, and potential harborage for rodents.

Stark Trucking is continuing to violate Oregon Revised Statute 459.205(1), through establishing, operating, and maintaining an unpermitted solid waste disposal/material recovery site and is liable for a civil penalty assessment. In the enclosed Notice, I have assessed a civil penalty of \$8,850 for Stark Trucking's establishment and operation of a solid waste disposal/material recovery site without a permit. Of this amount, \$450 represents the economic benefit which the Department estimates that Stark Trucking has gained until now from the violation through nonpayment of the permit fees. I note that Stark Trucking has continued to accept solid waste for several years, however, I have chosen to only assess a civil penalty for one day of violation.

The Notice and Order formally cites the violations and orders Stark Trucking to correct the violations within the deadlines specified in the Order. Specifically, Stark Trucking is ordered to submit the remainder of the incomplete permit application within 15 days, or submit a plan for Department approval for proper disposal of the waste within 15 days.

Appeal procedures are outlined in the Notice. If Stark Trucking fails to either pay or appeal the penalty within 20 days, a Default Order will be entered against. Also, violation of a Department Order would be a serious Class I violation, and would likely result in additional civil penalty assessment against Stark Trucking and consideration of other enforcement options.

Stark Trucking either needs to immediately obtain a permit for the site, or immediately make arrangements to remove the unpermitted waste from the site. If Stark Trucking decides not to obtain a permit, then the economic benefit that the company has gained from the violation would be for a delay in paying the disposal costs from at least 1996 to September 1999, the earliest feasible estimated date for complete removal of all waste from the site. At this time, the economic benefit equals \$5,763, as calculated by the U.S. Environmental Protection Agency BEN economic benefit computer model. If the removal of the waste is delayed beyond September 1999, the economic benefit of the violation would be greater. The Department needs to recoup the economic benefit of all violations documented in Oregon and may do so for the delayed lawful disposal costs if Stark Trucking decides not to complete its permit application in compliance with the Order.

We look forward to Stark Trucking's cooperation in correcting the violations and complying with the enclosed Order, and Oregon environmental law in the future. We are willing to assist Stark Trucking with questions regarding rule interpretations or the applicability of specific regulations to Stark Trucking's site.

Also enclosed are the following: a copy of referenced rules, a copy of OAR, Division 12 Civil Penalties, and a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). The Department looks particularly favorably on pollution prevention in considering penalty mitigation or SEPs.

If Stark Trucking has any questions with regard to the Notice and Order, or any other matter concerning compliance with Oregon's environmental laws, please contact Larry Cwik of the Department's Enforcement Section at (503) 229-5728 or toll-free at 1-800-452-4011, Enforcement Section ext. 5728.

Sincerely,



Langdon Marsh
Director

Enclosure(s)

cc: Cathie Davidson, Western Region, Salem Office -SW, DEQ
Waste Management and Cleanup Division, DEQ
Environmental Quality Commission
Environmental Protection Agency
City of Salem, Code Enforcement
Marion County District Attorney



Marion County

OREGON DEPARTMENT OF SOLID WASTE MANAGEMENT

March 31, 1999

DIRECTOR
James V. Sears
(503) 588-5169

BOARD OF
COMMISSIONERS
Randall Franke
Patti Milne
Mike Ryan

INTERIM COUNTY
ADMINISTRATOR
Jeffrey R. Davis

Duane Stark
Stark Trucking, Inc.
3425 Blossom Dr. NE
Salem, OR 97305

Dear Mr. Stark:

We have reviewed your request to fill out and submit a copy of DEQ's "Solid Waste Disposal Site Compatibility With Solid Waste Management Plan" form, but upon discussions with both the City of Salem and DEQ, we have decided not to complete the form at this time.

It is our understanding that DEQ is currently taking enforcement action against this site, which would preclude us signing such a statement. Should the issues with DEQ and Salem be resolved, and you are taking only source separated recyclable materials for processing, then we would consider completing and submitting this form.

If you are interested in performing sorting of non-source separated materials, not only will you require a DEQ solid waste disposal site permit, you will also be required to obtain a franchise from Marion County, as per Marion County Ordinance 615. If you are interested in this, contact our office for a franchise application.

Should you have any questions regarding this matter, please contact me at 588-5169, extension 5056.

Sincerely,

James V. Sears, Director
Solid Waste Management

RECEIVED MAY 12 1999

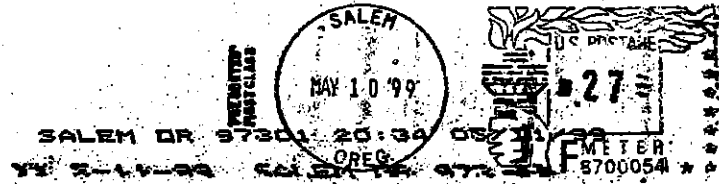
jab
stark letter.wpd

EXHIBIT # 5

attachment F-5



DEPARTMENT OF
SOLID WASTE MANAGEMENT
388 State St., Suite 735
Salem, OR 97301-3538



STARK TRUCKING
ATT: DUANE STARK
P.O. BOX 18005
SALEM OR 97305

9730518005





Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Western Region

Salem Office

750 Front St. NE

Suite 120

Salem, OR 97310

(503) 378-8240

(503) 378-3684 TTY

July 23, 1998

Duane Stark
 Stark Trucking
 3425 Blossom Drive, NE
 Salem, OR 97305

Re: NOTICE OF NONCOMPLIANCE
 WRS-98-0024
 Illegal Material Recovery Facility
 Marion County

Dear Mr. Stark:

In response to a solid waste complaint on May 5, 1998, Bob Barrows and Cathie Davidson, of my staff, met with you and walked around your property discussing your site operations and plans. As they understood it, construction and demolition debris is delivered and stored on this site, separated and ultimately recycled. At the time of the site visit piles of wood waste, yard debris, concrete and scrap metal were observed. A drop box for unrecyclable material was also on site which you indicated was dumped at a DEQ permitted solid waste disposal site. The woodwaste piles were particularly large and a number of smoldering "hot spots" were noted indicating the material had been sitting there for quite some time and was beginning to internally combust. We also discussed the fire that had occurred in the woodwaste last fall.

Your operation is considered a material recovery facility as defined in Oregon Administrative Rule (OAR) 340-093-0050 "a solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and or mechanical methods, or a facility at which previously separated recyclable are collected". Material recovery facilities are subject to DEQ solid waste permitting requirements.

Violation of State Solid Waste Statutes

Your current practice of operating a material recovery facility without a DEQ solid waste disposal site permit is in violation of Oregon Revised Statute (ORS) 459.205. This activity is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth below, we will refer your file to the Department's Enforcement Section. This will include a recommendation to proceed with a formal enforcement action, which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.



attachment F-6

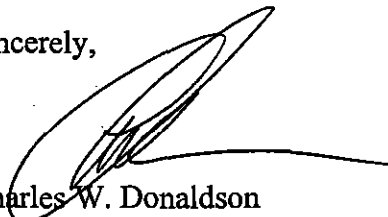
Correction Schedule

The Department will exercise its enforcement discretion and take no formal enforcement action provided that one of the following conditions are met:

1. Stop performing material recovery facility activities and remove the existing materials from the property by October 20, 1998; or
2. Obtain a DEQ Solid Waste Disposal Site /Material Recovery Facility Permit to continue your current operations (application attached). The Department must be in receipt of a complete application by August 30, 1998.

If you have questions about this letter or permit application requirements, please call Cathie Davidson at (503) 378-8240 x277.

Sincerely,



Charles W. Donaldson
Manager, Solid Waste Programs

CWD:cd
Enclosures

cc: Cathie Davidson, DEQ-WR
x:/swpermits/cdavidson/StarkTruckingNON..doc



Attachment F-7





Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Western Region
Salem Office
750 Front St. NE
Suite 120
Salem, OR 97310
(503) 378-8240
(503) 378-3684 TTY

November 30, 1998

Duane Stark
Stark Trucking
3425 Blossom Drive, NE
Salem, OR 97305

Re: NOTICE OF NONCOMPLIANCE
ENF-WMC/SW-WRS-98-365
Illegal Material Recovery Facility
Marion County

Dear Mr. Stark:

On July 20, 1998 the Department issued a Notice of Noncompliance (NON) to Stark Trucking for operating an illegal material recovery facility, in violation of OAR 340-093-0050. The NON indicated that Stark Trucking was required to choose from one of two following options;

1. Stop performing material recovery facility activities and remove the existing materials from the property by October 20, 1998 ; or
2. Obtain a DEQ Solid Waste Disposal Site /Material Recovery Facility Permit to continue your current operations (application attached). The Department must have been in receipt of a complete application by August 30, 1998.

VIOLATION

The violation has not been corrected in accordance with the schedule that was set forth in the July 20th NON. You are operating a solid waste disposal site without a permit in violation of Oregon Revised Statute (ORS) 459.205 and Oregon Administrative Rules (OAR) 340-093-0050.

CORRECTIVE ACTION REQUIRED

Since this situation constitutes an unpermitted solid waste disposal site you must do the following actions to bring your site into compliance:

- Immediately stop receiving regulated solid waste onto your site, including construction demolition waste.
- Within 60 days of receipt of this letter, remove all solid waste from the site, including all yard debris and woody material. This waste must be disposed of at a solid waste disposal site permitted by DEQ or at another appropriate facility approved by DEQ.
- Submit receipts to the Department showing the disposal site that accepted the wastes removed from the site.

Attachment F-8

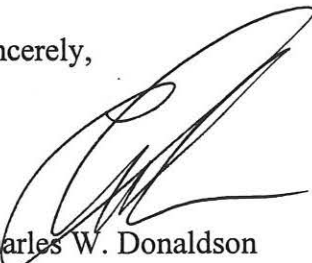


REGULATORY EFFECT OF THIS LETTER

This is a Class I violation and is considered to be a serious violation of Oregon environmental law. This violation is being referred to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. Formal enforcement action may include a civil penalty assessment for each day of violation. Complying with the schedule described above may reduce the penalty assessed.

If you have questions please call Cathie Davidson at (503) 378-8240 x277.

Sincerely,



Charles W. Donaldson
Manager, Solid Waste Programs

CWD:cd

cc:DEQ Enforcement Section
Cathie Davidson, DEQ-WR
x:\swpermits\cdavidson\StarkNON(11-98)-ltr



Application For A New Solid Waste Disposal Site Permit Oregon Department of Environmental Quality (Attach Additional Sheets if Necessary)

DEQ USE ONLY - REGIONAL OFFICE

DEQ USE ONLY - BUSINESS OFFICE
Date Received:
Amount Received:
Check No.:
Deposit No.:
Forward confirmation of fee payment for Northwest and Western Region applications to: DEQ - Salem
Forward confirmation of fee payment for Eastern Region applications to: DEQ - The Dalles

A. REFERENCE INFORMATION (Please Print Clearly. SEE INSTRUCTIONS ON BACK.)

1. STARK TRUCKING, INC. Legal Name of Applicant Registered (See #23 below)
8. STARK TRUCKING, INC. Common Name of Facility
2. Ph. (503) 393-6662 FAX (503) 393-6662 9. 3425 BLOSSOM DR. N.E. Facility Address
3. STARK TRUCKING, INC. Legal Name of Business/Facility (May Be Same As Above) SALEM OR 97305 City State Zip
4. P.O. BOX 18005 Mailing Address of Applicant 10. P.O. BOX 18005 Facility's Mailing Address
SALEM OR 97305 City State Zip
5. SANDRA A. STARK AND DUANE D. STARK AS TRUSTEE OF THE DUANE D. STARK AND SANDRA A. STARK FAMILY TRUST Legal Name of Property Owner E-mail at Facility
6. P.O. BOX 18005 Mailing Address of Property Owner 11. DUANE STARK Ph. (503) 393-6662 Name of Facility Operator
SALEM OR 97305 City State Zip
12. MARION County in which facility is located
7. Ph. (503) 393-6662 FAX (503) 393-1369

13. Enter Facility Location by: LATITUDE and LONGITUDE; and SECTION, TOWNSHIP and RANGE.
Sect.: Town.: 7S Range: 3W
LATITUDE LONGITUDE
Degrees Minutes Seconds Degrees Minutes Seconds

B. TYPE OF PERMIT REQUESTED

I am applying for the following permit (check one): Each type of permit listed below has an accompanying instruction sheet that describes steps you must complete in order to submit a completed application. If the appropriate instruction sheet is not attached to this application form or for more information, call DEQ at (503) 378-8240 ext. 252.

- 14. Transfer Station/Material Recovery Facility Permit
15. Composting Facility Permit
16. Waste Tire Management Permit
17. Solid Waste Treatment Facility Permit
18. Landfill Permit
19. Solid Waste Letter Authorization (short-term projects only)

C. SIGNATURE I hereby certify by my signature below that the information contained in this application, and the documents I have attached, are true and correct to the best of my knowledge and belief.

Signature of Legally Authorized Representative (See Instructions) DUANE STARK PRESIDENT
Print Name Title Date

Continue on Back Side

Attachment F-9



D. ATTACH TO THIS PERMIT APPLICATION (You must check all of the following in order for this application to be complete.)

- 21. I have attached a completed LAND USE COMPATIBILITY STATEMENT.
- 22. I have contacted a DEQ solid waste staff person to determine if I must get a WRITTEN RECOMMENDATION from the local government unit having jurisdiction over solid waste in my area.
- 23. I have attached a CERTIFICATE OF BUSINESS REGISTRY of this business with the State of Oregon.
- 24. I have attached a LIST OF DEQ PERMITS issued or applied for under the business name listed above. Check here if no other permits issued or applied for.
- 25. I have reviewed the instruction sheet that describes steps necessary to submit a completed application. I have attached additional materials, if any, as listed on that instruction sheet.

E. FEES - MUST ACCOMPANY THIS APPLICATION

26. Application Filing Fee: \$ _____ (Make check payable to: Oregon DEQ)

Instructions for Completing the Solid Waste Disposal Site Permit Application Form

A. REFERENCE INFORMATION

1. Enter the applicant's official or legal name. This is the name that appears on the certification form you must submit with this application (see #23). Do not use a colloquial name. If the business is a partnership, list each partner.
2. and 3. Self explanatory.
4. Enter the mailing address where the permit and related correspondence should go.
5. through 7. Self explanatory.
8. Enter the common or local name of the facility. For example, if Waste Management Disposal Services of Oregon, Inc. is the applicant (#1), Columbia Ridge Landfill and Recycling Center could be the common or local name of the facility (#8).
9. Enter the location of the facility. This is how someone could find the facility; it may not be the same as the mailing address. This is especially important for facilities using a mailing address with a post office box number or for sites listing the headquarters office as the mailing address.
10. Enter the mailing address for correspondence received at the facility. This may be the same as #4.
11. Enter the name and phone number of the person located at the facility who can respond to calls from DEQ staff.
12. Self explanatory.
13. Enter the facility location by referring to a topographic map. Latitude and longitude should be listed in degrees, minutes and seconds. Section, township and range are based on the Willamette Meridian.

B. TYPE OF PERMIT REQUESTED

14. through 19. Check appropriate box.

C. SIGNATURE

20. Definition: Legally Authorized Representative
- Corporation - By a principal executive officer of at least the level of vice president;
 - Partnership or Sole Proprietorship - By a general partner or the proprietor (owner), respectively; or
 - Municipality, State, Federal, or other Public Facility - By either a principal executive officer or ranking elected official.

D. PERMIT APPLICATION ATTACHMENTS

21. The Land Use Compatibility Statement is a form provided to you by DEQ that shows that land use has been considered and is acceptable for your facility (as required by law). Contact staff at the planning office of the county in which your facility is located and ask them to complete the form, then include it with your permit application.
22. In some areas of the state, facilities handling solid waste must get a written recommendation showing that the facility is compatible with the local comprehensive plan and zoning requirements. The recommendation would be provided by your County's commissioners, solid waste department, health department or other appropriate unit.
23. The Certification of Business Registry verifies that the Applicant has a current registration with the state of Oregon and assures DEQ that a permit could be issued to this legal entity. To obtain a Certificate of Existence or Certificate of Record, contact the Oregon Secretary of State's Corporation Division at (503)986-2200. Registration is verified for a 60 day period.
24. In order to better serve permittees, avoid duplication, and coordinate between divisions, it is important for DEQ to know if your facility has been issued or has applied for permits from the water or air quality programs of DEQ, or has DEQ solid waste permits for other activities at the same location.

E. FEES.

DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND USE COMPATIBILITY STATEMENT (LUCS)



WHAT IS A LUCS? The LUCS is the process DEQ uses to determine that DEQ permits and other approvals that affect land use are consistent with the local government comprehensive plan.

WHY IS A LUCS REQUIRED? Oregon law requires that state agency activities that impact land use be consistent with local comprehensive plans. DEQ Division 18 administrative rules identify agency actions that are defined as programs affecting land use. These programs must have a process for determining local plan consistency.

WHEN IS A LUCS REQUIRED? A LUCS is required for nearly all DEQ permits, some general permits, and certain approvals of plans or related activities that affect land use. These activities are listed in this form. In cases where a source needs more than one DEQ permit or approval, a single LUCS may be used.

A permit modification requires a LUCS when:

- there is a physical expansion on the property or the use of additional land is proposed
- there is a significant increase in discharges to water
- there is a relocation of an outfall outside of the source property, or
- there is any physical change or change of operation of an air pollutant source that results in a net significant emission rate increase as defined in OAR 340-28-110.

A permit renewal requires a LUCS if one has not previously been submitted, or if one of the above four permit modification factors apply.

HOW TO COMPLETE A LUCS:

- The LUCS form is included in the DEQ permit application or approval packet.
- Applicant fills out Section 1 of the LUCS and then submits it to the city or county planning office.
- The local planning office determines if the business or facility meets all local planning requirements.
- The local planning office must attach written findings of fact for local reviews or other necessary planning approvals that are required of the applicant.
- The applicant includes the completed LUCS and attachments with the permit application or approval request submittal.

WHERE TO GET HELP: Questions on the LUCS are to be directed to region staff responsible for processing the source permit or other approval application or, to Management Services Division at 800-452-4011 or (503) 229-6408.

SECTION 1 - TO BE FILLED OUT BY APPLICANT

1. Name of applicant STARK TRUCKING, INC. Contact person DUANE STARK
Telephone (503) 393-6662

Mailing address:
P.O. BOX 18005
SALEM, OR 97305

Location address:
3425 BLOSSOM DR. N.E.
SALEM, OREGON 97305

Tax Acct.# 52861-000 Tax Lot # R22171 Township 7S Range 3W Section _____
Latitude _____ Longitude _____

2. Describe type of business or facility and the services or products provided:
TRUCKING, EXCAVATING, BUILDING DEMOLITION, WOODWASTE RECYCLING

67

3. Circle the type of DEQ permit approvals being applied for at this time:

- | | | |
|----------------------------|-----------------------------------|------------------------------------|
| Air Notice of Const. | SW Compost Regst-Permit | Wastewater/Sewer Facility Plan *** |
| Air Discharge Permit* | SW Letter Authorization Permit | WQ NPDES/WPCF Permit ** |
| Title V Air Permit | SW MRF Permit | WQ Stormwater General Permit |
| Air Indirect Source Permit | <u>SW Trans. Station Permit</u> | Other WQ General Permit #_**** |
| Parking/Traffic Circ. Plan | SW Waste Tire Storage Permit | Fed. Permit WQ Cert. |
| SW Disposal Permit | HW/PCB Storage/Trmt/Disch Permit | Pollution Control Bond Request |
| SW Treatment Permit | Wastewater Revolving Loan Request | |

* excluding portable facility permits ** for onsite const-installation permits use DEQ form F:\WLANDUSE.OSS
 *** includes review of plan changes that require use of new land **** general permits, 600, 700, 1200CA, and 1500 are exempt.

4. This application is for a: new permit X permit renewal ___ permit modification ___ other _____

SECTION 2 - TO BE FILLED OUT BY CITY OR COUNTY PLANNING OFFICIAL

5. The facility proposal is located: X inside city limits X inside UGB ___ outside UGB

6. Name of city or county that has land use jurisdiction*: SALEM
*jurisdiction means the legal entity that is responsible for land use decisions for the subject property or land use.

7. The business or facility complies with all applicable local land use requirements: ___ yes X no ^{BM}

7a. List all local reviews or approvals that were required of the applicant before the LUCS consistency was determined (This does not include past requirements that do not relate to the pending DEQ permit request.):

7b. If no, identify reasons for noncompliance, or list requirement(s) that the applicant must comply with before LUCS consistency can be determined:

NEEDS NEW CONDITIONAL USE PERMIT.

CONDITIONAL USE PERMIT 92-12 EXPIRED FEBRUARY 8, 1996.

MUST COMPLY WITH CITY OF SALEM, PUBLIC WORKS, ENVIRONMENTAL REQUIREMENTS + RESTRICTIONS, STORM + SURFACE WATER DISCHARGES.

7c. Is local government currently processing remaining requirements to attain LUCS consistency: ___ yes X no ^{BM}
 Anticipated date of decision _____

7d. Is a public notice and hearing required? X yes ^{BM} ___ no hearing date _____

8. Planning official reviewer's telephone number: 503-588-6173

SIGNATURES

Bruce W. Matlack BRUCE W. MATLACK Title ASST. PLANNER Date 12-21-98
 Planning Official print planning official's name

 Planning Official print planning official's name Title _____ Date _____
 (depending upon city/county agreement on jurisdiction outside city limits but within UGB)

ATTENTION: A LUCS approval cannot be accepted by DEQ until all local requirements have been met. Written findings of fact for all local decisions addressed under 7 thru 7b must be attached to the LUCS.



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Western Region
Salem Office

750 Front St. NE
Suite 120

Salem, OR 97310
(503) 378-8240

(503) 378-3684 TTY

December 31, 1998

Stark Trucking, Inc.
Duane Stark
PO Box 18009
Salem, OR 97305

Re: Incomplete Material Recovery Facility
Permit Application
Project No. 767

Dear Mr. Stark:

On December 22, 1998, the department received your permit application for a material recovery facility.

The permit application included:

- The application form,
- A LUCS from the City of Salem requiring a Conditional Use Permit,
- A State of Oregon corporate division certificate,
- City of Salem court documents regarding complaints at the site and
- City of Salem letter listing environmental requirements and restrictions for storm and surface water discharges at the site.

Thank you for submitting the above materials. Upon review of your permit application we have determined that it is incomplete. In order for your application to be complete you must submit the following additional information;

- A Conditional Use Permit as required by the signed LUCS from the City of Salem,
- A written recommendation from the local government unit (Marion County) having jurisdiction over solid waste in your area (form attached),
- Detailed Plans and Specifications for the facility (instruction sheet attached) and
- Show proof of need for your facility.
- Mail application and compliance fee to the DEQ Business Office.


*2/23/99 - Called & left msg. for Kattie Davidson
inquiring if the applic. was completed since
this letter was sent. K. will*

attachment F-10



Please submit the requested information within 90 days of receipt of this letter. If you have any questions contact Cathie Davidson at (503) 378-8240, ext. 277 or by e-mail at; davidson.cathie@deq.state.or.us.

Sincerely,



Charles W. Donaldson
Manager, Solid Waste Programs

CWD:cd

enclosures

cc: Cathie Davidson DEQ-WR

Larry Cwik, DEQ Enforcement, NWR

x:\Solid Waste\SW Permits\SW\lrs-98\Stark App(12-98)-ltr



Exhibit 11



Exhibit 12







December 17, 1998

RECEIVED
DEC 17 1998
COMMUNITY
DEV. DEPT.

**LAND USE COMPATIBILITY RESPONSE
ENVIRONMENTAL REQUIREMENTS & RESTRICTIONS
STORM & SURFACE WATER DISCHARGES**

Stark Trucking, Inc.
3425 Blossom Dr NE, Salem Oregon

PROPOSAL:

The proposal to store and process/grind construction waste for disposal or recycling.

INSPECTION:

Inspection of this area indicated that it is slope towards the north end if the property, were a natural ditch exist draining in to Claggett Creek and the Willamette River. The facility has constructed a berm between the process are and the edge of the property to prevent waste runoff.

CONCERNS:

The concern with this type of facility is the possibility of a fire requiring excessive water application or Contamination from improper waste handling.

CONDITIONS:

No Storm, Surface, or Non-Treated Cooling water discharges are approved to Salem's Sanitary Sewer System. No discharges of contaminated surface or storm water are allowed in the local Storm Sewer or Creek system.

The following are special conditions and local requirements which apply to this project:

1. Any discharges shall comply with all the conditions and limits established by DEQ and Salem Revised Codes.
2. The City Environmental Services Division shall be supplied with a copy of all lab analysis and reports, and a copy of the DEQ discharge permit.
3. Salem Environmental Services (503-588-6333) or Salem 911 shall be immediately notified of any spills or polluting discharges to Salem's Storm Sewer/Creek System.
4. Routine system inspection shall include a site inspection and an inspection of the Storm Sewer/Creek system for the presence of unauthorized discharges.
5. Process waters, Soil/Mud and Solid materials shall not be allowed to enter the Storm Sewer/Creek System.

attachment F-13

Ex. 13

PUBLIC WORKS DEPARTMENT

August 10, 1995

Page 2

6. An approved Accidental Spill Prevention Plan shall be developed for the system, and a copy submitted to the City.
7. All above ground storage of chemicals or product shall be protected from spill and/or vandal discharges.
8. Areas subject to flooding shall be protected to prevent movement of the contaminated material or product.
9. Unmanned site(s) shall have a sign posted to indicating an emergency contact phone number.



James K. Gengler
Environmental Compliance Specialist

JKG:P:\PERSDIR\JGENGLER\LETTERS\FORMS\SWTRPROC

cc: Mike Wolski, Environmental Services Manager

Transfer Stations and Material Recovery Facilities

Permit #	Facility	County	Open Date
473	Citistics, Inc. Material Recovery Facility	Washington	11/19/1998
387	East County Recycling	Multnomah	9/19/1986
458	Ecosort Mrf	Lane	5/21/1996
432	Energy Reclamation	Multnomah	5/15/1994
389	K.B Recycling Recycling Center	Clackamas	7/31/1987
480	K.B. Recycling Inc. Materials Recovery Facility	Clackamas	
400	Marion Recycling Center	Marion	1/18/1989
474	Rsi Material Recovery Facility	Lane	6/16/1997
459	Recycle America Material Recovery Facility (Tdk/Wmo Mrf)	Multnomah	7/28/1997
461	Rose City Redevelopment	Multnomah	6/3/1996
476	The Energy Connection Inc.	Linn	11/20/1997
245	Wastech (Oregon Processing & Recovery)	Multnomah	4/5/1974
435	Wri Material Recovery	Clackamas	9/25/1995

Post-it® Fax Note 7671		Date 12-83	# of pages 3
To Duane Stark	From Cathie Landsau		
Co./Dept.	Co. 378-8240 1277		
Phone #	Phone # 503-1589		
Fax # 393-1369	Fax #		

Ex. 14

Attachment F-14

77

IN THE MUNICIPAL COURT OF THE CITY OF SALEM
COUNTY OF MARION - STATE OF OREGON
NO. 98-3083280

RECEIVED
SEP 03 1998
MUNICIPAL COURT

CITY OF SALEM,

Plaintiff,

vs.

MOTION TO DISMISS

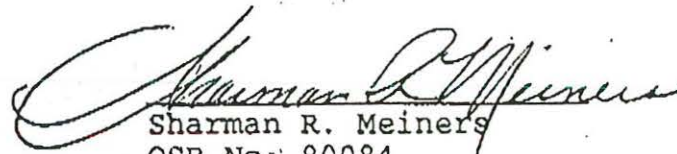
DUANE D. STARK,

Defendant.

Plaintiff moves this Court for an order dismissing the complaint in the above entitled action.

This motion is made for the reason that defendant has abated the nuisance described in the amended criminal information.

DATED at Salem, Marion County, Oregon this 3rd day of September, 1998.




Sharman R. Meiners
OSB No: 80084
Assistant City Attorney

OF ATTORNEYS FOR PLAINTIFF

IT IS SO ORDERED.

DATED this 3 day of September, 1998.



Municipal Court Judge

Page

STEPHANIE SMYTHE
CITY ATTORNEY
555 LIBERTY ST. S.E.
SALEM, OREGON 97301
PHONE (503) 588-6003

Ex. 15
Attachment F-15

OREGON UNIFORM CITATION AND COMPLAINT

RECOMMENDED USE FOR WILDLIFE, FISHING, WEIGHTS & MEASURES, PARK, AERONAUTICS AND CITATION IN LIEU OF CUSTODY

CRIMINAL/OTHER (SEE A ON BACK) INFRACTION(S) (SEE B ON BACK) TRAFFIC NON-TRAFFIC

STATE OF OREGON

CITY OF SALEM

COUNTY OF MARION

DOCKET NO. 98-

COURT: DISTRICT MUNICIPAL
 JUSTICE JUVENILE CIRCUIT

THE UNDERSIGNED CERTIFIES AND SAYS THAT:

DRIVER LICENSE NO. / ID. NO. 617007 STATE OR TELEPHONE NO. 503-555-1234

NAME: LAST JIARK FIRST DUANE INITIAL D

ADDRESS 3923 IRIS STREET NE

CITY SALEM STATE OR ZIP CODE 97305

SEX M RACE W DATE OF BIRTH 09-29-42 HEIGHT 5-7 WEIGHT 205 HAIR BRN EYES BRN

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE MENTIONED STATE AND COUNTY:
 OFFENSE DATE MONTH DAY YEAR TIME 09 23 1998 0900 AM PM
 AT LOCATION 3425 Blossom DR NE SALEM, OR

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

1. VIOLATED (CITE ORS/ORD./RULE) SKC 45.080	DESCRIPTION	1. SCHEDULED BAIL
	MAINTAINING A PUBLIC NUISANCE - COMBUSTIBLE DEBRIS AND OTHER SOLID WASTE AND JUNK	\$ APPEAR
2. VIOLATED (CITE ORS/ORD./RULE)	DESCRIPTION	2. SCHEDULED BAIL
		\$
3. VIOLATED (CITE ORS/ORD./RULE)	DESCRIPTION	3. SCHEDULED BAIL
		\$

I CERTIFY UNDER LAW (ORS 153.990, 153.995, 162.075, 830.995) THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE MENTIONED PERSON COMMITTED THE ABOVE OFFENSE(S) AND I HAVE SERVED THE PERSON WITH THIS COMPLAINT.

DATE ISSUED 2/12/98 OFFICER'S SIGNATURE [Signature] ID NO. 51007

PRINT OFFICER'S NAME: CAROLANIC CONSTANTINE COMPLAINT OR INFORMATION FILED AT TIME OF CITATION: NO YES

SIGNATURE OF ARRESTING PERSON (IF NOT OFFICER): PRINT NAME:

BOOKING DATE: CUSTODY AT:

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE:

MO	DAY	YEAR	TIME	AM	PM	LOCATION
02	23	98	8 AM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SALEM MUNICIPAL COURT 555 LIBERTY ST SE SALEM, OR

SUMMONS 308328

RESERVED FOR D.A. USE

RESERVED FOR COURT USE

A COMPLAINT ON THIS CITATION WILL BE FILED AGAINST YOU IN THE COURT INDICATED ON THE FRONT OF THE SUMMONS.

READ CAREFULLY

You are charged with a(n):

- A. CRIME/OTHER, as shown on the front of this citation. You must appear at the time and place set by this summons. The following applies *only* if checked:
 - You have been cited in lieu of custody. This citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You must appear in court at the time set in the citation. If you fail to appear and a complaint or information has been filed, the court will immediately issue a warrant for your arrest.
- B. INFRACTION, as shown on the front of this citation. You must do one (and only one) of the Infraction Options listed below.

INFRACTION OPTIONS
(FOR THOSE CHARGED WITH ONLY INFRACTION(S))

OPTION 1. Appear in court at the time indicated and enter a plea. You have a right to trial and if you plead not guilty the court will fix a date and time for trial.

OPTION 2. Fill in the following and send along with a written explanation and the bail to the court (this must reach the court before the time this summons requires you to appear):
 I, _____ (SIGNATURE OF DEFENDANT) on this day _____ (DATE), send this summons, along with the attached written explanation, and a check or money order for the bail amount indicated (\$ _____ amount enclosed) to the court. I understand that with these submissions, I waive my right to a trial and consent to any court judgment based on the explanation and the officer's report. I understand the court may forfeit all or part of this bail I submit and will return that part, if any, of the bail that is greater than the amount forfeited.

OPTION 3. Fill in the following and send along with the bail and any written explanation to the court (this must reach the court before the time this summons requires you to appear):
 I, _____ (SIGNATURE OF DEFENDANT) on this day _____ (DATE), PLEAD GUILTY of the offense(s) charged on the other side of this summons and send this summons, along with a check or money order for the bail amount indicated (\$ _____ amount enclosed) to the court. I understand my right to a trial and that, with these submissions, I waive my right to a hearing and agree to the penalties for my offense. I understand that I have a right to submit a written explanation under this option and such explanation, if any, is attached to this summons.

OPTION 4. Fill in the following and send along with the bail to the court (this must reach the court before the time this summons requires you to appear):
 I, _____ (SIGNATURE OF DEFENDANT) on this day _____ (DATE), PLEAD NOT GUILTY of the offense(s) charged on the other side of this summons, send this summons, along with a check or money order for the bail amount indicated (\$ _____ amount enclosed) to the court, and hereby request a hearing. I understand that the court will give me notice of the trial and I will appear at that time. I understand that the court may impose penalties if I do not appear at the time given in the notice.

NOTICE

1. IN ANY CASE, THE COURT, AFTER NOTICE, MAY REQUIRE YOU TO APPEAR FOR A HEARING.
2. If charged with an infraction and you are going to have an attorney represent you, you must notify the court in advance.

WARNING

1. IF YOU FAIL TO FOLLOW THESE INSTRUCTIONS, THE COURT MAY ORDER OR IMPOSE SANCTIONS AND/OR ISSUE A WARRANT FOR YOUR ARREST.
2. If charged with an infraction or violation and you posted the bail amount indicated on the front and no hearing is held, the court will not impose a fine in excess of the bail amount. If you do not post the full bail amount and do not appear, the court, without further hearing, may enter judgment against you for more than the bail amount and up to the maximum penalty allowed by law for the offense and for restitution.

MAIL CORRESPONDENCE AND MAKE CHECKS PAYABLE TO:

Salem Municipal Court
 555 Liberty St. SE
 Salem, OR 97301
 Night Court: 7 P.M. Tuesd:

IN THE MUNICIPAL COURT OF THE CITY OF SALEM

COUNTY OF MARION - STATE OF OREGON

NO. 98-308328

CITY OF SALEM,)
)
 Plaintiff,)
)
 vs.)
)
 DUANE D. STARK,)
)
 Defendant.)

CRIMINAL INFORMATION

The above-named defendant is accused by this information of the crime **MAINTAINING A PUBLIC NUISANCE** committed as follows:

That said defendant, on or about the 23rd day of February, 1998, within the corporate limits of Salem, did wrongfully, unlawfully and recklessly caused and permitted the accumulation of combustible debris and other solid waste, junk, leaves, pine needles, and vegetative matter that resulted in a fire on November 21, 1997 on private property, contrary to provisions of Section 45.080 of the Salem Revised Code and against the peace and dignity of said City.

The City Attorney intends this crime to be treated as a misdemeanor.

DATED at Salem, Marion County, Oregon this 18th day of February, 1998.


Assistant City Attorney

Ex. 16

Attachment F-16

21

VALLEY LANDFILLS	9/97		19.02 TONS - (WASTE)
IRBEND LANDFILL	10/25/97 THRU 8/10/99		212.22 TONS - (WASTE)
		(PLUS \$52.00-TIRES/ APPLIANCES-DUMP FEE)	
WESTERN RECYCLING			23.27 TONS - (METAL)
CAL-BAG METALS			3.75 TONS - (METAL)
SCHNITZER STEEL	4/97 THRU 12/98		292.19 TONS - (METAL)
CHERRY CITY METALS	11/98 THRU 10/99		205.29 TONS - (METAL)
SMURFIT NEWSPRINT	1/98 THRU 11/24/99	(241 LDS)	5,711 TONS - (HOG FUEL)
GEORGIA-PACIFIC-TOLEDO	10/99 THRU 12/2/99	(35 LDS)	1,126.03 TONS - (HOG FUEL)

EQUIPMENT PURCHASED -

8/97 - 1997 HIGHWAY CONTENDER GRINDER.....	\$277,800.00
10/97 - 1997 230 HITACHI TRACKHOE.....	\$167,278.00
4/98 - 1975 40' PEERLESS CHIP VAN TRAILER.....	\$5,775.00
11/98 - 1996 KAWASAKI WHEEL LOADER.....	\$57,000.00
3/99 - 1999 SCREEN-IT SCREEN PLANT.....	\$142,500.00
9/99 - DESTONER.....	\$37,500.00

	\$687,853.00

attachment F-17

Ex.17

23



UNIVERSAL REFINER CORPORATION

P.O. BOX 151 • MONTESANO, WA 98563
TELEPHONE (360) 249-4415 • FAX: (360) 249-4773

Invoice No. 97-0813

Machine No. PDR-80-42

Date AUGUST 13, 1997

Customer PO No.

Sold To: MR. DUANE STARK
PO Box 18005
SALEM, OR 97305

Terms Net

Quantity	Description	Unit Price	Total
	PDR-80-475 HIGHWAY CONTENDER: 2 AXLE UNIT WITH A N14-475 CUMMINS ENGINE, 160" x 100" HOPPER, ONE SET OF 3 1/2" SCREENS, SAFETY SHROUD AND STANDARD DRIVE PACKAGE. THIS UNIT IS SUPPLIED WITH A FIXED CONVEYOR DISCHARGE SYSTEM WITH A MAGNETIC HEAD PULLEY.	\$276,000	
	ONE SET OF 6" SCREENS	\$ 1,800	
	LESS DOWNPAYMENT	- 30,000	
	TOTAL DUE THIS INVOICE PRIOR TO SHIPMENT		\$247,800

*paid in full
CR # 2003*

*Credit for
\$6500
magnet*



SEATTLE
5000 E. Marginal Way S.
Seattle, WA 98134
Phone: (206) 762-9191
1-800-345-9192

SPOKANE
4102 E. Boone Ave.
Spokane, WA 99211
Phone: (509) 535-9966

PORTLAND
6899 N.E. Columbia Blvd.
Portland, OR 97218
Phone: (503) 287-4145
1-800-676-5532

CUSTOMER NO.	PAGE	INVOICE NO.	INVOICE DATE
86521	1	200308	10/8/97

SOLD TO: DUANE AND SANDRA STARK
P. O. BOX 18005
SALEM, OR 97305

SHIP TO:

ORDER	SHIP	B O	MFR	PART NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT
1				01943 1997 HITACHI EX230LC-5	S/N 15S-1411	167,278 00	167,278 00
				NON TAX OREGON			
				TERMS: CASH ON RECEIPT OF INVOICE			
				INVOICE			
				CELEBRATING 43 YEARS OF BUSINESS 1954 - 1997			

LEASE REMIT TO: TOTEM EQUIPMENT COMPANY, DEPT. #1059, P.O. BOX 34936, SEATTLE, WA 98124
6899 NE COLUMBIA BLVD.
PORTLAND, OR 97218
ATTN: DIANA THOMPSON

CREDIT AMOUNT
|
IN YOUR FAVOR

PLEASE PAY
\$167,278 00
THIS AMOUNT

TERMS AND CONDITIONS
C ON RECEIPT UNLESS CREDIT HAS BEEN APPROVED IN ADVANCE.
W APPROVED CREDIT INVOICES ARE DUE NET 10TH DAY OF MONTH
FOLLOWING DATE OF INVOICE. A LATE PAYMENT CHARGE OF 1½% PER
MONTH (18% PER ANNUM) WILL BE CHARGED ON ALL PAST DUE
INVOICES, WITH A \$5.00 MINIMUM CHARGE.

NOTE: Unshipped quantities automatically will be backordered unless formally cancelled by customer.
CONDITIONS OF SALE: No goods will be accepted for credit unless returned with our permission, transportation charges paid and date of invoice accompanying goods. A handling charge will be made on all returned goods unless returned on account of being defective or error on our part. Goods cut or machined to order are not returnable. No core credit issued after 30 days.

DUPLICATE

85

TK

BILL OF SALE



THIS INDENTURE WITNESSETH, That in consideration of the sum of ONE HUNDRED SIXTY SEVEN THOUSAND TWO HUNDRED SEVENTY EIGHT Dollars, (\$167,278.00) the receipt whereof hereby is acknowledged, I the undersigned seller, hereby grant, bargain, sell, transfer and deliver unto DUANE AND SANDRA STARK hereinafter called buyer, the following described personal property, now being and situate HITACHI EX230LC-5 HYDRAULIC EXCAVATOR S/N 15S-1411 in State of OREGON, County of MARION to-wit:

HITACHI EX230LC-5 HYDRAULIC EXCAVATOR S/N 15S-1411

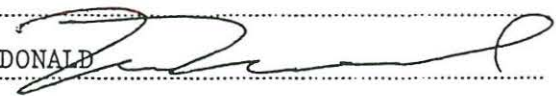
(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

TO HAVE AND TO HOLD, the same unto the buyer and buyer's executors, administrators, successors and assigns forever.

And I, the seller, hereby covenant to and with the said buyer that I am the owner of said personal property; that the same is free from all encumbrances.

that I have a good right to sell the same, and that I, my heirs, executors and administrators shall warrant and defend the same against the lawful claims of all persons whomsoever.

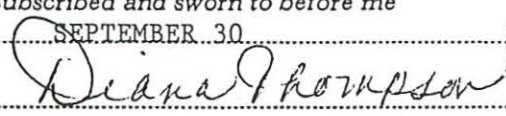
WITNESS.....hand..... this 30TH day of SEPTEMBER, 19 97

MIKE MC DONALD 
 TOTEM EQUIPMENT COMPANY

STATE OF OREGON }
 County of MULTNOMAH } ss.

I, TOTEM EQUIPMENT COMPANY
 being first duly sworn, depose and say that I AM.....the sole owner..... of the property described in the foregoing bill of sale, that the same has been paid for in full, and that on this date the same is free and clear of liens and encumbrances of every kind and nature.....



Subscribed and sworn to before me
 SEPTEMBER 30, 19 97.

 Notary Public for
 My commission expires 3/23/98

WERSHOW ASH LEWIS
7340 SW HUNZIKER RD #220
TIGARD, OR 97223
(503)639-2356

Page : 1
Date : 04/22/98

Buyer Number: 596
S K TRUCKING INC
DUANE STARK
PO BOX 18005
SALEM, OR 97305
Phone (503) 931-1097

Invoice # 428028
Tax Status 1 Taxable

Driver's Lic#
Fax Phone () -

Purchased at Auction of: Y & M TRUCKING/BUGABOO LOGGING

Lot	Description	Tax	Quantity	Unit Price	Extension	Grp
10139	1975 PEERLESS 45' 17.9 UNIT 2 AXLE CHIP TRAILER WITH AIR RIDE, AIR SCALES, S/N T750672, LICENSE HP27715		1	4,500.00	4,500.00	
10142	¹⁹⁶⁹ STRICK 40' CHIP TRAILER, S/N 110818, WA LICENSE 9969-LF	Y	1	1,000.00	1,000.00	

*Added
Stark
TRK*

*↓
Title
NOT changed*

All Purchases Must be Removed no Later than 05/22/98

Purchases 2 lots 2 items

Purchases	\$	5,500.00
Buyer Premium	5.000% \$	275.00
Balance Due	\$	5,775.00

WHITE-CUSTOMERS ORIGINAL INVOICE
YELLOW/GOLD-CUSTOMERS CHECK OUT COPIES
NEXT AUCTION: EUGENE F BURRILL LUMBER
WHITE CITY, OR MAY 5-6, 1998

ID Check # 15547

27



PORTLAND • SEATTLE • SPOKANE

13805 N.E. SANDY BLVD. (97230)
P.O. BOX 20775 (97294)
PORTLAND, OR
(503) 252-5933
1-800-929-5933
FAX (503) 252-1769

9615 W. MARGINAL WAY SOUTH
SEATTLE, WA 98108
(206) 762-5933
1-800-935-5933
FAX (206) 763-3117

3107 E. TRENT AVENUE
SPOKANE, WA 99202
(509) 534-5933
1-800-938-5933
FAX (509) 534-5286

SINCE 1911 ... THE SOURCE FOR CONTRACTORS IN THE NORTHWEST

- ...Conveyors
- ...Finlay Hydrascreen
- ...Read Screen-All
- ...Asphalt Machinery
- ...Flowboy
- ...Sno-Go
- ...Bomag
- ...Glencor Ind.
- ...Spokane Steel Foundry
- ...Bucyrus Blades
- ...Hypac
- ...Swinger Loaders
- ...Columbia Steel
- ...Kawasaki
- ...Technetics
- ...Continental Conveyors
- ...Kenco
- ...Telsmith
- ...Coppes Epoxies
- ...Kitt Transporters
- ...Thurman Scale Co.
- ...Cummins Engines
- ...Layton Pavers
- ...Western Wire
- ...Fiatallis
- ...Leach Vac/All
- ...WH Maxi-Sweep
- ...Midland Machinery

TERMS:
NET 10 DAYS
FROM DATE OF INVOICE
A SERVICE AND HANDLING FEE OF 1 1/2% PER MONTH WILL BE CHARGED ON ALL PAST DUE AMOUNTS.
PLEASE REMIT TO:
CLYDE/WEST, INC.
P.O. BOX 20775
PORTLAND, OR 97294

NEED PARTS • SUPPLIES • SCREEN CLOTH • MANGANESE?
CALL • FASPARTS® • 1 (800) 333-5933
our Nationwide Parts & Supplies Hotline

Bill To: DUANE & SANDRA STARK
3923 IBIS ST NE
SALEM OR 97305

Ship To:

Branch Invoice No. 19001147	Page No. 1
Repair Order No.	
Back Order Reference	

Eq. No. K	Model 65ZIV	Serial Number 65J2-0252	Equip. No. 2546	Slm. 544	B/O Via	Open Date	Close Date	Hour Meter Reading	Tax Code
--------------	----------------	----------------------------	--------------------	-------------	---------	-----------	------------	--------------------	----------

Customer Account No. 19750352	Customer Purchase Order No.	Branch Ordered 1	Branch Shipped 1	Method of Payment CHARGE	Method of Shipment ON SITE	INVOICE DATE 11/04/98
----------------------------------	-----------------------------	---------------------	---------------------	-----------------------------	-------------------------------	--------------------------

Quantity Ordered	Quantity Shipped	Quantity Back Order	Part Number	Description	Stock Class	BIN Location	Unit Price	Extended Price
				PROPOSAL NUMBER: P-3648				
				USED KAWASAKI MODEL 65ZIV WHEEL LOADER SERIAL NUMBER 65J2-0252 ... STOCK NUMBER 2546				
				SELL PRICE, F.O.B. PORTLAND, OREGON.....				57,000.00
				THANK YOU				

Da New Fas

Prepared By: _____
Date of Lading: _____
Carrier: _____

SELLING BRANCH

PLEASE NOTE:
ALL SALES SUBJECT TO THE PRINTED TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF, AND, IF APPLICABLE, ON OUR CREDIT APPLICATION, QUOTATION FORM, AND EQUIPMENT RENTAL AGREEMENT.

Sub Total	57,000.00
PPD Freight	
Handling	
Misc.	
Incoming Frt.	
Sales Tax	
AMOUNT DUE	57,000.00

ORIGINAL INVOICE

38

MANUFACTURES STATEMENT OF ORIGIN

THE BELOW MANUFACTURE CERTIFIES THAT ON 3-19- 1999 HE CONSTRUCTED FROM ALL NEW MATERIALS EXCEPT AS NOTED, THE FOLLOWING EQUIPMENT:

MAKE R. D. Olson Mfg., Inc. MODEL 5x12 Screen It
SERIAL 99308-290 YEAR 1999 USED MATERIAL None
SCALE WEIGHT _____

WASHINGTON STATE DEPARTMENT OF LICENSING NUMBER 6318
EXPIRES 4-30-99

THE BELOW FURTHER CERTIFIES HE HAS SOLD THE ABOVE ITEM TO:

Construction Equipment
NAME _____ Company _____ RESALE NUMBER 600 438 579

ADDRESS P.O. Box 1271 CITY Lake Grove STATE OR

ZIP 97035 HEREBY TRANSFERRING ALL RIGHTS AND CONVEYS FULL TITLE RIGHTS HEREIN CONTAINED, FURTHER STATING THERE ARE NO LIENS ON SAID EQUIPMENT.

R.D. OLSON MANUFACTURING CO.
P.O. BOX 876 1803 BAKER WAY
KELSO, WASHINGTON, 98626
(206)577-7213

R D Olson PRESIDENT

COPY

39

UNIVERSAL REFINER CORPORATION Certificate of Origin for a Vehicle

DATE: AUGUST 29, 1997

VEHICLE IDENTIFICATION NO.: PDR-80-42

INVOICE NO.: 97-0813

BODY STYLE: 5TH WHEEL YEAR: 1997

MODEL: HIGHWAY CONTENDER

MAKE: U.R.C.

WEIGHT: 48,000 AP

NUMBER OF AXELS: TWO (2)

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number Indicated to the following distributor or customer.

NAME OF DISTRIBUTOR OR CUSTOMER

DUANE D. STARK AND SANDRA A. STARK
PO Box 18005
3425 BLOSSOM DRIVE NE
SALEM, OR 97305

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.



UNIVERSAL REFINER CORPORATION

BY:

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

No 1018

MONTESANO, WA 98563

CITY - STATE

EXHIBIT # 19-1 (7 photos)



#1



#2

Attachment F-19

Ex. 18



attachment F-18

EXHIBIT # 19-2



#3



#4

EXHIBIT # 20



Attachment F-20

EXHIBIT # 19-4



#7

EXHIBIT # 19-3



#5



#6

Date: November 24, 2000

To: Environmental Quality Commission

From: Stephanie Hallock, Director *Stephanie Hallock*

Subject: Agenda Item D, U.S. Fish & Wildlife Service's Request for a Variance to the Total Dissolved Gas Water Quality Standard, EQC Meeting November 30, 2000

Statement of Purpose

The U.S. Fish and Wildlife Service has petitioned the Commission for a variance to the State's total dissolved gas water quality standard. This variance will enable water to be spilled at Bonneville Dam to assist outmigrating fall chinook from the Spring Creek National Fish Hatchery. The petition requests a variance from the standard of 110 percent of saturation relative to atmospheric pressure, for a ten-day period in March 2001.

Rationale for the U.S. Fish and Wildlife Service's Variance Request

Although the Spring Creek Hatchery fish are not endangered species, they play an important role in helping protect Endangered Species Act listed fish. The 7.5 million juveniles due to be released make up a large proportion of the fish to be caught under the United States/Canada treaty allocations. Additionally, these fish are important for the near-shore fisheries off the coasts of Oregon and Washington, and in the Columbia River, most notably the Buoy Ten fishery.

In the absence of these hatchery fish, a disproportionate number of endangered species can be expected to be taken. The Canadian ocean fisheries are managed under harvest quota, time and area regulations. Because both Spring Creek hatchery fish and endangered Snake River fish intermingle off the west coast of Vancouver Island, greater numbers of hatchery fish in the United States/Canada Treaty area will result in fewer endangered Snake River fish being caught. Similarly, endangered Snake River fish are at greater risk if there is any reduction in Spring Creek Hatchery production. Historically, Spring Creek Hatchery fish contributed nine percent of the catch off the West Coast of Vancouver Island, and 27 percent of the catch off the Washington and northern Oregon coasts annually. Spring Creek Hatchery fish have contributed as much as 65,600 fish to tribal fisheries and 41,500 fish annually to non-tribal fisheries in the Columbia River in the past. In 1999, fall chinook produced at the hatchery contributed about 26,500 fish to commercial and sport fisheries in the Columbia River. The treaty Indian harvest was about

21,900 fish, and the in-river sport catch was about 4,400 fish. A further 200 fish were taken incidentally in prosecution of the non-Indian commercial sturgeon fishery.

In recent years both federal and state governments have reduced hatchery production for the Columbia River due to Congressional reductions in Mitchell Act funding. These reductions have forced the closure of some hatcheries, with the result that the Spring Creek Hatchery is the sole producer of tule fall chinook remaining open above Bonneville Dam. These closures make the Spring Creek contribution even more important.

Spill for the Spring Creek Hatchery release was first requested in 1995 because of the low fish guidance efficiency (the number of fish guided away from turbine intakes) at the Bonneville Dam second powerhouse.

Justification for the Variance

A fish passage efficiency of 80 percent is targeted for the Spring Creek Hatchery release. This is the same as the fish passage efficiency targeted by the National Marine Fisheries Service for endangered salmonids. According to the National Marine Fisheries Service's calculations, for a river flow of 200 thousand cubic feet per second, spills of 45, 80 and 150 thousand cubic feet per second would result in fish passage efficiencies of 54, 63 and 72 percent respectively. According to the U.S. Army Corps of Engineers, spills of 45, 80 and 150 thousand cubic feet per second would result in total dissolved gas levels of 110, 115, and 120 percent saturation respectively. These calculations are presented in Table 1.

Table 1: Estimated Bonneville Spillway Flows, Total Dissolved Gas Levels, Fish Passage Efficiency, and Increase in Fish Survival.

Total River Flow (kcfs)	200	200	200	200	200	200
Spill (kcfs)	0	45	80	100	120	150
Tailrace Gas Level (percent)	100	110	115	116	117	120
Fish Passage Efficiency (percent)	33	48	59	63	66	71
Increase in fish survival Compared to no-spill	0	132,750	229,500	258,750	288,750	333,000

During previous spill events, both physical and biological monitoring have occurred. Physical monitoring has been required to ensure compliance with the water quality standard variances. Biological monitoring has been required to demonstrate that the higher total dissolved gas levels have not adversely impacted fish. Biological monitoring occurring since 1995 has shown extremely low levels (one to two percent at most) of fish showing any signs of gas bubble disease. Incidences of gas bubble disease can be expected to be low due to the limited exposure

time for these fish. They are exposed to elevated total dissolved gas levels for a short duration, and only one episode.

Sub-lethal effects, such as difficulty with the fresh-water/salt-water transition or increased susceptibility to predation from northern pike-minnow have not been documented. But, again, due to the short duration and single episode, significant sub-lethal effects are not expected.

Monitoring Results for 2000 Spill

Spring Creek National Fish Hatchery released 8,177,725 tule fall chinook salmon on March 9, 2000 at 0800 hours. Spilling began at Bonneville Dam at 2000 hours on March 9, 2000. The spill operation was stopped at 2000 hours on March 16, 2000 at the request of the action agencies (Corps of Engineers, Bonneville Power Administration) due to the cost and declining numbers of fish observed.

Biological monitoring occurred on March 10 and 11, 2000. On March 10, 2000, and on March 11, 2000, 169 and 135 juvenile and resident fish were collected and analyzed respectively for signs of gas bubble trauma. No signs of bubbles were recorded in any of the fish sampled.

Physical monitoring was conducted, and at no time did total dissolved gas levels exceed 120 percent of saturation at Skamania/Warrendale or 115 percent of saturation at Camas/Washougal. Both measurements are calculated as 12-hour averages.

In addition to the above monitoring that was required by the Commission as a condition of its approval of the variance, the US Fish and Wildlife Service also conducted monitoring at spawning areas along Ives Island to ensure that dissolved gas levels did not impact redds. A sensor was placed near a chum salmon redd closest to shore. This is potentially the redd most susceptible to dewatering or insufficient water depth to compensate for total dissolved gas levels. During the period of spill, water depths ranged between 3.81 feet and 5.26 feet. The minimum depth provided compensation for 8.4 percent total dissolved gas pressure at the redd relative to the surface. Thus total dissolved gas pressure at the most vulnerable redd was maintained below 105 percent of saturation, a level that is fully protective of eggs in the redd.

Authority of the Commission with Respect to the Issue

The authority of the Commission to address this issue is contained in Oregon Administrative Rules OAR 340-41-205(2)(n). A copy of the rule is attached at Appendix A.

At its meeting of February 16, 1995, the Commission modified the administrative rules to enable modifications of the total dissolved gas standard in the Columbia River for the purpose of assisting juvenile in-river salmon migration.

If the Commission is to grant the requested variance, it is required to make the following four findings:

- (i) Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill;
- (ii) The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;
- (iii) Adequate data will exist to determine compliance with the standards; and
- (iv) Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.

The rule also enables the Commission to consider alternative modes of migration, at its discretion.

Alternatives and Evaluation

The U.S. Fish and Wildlife Service has considered alternatives to spill at Bonneville Dam. These include transporting smolts below Bonneville Dam, and releasing more fish.

Transporting Juvenile Fish

The alternative of transporting juvenile fish from the hatchery and releasing them downstream from Bonneville Dam has been considered. Potentially loading fish in barges and releasing them below Bonneville Dam could result in increased survival. Certainly, it would alleviate the effects of turbines, elevated total dissolved gas and predation. However, this has been evaluated, and a very high percentage of adult fish strayed to other hatcheries. Also, adult return rates to the Spring Creek Hatchery were significantly lower from the barged group. The goal for returns to the Spring Creek hatchery is 7,000 fish. This number is required to provide enough fish for spawning. Straying of fish to other streams or facilities may lead to the Spring Creek Hatchery falling short of this target.

The Spring Creek Hatchery has been in operation sufficiently long for its fish to have developed into a unique group. The U.S. Fish and Wildlife Service, along with state and tribal fisheries managers are trying to maintain the genetic integrity of this group. Supplementing the Spring Creek Hatchery with fish from other hatcheries (either of Spring Creek origin, or not) runs the risk of diluting the unique characteristics of these fish.

Releasing More Fish

Based on the notion that there are going to be mortalities at Bonneville Dam if this variance is not approved, the argument has been advanced that the U.S. Fish and Wildlife Service should simply release more fish. In this way, despite increased mortality, the required number of fish could be assured.

Due to the capacity of the hatchery, and hatchery operation, this is not a possibility. The Spring Creek Hatchery makes three releases per year, in March, April and May. Under this schedule, not all fish are released in March. Those that remain behind grow to take over the space vacated by the March release. Similarly, only a portion of the fish is released in April, and the remaining fish grow to occupy the vacated space. This latter group is released in May. This schedule fully utilizes the physical capacity of the hatchery, as well as its water supply and waste treatment facilities. This schedule has been followed to reduce the risk from low returns from any one release. Fish released in April and May are able to pass Bonneville Dam under the auspices of the National Marine Fisheries Service's (NMFS) total dissolved gas variance that will be considered separately by the Commission.

Competition Between Spring Creek Hatchery Fish and Endangered Snake River Salmon

Interactions between wild fish and hatchery fish have been blamed for thinning the genetic diversity of wild fish, and competing for food and habitat. Spring Creek Hatchery fish are expected to pose little competitive risk to wild Snake River salmon. The main reason for this is the difference in migration timing. Because passage to the sea for Spring Creek Hatchery fish is short, the timing of the release assures that hatchery fish either completely miss or only slightly overlap with Snake River salmon. Spring Creek Hatchery fish are physiologically ready to migrate and move out of rearing areas in the Columbia River quickly. It is possible that hatchery and wild fish compete with one another for food in the ocean, although the size of the marine environment, coupled with the fact that there are billions of juveniles migrating in the ocean minimize the impact of this interaction.

Summary of Public Input Opportunity

The Department issued a notice on October 27, 2000 notifying the public of an opportunity to comment on the variance request. A public hearing was held on November 24, 2000, and written comments were due by 5:00 p.m. on November 24, 2000.

No one attended the public hearing, and two written comments were received from the National Marine Fisheries Service (NMFS), and the Columbia River Inter-Tribal Fish Commission (CRITFC). This written comment is summarized below.

Public Comment Summary

The following is a summary of the written comment received from NMFS.

NMFS notes that it has requested and been granted variances to the State's total dissolved gas water quality standard which has enabled it to implement the biological opinion relating to operation of the federal hydropower system on the Columbia River. NMFS notes that the U.S. Fish and Wildlife Service intends to release juvenile fish from the Spring Creek National Fish hatchery located upriver from Bonneville Dam.

In the interest of improved survival of the released fish, NMFS supports the request.

The following is a summary of the written comment received from the Columbia River Inter-Tribal Fish Commission (CRITFC).

CRITFC supplied a letter containing its reasons for supporting the 2001 variance. The letter references all previous comments filed in support of this variance, and requests that these be incorporated as part of this submission.

The significance of salmon to the Tribes is greater than to any other group in the Columbia Basin, due to their cultural significance and treaty rights guaranteed by the United States. Permitting increased total dissolved gas levels at Bonneville Dam is more protective of the beneficial use (salmonid fisheries) than forcing them through turbines and screened bypass systems. The Department and Environmental Quality Commission should focus on improving inriver survival. The Clean Water Act does not provide for protecting beneficial uses by removing them from the aquatic habitat to transport them around dams.

The Tribes depend on salmon, including Spring Creek Hatchery salmon for cultural, ceremonial and subsistence purposes. Tule fall chinook is especially valued because of its low oil content, allowing it to be more easily dried for protein over the winter months.

While some disparage the use of hatcheries, in fact it is very difficult to draw a clear line between the cultural value of hatchery versus wild fish. Indeed, Oregon's treaty obligations to the Tribes do not differentiate between these two types of fish. This principle was upheld in federal court in *U.S. v. Oregon*. Denial of this variance will result in a significant loss of juvenile salmon relative to spill at the 110 percent total dissolved gas standard. Assuming a 1.1 percent estimated smolt-to-adult survival, denial of this request in 2000 would have resulted in a loss of 1,654 adults to treaty and non-treaty harvests, as well as restricting potential future increases in production of this stock.

Recent planning pursuant to *U.S. v. Oregon* has resulted in an agreement to begin outplanting Spring Creek Hatchery juveniles into under-seeded tributaries in the Bonneville pool and Lower Columbia River to supplement wild production. CRITFC further supports the U.S. Fish and Wildlife service's comments on the buffering effects of the Spring Creek Hatchery release on endangered species harvest.

The Independent Scientific Advisory Board recently found that total dissolved gas levels of 120 percent were conservative and not harmful to fish in the river, and indeed, low incidence of gas bubble disease was detected in fish exposed to levels of 125 percent. In addition, mortality estimates of Spring Creek Hatchery fish at Bonneville Dam that passed via turbines, screened bypass systems and spill were 18, 20 and 4 percent respectively. Further, recent studies suggest that increased juvenile survival can be expected even at total dissolved gas levels of 125 percent. In addition, smolt-to-adult survival rates are higher from years with increased flow and increased spill, even though total dissolved gas levels often exceeded 125 percent.

As in the past, CRITFC will be conducting shore-based biological monitoring below Bonneville Dam to check for gas bubble disease. On the issue of returning adults, there is no evidence that spill impedes adult returning migration at spill levels below those that result in 120 percent total dissolved gas saturation. It is also very unlikely that there will be adult salmon migrating below Bonneville Dam during the spill period.

Conclusions

As in the past the issue before the Commission is one of balancing risk. The question is, whether beneficial uses are better protected by granting the requested variance to the total dissolved gas water quality standard than they would be by denying the request with attendant estimated mortalities from turbine and bypass passage? In past years the Department has viewed total dissolved gas saturation at the levels requested this year as being conservative, and providing greater survival than migration in the absence of a variance. In order to proceed with granting the variance, the Commission must make the four findings required by the administrative rule:

- (i) *Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill.* Failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines is between 11 and 15 percent. Fish passing over spillways as a result of spill experience two to three percent mortality;
- (ii) *The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon.*

The balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine passage. Resident fish and aquatic invertebrates in the Columbia River downstream of Bonneville Dam were monitored for signs of gas bubble disease since 1993. Less than one percent of fish examined in 1993 and 1995 showed signs of trauma, while in the remaining years, no incidences were detected in fish examined. No signs were observed in aquatic macroinvertebrates. Low incidences, as reported above, were detected in migrating juveniles and returning adults when total dissolved gas levels were within variance limits. Higher levels of total dissolved gas saturation resulting from involuntary spill have resulted in increased incidence of gas bubble disease detected. Given data from past monitoring, at the levels requested, there appears to be a reasonable balance between increased survival due to avoidance of turbine and bypass system mortalities;

- (iii) *Adequate data will exist to determine compliance with the standards.* The U.S. Fish and Wildlife Service has submitted a detailed physical monitoring plan. The U.S. Army Corps of Engineers will conduct physical monitoring at Warrendale, Skamania, Camas/Washougal and Wauna Mill. Hourly data will be posted electronically on the U.S. Army Corps of Engineers' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program;
- (iv) *Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.* The U.S. Fish and Wildlife Service has submitted a detailed biological monitoring plan. Juvenile salmonids and resident fish will be collected with a beach seine downstream from Bonneville Dam and examined for signs of gas bubble disease on non-paired fins, eyes and lateral lines. Based on evidence from previous years, few signs of gas bubble disease are expected. The sampling will, therefore be confined to two days during the ten-day spill period. No examinations of gill lamellae will occur this year due to the variability of results and increased risk to fish due to handling for this examination.

The Department concludes that the required findings are supported by the application.

Department Recommendation on the U.S. Fish and Wildlife Service's Request

The Department recommends that the Commission grant this petition by adopting the findings contained in the Draft Order attached as Appendix B, subject to implementation of physical and biological monitoring as proposed in the monitoring plan accompanying the U.S. Fish and Wildlife Service's request, and

- (i) Approve a revised total dissolved gas standard for Bonneville Dam on the Columbia River for a ten-day period in March 2001;
- (ii) Approve a total dissolved gas standard for Bonneville Dam of a daily (12 highest hours) average of 115 percent as measured at the Camas/Washougal monitoring station;
- (iii) Approve a further modification of the total dissolved gas standard at Bonneville Dam to allow for a daily (12 highest hours) average of 120 percent as measured at tailrace monitors below the dam;
- (iv) Approve a cap on total dissolved gas for Bonneville Dam during the spill program of 125 percent, based on the highest two hours during the 12 highest hourly measurements per calendar day; and
- (v) Require that if *either* 15 percent of the fish examined show signs of gas bubble disease in their non-paired fins, *or* five percent of the fish examined show signs of gas bubble trauma in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles, whichever is less, the Director will halt the spill program;
- (vi) Require the U.S. Fish and Wildlife Service to incorporate the following conditions into its program:
 - a) written notice must be furnished to the Department within 24 hours of a violation of the conditions of this variance as it relates to voluntary spill. Such notice will include an explanation of the reasons for the violation, actions taken to resolve the situation, or if no action is taken, the reasons why not;
 - b) provision of a written report of the 2001 spill program for the Spring Creek National Fish Hatchery release. Such report is to be received by the Department no later than September 30, 2001;
 - c) application for a variance for 2002 is to be furnished to the Department in conjunction with the written report prescribed above.

Attachments

- Appendix A: Oregon Administrative Rule, OAR 340-41-205, 445, 485 and 525 (2)(n)
- Appendix B: Draft Order Approving the U.S. Fish and Wildlife Service's Request

Reference Documents (available upon request)

U.S. Fish and Wildlife Service (2000) *Application for a Variance to the State's Total Dissolved Gas Water Quality Standard at Bonneville Dam*, U.S. Fish and Wildlife Service, Portland, OR, September 26, 2000.

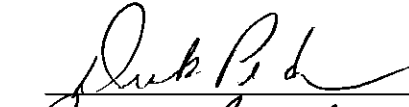
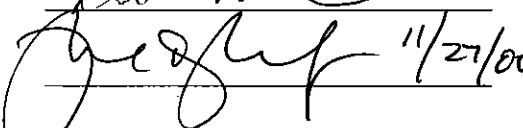
U.S. Fish and Wildlife Service (2000) *State of Oregon Department of Environmental Quality: Total Dissolved Gas (Criteria Modification) Petition Contents*, U.S. Fish and Wildlife Service, Portland, OR, September 26, 2000.

U.S. Fish and Wildlife Service (2000) *Gas Supersaturation Monitoring Below Bonneville Dam, March 2000*, U.S. Fish and Wildlife Service, Vancouver, WA, October 2, 2000

Approved:

Section:

Division:

 11/26/00
 11/27/00

Report Prepared By: Russel Harding

Phone: (503) 229-5284

Date Prepared: November 24, 2000

APPENDIX A

Oregon Administrative Rule, OAR 340-41-205, 445, 485 and 525 (2)(n)

- (A) The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 110 percent of saturation, except when stream flow exceeds the ten-year, seven-day average flood. However, for hatchery receiving waters and waters of less than two feet in depth, the concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 105 percent of saturation;
- (B) The Commission may modify the total dissolved gas criteria in the Columbia River for the purpose of allowing increased spill for salmonid migration. The Commission must find that:
 - (i) Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill;
 - (ii) The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;
 - (iii) Adequate data will exist to determine compliance with the standards; and
 - (iv) Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.
- (C) The Commission will give public notice and notify all known interested parties and will make provision for opportunity to be heard and comment on the evidence presented by others, except that the Director may modify the total dissolved gas criteria for emergencies for a period not exceeding 48 hours;
- (D) The Commission may, at its discretion, consider alternative modes of migration.

APPENDIX B

Draft Order Approving U.S. Fish and Wildlife Service's Request

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of the U.S. Fish and	(
Wildlife Service's request to	(	ORDER
spill water to assist out-migrating	(
Spring Creek Hatchery salmon smolts	(

WHEREAS the Department of Environmental Quality received a request from the U.S. Fish and Wildlife Service dated September 26, 2000, to adjust the Total Dissolved Gas Standard as necessary to spill over Bonneville Dam on the Columbia River to assist out-migrating Spring Creek Hatchery tule fall Chinook smolts, for a ten-day period in March 2001; and

WHEREAS the public was notified of the request on October 27, 2000, and given the opportunity to provide testimony at 10:00 a.m. on November 24, 2000, and the opportunity to provide written comments until 5:00 p.m. on November 24, 2000.

WHEREAS the Environmental Quality Commission met on November 30, 2000 and considered the request, justification and public comment.

THEREFORE the Environmental Quality Commission orders as follows:

1. Acting under OAR 340-41-205(2)(n)(B), the Commission finds:
 - (i) failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines is between 11 and 15 percent. Fish passing over spillways as a result of spill experience two to three percent mortality;
 - (ii) the balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine passage. Resident fish and aquatic invertebrates in the Columbia River downstream of Bonneville Dam have been monitored for signs of gas bubble disease since 1993. Less than one percent

of fish examined in 1993 and 1995 showed signs of trauma, while in the remaining years, no incidences were detected in fish examined. No signs were observed in aquatic macroinvertebrates. Low incidences, as reported above, were detected in migrating juveniles and returning adults when total dissolved gas levels were within variance limits. Higher levels of total dissolved gas saturation resulting from involuntary spill have resulted in increased incidence of gas bubble disease detected. Given data from past monitoring, at the levels requested, there appears to be a reasonable balance between increased survival due to avoidance of turbine and bypass system mortalities;

- (iii) the U.S. Fish and Wildlife Service has submitted a detailed physical monitoring plan. The U.S. Geological Survey will conduct physical monitoring at the Bonneville dam forebay, Warrendale, Skamania, and Camas/Washougal. Hourly data will be posted electronically on the U.S. Army Corps of Engineers' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program;
 - (iv) the U.S. Fish and Wildlife Service has submitted a detailed biological monitoring plan. Juvenile salmonids and resident fish will be collected with a beach seine downstream from Bonneville Dam and examined for signs of gas bubble disease on non-paired fins, eyes and lateral lines. Based on evidence from previous years, few signs of gas bubble disease are expected. The sampling will, therefore be confined to two days during the ten-day spill period. No examinations of gill lamellae will occur this year due to the variability of results and increased risk to fish to due handling for this examination.
2. The Environmental Quality Commission approves a modification to the Total Dissolved Gas standard for spill over Bonneville Dam subject to the following conditions:
- (i) a revised total dissolved gas standard for Bonneville Dam on the Columbia River for a ten-day period in March 2001;
 - (ii) a total dissolved gas standard for Bonneville Dam of a daily (12 highest hours) average of 115 percent as measured at the Camas/Washougal monitoring station;
 - (iii) a further modification of the total dissolved gas standard at Bonneville Dam to allow for a daily (12 highest hours) average of 120 percent as measured at tailrace monitors below the dam;

- (iv) a cap on total dissolved gas for Bonneville Dam during the spill program of 125 percent, based on the highest two hours during the 12 highest hourly measurements per calendar day; and
- (v) if *either* 15 percent of the fish examined show signs of gas bubble disease in their non-paired fins, *or* five percent of the fish examined show signs of gas bubble trauma in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles, whichever is less, the Director will halt the spill program;
- (vi) the U.S. Fish and Wildlife Service to incorporate the following conditions into its program:
 - a) written notice must be furnished to the Department within 24 hours of a violation of the conditions of this variance as it relates to voluntary spill. Such notice will include an explanation of the reasons for the violation, actions taken to resolve the situation, or if no action is taken, the reasons why not;
 - b) provision of a written report of the 2001 spill program for the Spring Creek National Fish Hatchery release. Such report is to be received by the Department no later than September 30, 2001;
 - c) application for a variance for 2002 is to be furnished to the Department in conjunction with the written report prescribed above.

Dated: _____

ON BEHALF OF THE COMMISSION

Director

Minutes are not final until approved by the EQC

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

September 28-29, 2000
Regular Meeting

On September 28, 2000, the Environmental Quality Commission (EQC) traveled to Roseburg, Oregon where they toured the Formosa Mine near Riddle and the Calapooya Project in the Sutherlin Area. That evening they had dinner with local officials at the Sleep Inn and Suites, Umpqua Room, 2855 NW Edenbower Blvd, Roseburg, Oregon. The following Environmental Quality Commission members were present:

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

On September 29, 2000, the regular meeting of the EQC was held at the Sleep Inn and Suites. The following EQC members were present:

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

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

Note: The Staff reports 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 8:30 a.m. on Friday, September 29.

A. Approval of Minutes

Minutes from the May 17-18, 2000 meeting: A correction was made on page 7, 6th paragraph, the 5th line should read "...requiring the Department of Corrections to comply with statewide land use goals and ~~at~~ local land use..." A motion was made by Commissioner Van Vliet to approve the minutes as corrected. Commissioner Reeve seconded the motion and it passed with five "yes" votes.

Minutes from the July 13-14, 2000 meeting: On page 3, Transfer section, 3rd paragraph, 4th line, it was noted that the word primer was misspelled. On page 5, Agenda Item K, 1st line, the committee should read "*Technical Education Advisory Committee*." A motion was made by Commissioner Van Vliet to approve the minutes as corrected. Commissioner Bennett seconded the motion and it carried with five "yes" votes.

Minutes from the August 22, 2000 meeting: On page 1, last paragraph, the third line should read "...DEQ intended to try to define the performance of the standard trench ~~through a contract~~. If criteria were..." On line 5 of the same paragraph there should be a space between not and able. A motion was made by Commissioner Van Vliet to approve the minutes as corrected. The motion was seconded by Commissioner Malarkey and carried with five "yes" votes.

Minutes from the September 6, 2000 meeting: A motion was made by Commissioner Reeve to approve the minutes as written. Commissioner Bennett seconded the motion and it carried with five "yes" votes.

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

Maggie Vandehey, Tax Credit Manager, presented this item. See attached edited transcript.

C. Consideration of Tax Credit Requests

Chair Eden stated when VanBeek Dairy came up she would recuse herself because VanBeek Dairy is a client of her family firm.

Maggie Vandehey, Tax Credit Manager, presented the tax credits in Agenda Item C.

Ms. Vandehey asked to remove several items from the agenda.

Willamette Industries asked that application 4979 be removed from the agenda due to a scheduling conflict. Ms. Vandehey noted this application had been on the EQC agenda a number of times.

The attorney representing Smurfit Newsprint Corporation requested application 5236 be removed from the agenda.

By mutual agreement of the Department and the applicant, the Department requested removal of application 5345 from consideration. The Department reviewed the facility as though it were a replacement facility. The applicant presented information that the Department's assessment was incorrect.

Corvallis Disposal requested removal of application 5434. The applicant reallocated the use of several components presented on the application. The Department will rework the application once they have the information.

Willamette Industries asked that application 5167 be removed from the agenda due to a scheduling conflict. This application has been on the EQC agenda several times.

Ms. Vandehey asked the Chair to verify if there was a representative from Wah Chang in the audience. With no representative present, Ms. Vandehey asked to remove applications 5276 and 5286.

Willamette Industries asked that application 5299 be removed from the agenda due to a scheduling conflict.

She asked to remove application 5373, Sanders Forest Products, Inc. and hold the application over until the applicant's two-year filing period passes to provide the applicant with an opportunity to bring the facility into compliance. Ms. Vandehey explained that should the Commission deny the application at this time, the applicant would not be able to seek a tax credit for the log yard should they come into compliance.

A motion was made by Commissioner Bennett to approve the tax credits found in attachment A with the exception of those applications that have been removed during the course of this meeting. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

App.No.	Media	Applicant	Certified Cost	% Allocable	Value
5159	Water	Deschutes Brewery	\$ 714,103	100%	\$ 357,052
5162	Air	Ohka America, Inc.	\$ 509,938	100%	\$ 254,969
5163	Water	Ohka America, Inc.	\$ 114,425	100%	\$ 57,213
5195	Water	Sabroso Corporation	\$ 65,854	100%	\$ 32,927
5196	Noise	Sabroso Corporation	\$ 4,208	100%	\$ 2,104
5197	SW	Sabroso Corporation	\$ 32,062	100%	\$ 16,031
5198	Water	Sabroso Corporation	\$ 37,557	100%	\$ 18,778
5199	SW	Sabroso Corporation	\$ 9,914	100%	\$ 4,957
5297	Air	Synthetech, Inc.	\$ 346,554	100%	\$ 173,277
5331	Noise	Oregon Steel Mills, Inc.	\$ 96,790	100%	\$ 48,395

5353	Air	Schrock Cabinet Company	\$ 68,912	100%	\$ 34,456
5358	Air	Schrock Cabinet Company	\$ 75,760	100%	\$ 37,880
5363	SW	United Disposal Service, Inc.	\$ 128,030	100%	\$ 64,015
5384	Air	Ash Grove Cement Co.	\$ 307,596	67%	\$ 102,891
5386	Field Burning	Oregon Rootstock & Tree Co., Inc. dba TRECO	\$ 148,842	100%	\$ 74,421
5388	Air	Foster Auto Parts, Inc.	\$ 1,754	100%	\$ 877
5389	Air	U Pull It Tigard, Inc.	\$ 1,754	100%	\$ 877
5390	Air	Damascus U Pull It, Inc.	\$ 1,754	100%	\$ 877
5391	Air	U Pull It Salem Auto Wrecking, Inc.	\$ 1,754	100%	\$ 877
5392	Water	Damascus U Pull It Inc.	\$ 7,295	100%	\$ 3,648
5393	Water	U Pull It Tigard, Inc.	\$ 8,804	100%	\$ 4,402
5394	Water	Foster Auto Parts, Inc.	\$ 10,513	100%	\$ 5,257
5395	Water	Foster Auto Parts, Inc.	\$ 45,823	100%	\$ 22,912
5419	SW	Newberg Garbage Service, Inc.	\$ 42,810	100%	\$ 21,405
5420	SW	Newberg Garbage Service, Inc.	\$ 30,000	100%	\$ 15,000
5425	SW	Bend Garbage Company	\$ 215,104	100%	\$ 107,552
5429	SW	Newberg Garbage Service, Inc.	\$ 14,918	100%	\$ 7,459
5430	SW	Newberg Garbage Service, Inc.	\$ 4,796	100%	\$ 2,398
5441	Plastics	Denton Plastics, Inc.	\$ 9,000	100%	\$ 4,500
5450	SW	American West Leasing	\$ 45,995	100%	\$ 22,998
5456	Perc	Midway Cleaners, Inc.	\$ 49,814	100%	\$ 24,907
5459	USTs	Devon Oil Company, Inc	\$ 99,099	90%	\$ 44,595
5460	USTs	Devon Oil Company, Inc	\$ 124,917	87%	\$ 54,339
Total			\$ 3,376,450		\$1,624,243

Ms. Vandehey presented certificates 3825, 3038, and 4000 for transfer.

A motion was made by Commissioner Van Vliet to approve the transfers. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

D. Informational Item: Update from the Department's Chemical Demilitarization Program

Wayne Thomas, Chemical Demilitarization Program Administrator, provided a brief update to the Commission on the current status of the Department's Chemical Demilitarization Program. Mr. Thomas discussed the Hazardous Waste Storage and Treatment Permit (HW Permit) for the Umatilla Chemical Agent Disposal Facility (UMCDF) that was issued in February 1997. As of September 25, 2000 the Department has received 95 permit modification requests (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 require Commission approval. A summary was provided of the four Class 3 permit modification requests currently under consideration by the Department (one of the Class 3 modifications has already been approved by the Commission). It was requested the Commissioners consider whether they wanted to delegate decision-making authority to the Department for any of the Class 3 modifications (Storage of UMCDF secondary wastes in "J" Block, Secondary Waste Compliance Schedule, Incorporation of Air Emissions Standards, or Dunnage Incinerator and Associated Pollution Abatement System Improvements).

The rule-making process the Department has initiated to bring all of the stockpiled chemical weapons at the Umatilla Chemical Depot under regulatory authority was discussed. Following the public comment period, the draft rule will be presented to the Commission in March, 2001. Mr. Thomas discussed the Department's public outreach efforts, and made special mention of his appreciation for the assistance the Department has received from the U.S. Army's Public Outreach Office. A memorandum was distributed that included information on other Chemical Demilitarization subjects including the Inspection Program and Compliance Status, Secondary Wastes, Post Trial Burn Health Risk Assessment, and the requirement that the Army demonstrate compliance with permit emission standards "upstream" of each furnace's Pollution Abatement System Carbon Filter System (PFS).

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

Timothy Thomas of the Army's Program Manager for Chemical Demilitarization and Loren Sharp of the Washington (Raytheon) Demilitarization Company gave the Commission a summary of the chemical agent release that occurred at the Tooele Chemical Agent Disposal Facility in May, 2000. Mr. Thomas discussed the investigations that were undertaken, the lessons learned, and how those lessons are being applied both at the Tooele facility and at other chemical demilitarization facilities, including UMCDF. The Commissioners asked several questions for clarification. Commissioner Reeve requested the Department return to the Commission at a future meeting and provide clarification and an affirmative statement on the Army's capabilities to review and implement the Programmatic Lessons Learned Program.

Staff Recognitions: Steve Greenwood and Kerri Nelson presented Mari, Belsky, Cheryl Hutchins, and Ruben Kretzschmar plaques for their years of service with the Department.

Public Comment: There was no general public comment.

F. Rule Adoption: Public Participation in Permit Process Rules

Susan Greco, Rules Coordinator, presented this rulemaking which creates 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 (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. The proposal adopts rules categorizing water quality and solid waste permit actions. The 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. The category process will cover all permit applications received prior to the rule changes as best as practicable.

Ms. Greco pointed out two errors in the staff report. The first was on page 17 of Attachment A, 340-045-0060---change "public health or safety of the environment" to "public health, safety or the environment." The second is on page 31 of Attachment A, 340-071-0100(96)---add after the word "Department" the phrase "or its agent." Commissioner Van Vliet made a motion to adopt the public participation in permit process rules with the above amendments. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

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

Andy Ginsburg, Air Quality Administrator, gave the Commission a brief summary of CO planning in the State. David Collier, Air Quality staff, summarized the key points for the proposed Klamath Falls CO Maintenance Plan, emphasizing the Plan will allow EPA to eliminate the oxygenated fuel requirement in Klamath Falls. Commissioner Malarkey inquired about the Klamath County adoption of an air quality ordinance. Staff clarified that a revision to the Klamath County Air Quality Ordinance, addressing particulate pollution, was initially part of the rulemaking package as a pollution prevention measure. However, prior to the public hearing the Klamath County Commissions decided they needed more time to review the proposed changes and the Klamath County ordinance was not part of the final CO plan rulemaking brought before the Commission. The advisory committee was unanimous in their recommendation to eliminate oxygenated fuels.

A motion was made by Commissioner Bennett to adopt the Klamath Falls Carbon Monoxide Maintenance Plan as a revision to the State Implementation Plan (SIP). Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

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

Andy Ginsburg, Air Quality Administrator, and Ted Kotsakis, Vehicle Inspection Program (VIP) Manager, presented this item. Mr. Kotsakis reviewed the history of VIP operations. DEQ has progressed to more sophisticated testing over the years beginning with a manual basic test, then to a computerized basic test, then to a BAR31 test, and currently asking the Commission to approved the new on-board diagnostic (OBD) test.

EPA has required auto manufacturers to install second generation OBD systems on vehicles beginning with the 1996 model year. For this OBD system the connectors under the vehicle dashboard are all the same, The OBD test provided more emissions reduction credit than our existing BAR31 test, and the duration of the OBD test is 3.5 minutes compare to the current 10 minute BAR31 test. The scheduled implementation date for OBD testing is December 1, 2000. Repair shops and fleets in the Portland area would receive training offered by the Department to introduce the new OBD test to the repair industry prior to the implementation date. The OBD download information would be printed out for the customer when the vehicle fails; so the information can be used by the repair technician to facilitate repairs.

Commissioner Bennett noted "on-board" was misspelled on the front page of the rule package. He also stated the name of the VIP's Medford station manager, Ted Wacker, was misspelled. Commissioner Bennett questioned why VIP was not considering using community college instructors for the OBD training. Staff responded that community college auto shop training has become manufacturer specific and was not appropriate for VIP's purpose; and VIP has in-house expertise. Commissioner Van Vliet asked about the cost of the OBD testing equipment. Staff stated the cost was about \$2,500 per test lane compared to a market cost for the enhanced test of about \$150,000 per test lane.

A motion was made by Commissioner Bennett to adopt the new rules and include the rules in the Clean Air Implementation Plan with the above corrections noted. It was seconded by Commissioner Van Vliet and carried with five "yes" votes.

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.

Larry Knudsen, Commission legal counsel, reviewed the Petition for Reconsideration of the Department's Notice of Assessment of Civil Penalty Against Smurfit Newsprint Corporation filed by the Northwest Environmental Defense Center, Willamette Riverkeepers, Oregon State Public Interest Research Group, Oregon Chapter of the Sierra Club and the Oregon Environmental Council. Mr. Knudsen advised that penalty and penalty mitigation determinations had been delegated to the Director and the Commission's role was generally limited to review of contested case hearing orders. He also noted there was a significant legal question regarding whether such a determination was subject to review under ORS 183.484 and OAR 137-004-0080. He recommended the Commission find that the matter of reconsideration should be undertaken, if at all, by the Director and not the Commission.

Commissioner Van Vliet made a motion to delegate to the Director the review and action of this case. Commissioner Malarkey seconded the motion and it carried with five "yes" votes.

There being no oral public comment on agenda item J, the public comment period was closed.

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

Lydia Taylor, Deputy Director, presented this item. When reviewing the criteria, Commissioner Bennett indicated that in Attachment A, Standards section, Item 1, he would like it to read "a Bachelor of Science degree in an appropriate field of study from an accredited college or university." One additional letter of comment from Hells Canyon Preservation Council was received by the Commission but not received by the Department. It was reviewed and incorporated into the staff report with no changes made to the staff report.

Commissioner Malarkey made a motion to adopt the Standards, Criteria, Policy Directives and Hiring Procedures to be used in hiring the Director of DEQ including the amendment made by Commissioner Bennett. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

Deputy Director Taylor then went over the hiring timelines with the Commission. It was decided that Chair Eden and Commissioner Van Vliet would form the search committee. They would review the applications and interview the first round of candidates. All applications would be mailed to the entire Commission for review. Questions to ask the interviewees will be drafted by the Department with Commission input. The final candidates will be interviewed by the entire Commission at DEQ headquarters on November 6, 2000. This will be in executive session.

At this time, the role of vice-chair was discussed. Commissioner Malarkey made a motion to elect Commissioner Van Vliet as vice-chair. It was seconded by Commissioner Reeve and carried with five "yes" votes.

K. Action Item: Appointment of an Interim Director

Commissioner Malarkey made a motion to appoint DEQ Deputy Director, Lydia Taylor, as Interim Director. This appointment would be in effect until a new director is hired, and would be with all benefits and salary of the position. The motion was seconded by Commissioner Van Vliet and carried with five "yes" votes.

L. Commissioners' Reports

Commissioners Bennett and Van Vliet commended Director Marsh on his tenure at DEQ. Commissioner Malarkey reported she had seen the Air Quality Division's presentation on upcoming rule revisions and complemented the staff on their interactions with the community. She also indicated that metropolitan Eugene had adopted a wetwater management plan. Chair Eden had attended the Governor's Executive Review Panel regarding the Umatilla Chemical Depot. The next meeting will be October 5, 2000.

M. Director's Report

The Portland Harbor Cleanup will be directed by a joint Environmental Protection Agency (EPA)/Department of Environmental Quality (DEQ) Project Team. DEQ will have lead technical and legal responsibility for the upland, or on-shore, contamination cleanup and for coordinating with EPA on upland contamination that may impact in-water contamination. DEQ will also ensure that ongoing efforts, such as the Combined Sewer Overflow project, Total Maximum Daily Load development and the Oregon Plan, are coordinated with the Superfund process so that potential conflicts are minimized wherever possible. EPA will have lead technical and legal responsibility for in-water (sediment) contamination. EPA and DEQ will work together on community outreach activities.

The Waste Policy Leadership Group (WPLG) is finalizing recommendations that include establishing a new statewide recovery goal, adopting new required wasteshed recovery rates, and developing new recovery programs and policies that would increase recycling statewide. The program recommendations under review would target key wastestreams such as construction/demolition debris, food waste, mixed waste paper, and scrap tires. In addition, the WPLG is examining extended product responsibility proposals for specific materials such as waste electronics, mercury-containing wastes, and scrap tires, as well as other waste prevention program and policy recommendations. The final recommendations may include changes to administrative rules, legislation, and DEQ Solid Waste program priorities and activities.

EPA launched its National Performance Track program on June 26, 2000. The program rewards top performing facilities, and is based largely on the Green Permits Program. Four Oregon facilities have applied to the National Environmental Achiever Track: Epson Portland, Inc., LSI Logic, Kinglsey Field (US Air Force), and Kerr-McGee. DEQ is working closely with EPA on this program. EPA was able to launch its program fairly quickly because we had tested these ideas in Oregon and they collaborated with states as they developed program elements. Because of this close coordination, our facilities are finding it easy to apply to both programs for added benefits.

DEQ was part of the "stewardship group" that first recommended, then helped initiate and guide, the production of The State of the Environment Report, released Sept. 1, 2000. The group agreed that new options for Oregon's environmental management should be based on sound science, but quickly recognized choices about selecting and reporting data were not value-neutral. The stewardship group turned over responsibility to independent scientists in Oregon's universities. This science panel chose to emphasize ecosystems and natural functions of the environment, and the interconnection of these systems, in a way that provides a fresh look at how we address environmental management. Each section of the report suggests indicators to be used in tracking trends in the

environment. DEQ will now have the opportunity to engage in discussions with the scientists and the Oregon Progress Board regarding individual recommendations.

Over the past several months, the Willamette Restoration Initiative (WRI) has developed a detailed draft workplan with specific action items and timelines. Paul Risser, President of Oregon State University and WRI Chair, prepared the Draft Overview, a policy-level document that outlines an overall conservation strategy for the basin. Recommended actions deal with clean water, water quantity, habitat, hydropower processes, and institutional and policy actions needed to support restoration strategy. The Draft Overview specifies stewardship objectives; identifies indicators and benchmarks for how we'll know if we are successful (from State of Environment Report); and identifies WRI's current and future roles. The WRI Board will be meeting all day on October 26 for its final review of the Willamette Restoration Initiative Strategy.

On August 15th, EPA released the first phase of the National Air Toxics Assessment (NATA). Toxic air pollutants are chemicals known or suspected to cause serious health problems such as cancer and birth defects. The NATA estimated there are 16 toxic air pollutants in Oregon above levels believed to be safe, and every county in the state has some toxic air pollutants above these levels. This confirms the need for the Oregon air toxics program recommended by DEQ's advisory committee known as the Hazardous Air Pollutant Consensus Group. The group recommended DEQ form a scientific advisory panel to help provide and evaluate more detailed information about toxics in local areas, and then work with communities to design plans to reduce health risks from air toxics. The Air Quality Division expects to propose rules to implement this program in about a year.

Gary Messer, Water Quality Manager for Western Region, and Barbara Burton, updated the Commission on Oregon Metallurgical Corporation (Oremet) Water Quality Permit. Oremet is located in Albany, produces Titanium and has storm and process wastewater discharges of up to 1.9 million gallons/day. After treatment this wastewater is discharged to a 5 acre wetland area adjacent to Oak Creek, and the seepage from this wetland area discharges to Oak Creek. From about mid-July until the start of seasonal rains in the fall, Oak Creek has no flow upstream of the Oremet facility, but the Oremet discharges maintain a flow in Oak Creek that supports aquatic life and wetland habitats year round from their facility for a distance of about 2 miles downstream to where Oak Creek enters the Calapooia River.

When the Oremet WQ permit was issued in 1991, an environmental organization successfully filed suit against DEQ for issuing a permit which violated the Department's mixing zone rules, in that our rules do not allow a discharge to take up more than 50% of the receiving stream's width. In response, the Department, working in cooperation with environmental groups, developed new mixing zone rules (OAR 340-041-0445(4)(g)) that allows for extended mixing zones where it is demonstrated the discharge creates an overall environmental benefit. In the Oremet renewal permit, the Department found that Oremet's discharge did provide an overall environmental benefit and established an extended mixing zone to be Oak Creek to its point of discharge into the Calapooia River and 375 feet downstream.

At the public hearing on August 29, 2000, 49 people were in attendance and 13 comments were entered into the record, all in support of the permit. On the last day of the Public Comment period (Sept 22), 3 environmental organizations submitted lengthy written comments in opposition to the Department issuing an extended mixing zone. The way the current rules are written, either the Department or the EQC can grant the extended mixing zone and permit. As soon as the Department reviews and responds to all the written comments submitted, we will determine if the Department should proceed with permit issuance, or if the matter should be brought before the EQC to make the final determination.

Bob Baumgartner, Water Quality Manager at Northwest Region, briefed the Commission on the Blue Heron permit that is currently open for public comment.

There being no further business, the meeting was adjourned at 3:15 p.m.

**Edited Transcript
Agenda Item B
September 29, 2000 EQC Meeting**

Melinda Eden, Chair of the Environmental Quality Commission

Next is Agenda Item B, consideration of request for preliminary certification of tax credit number 5009; which is Portland General Electric Company's Independent Spent Fuel Storage Installation. Ms. Vandehey is here.

Maggie Vandehey, Tax Credit Program Manager, Department of Environmental Quality

Good Morning Madam Chair and Commissioners. I'm Maggie Vandehey with the tax credit program at DEQ.

Portland General Electric submitted application for preliminary certification of its dry storage system. That is what is presented in Agenda Item B. It was submitted under the pollution control facility tax credit program. The facility claimed for certification is located in Rainier at the Trojan Nuclear Power Plant site. It is estimated that the cost will be about \$55 million once it's constructed. The application is numbered 5009.

The November 18, 1999, EQC work session provided background information on Trojan, decommissioning, wet storage and dry storage. And a transcript of that has been provided in the staff report. I'll cover some of that information again here today for the benefit of the Commissioners who were not in attendance at that work session.

However, first, I would like to briefly describe preliminary certification. 1995 legislation provided for the preliminary certification of a pollution control facility. New rules implementing preliminary certification went into effect on May 1, 1998. However, PGE submitted their preliminary application the day before, on April 30, 1998, under the old rules. And it is under these old rules that we reviewed this preliminary application.

According to the legislation, the department considers that the applicant submitted the preliminary application as required. And that is, prior to completion of the construction.

The review was limited to the claimed facility's ability to meet the definition of a pollution control facility. The actual cost and the percentage of the cost that could be attributed to pollution control were not considered.

The new rule provides that pre-certification means the facility meets the definition of a pollution control facility. Of course if PGE constructed it (microphone noise) ... facility presented in these documents.

At this point, a bit of background of Trojan Nuclear Power Plant may be a bit helpful to you.

The commercial production of power began in 1976. In January of 1993, PGE notified the Nuclear Regulatory Commission that they decided to stop commercial operations of the power plant. PGE based the decision on several uncertainties; uncertainties about the plant's reliability, particularly the reliability of the steam generators; uncertainty about the cost of operation; and uncertainties about the availability of low-cost replacement power.

Once a nuclear power plant ceases to operate, the NRC requires that the plant be completely decommissioned in 60 years. And I noticed in the transcript that it said 16 years; I just want to clarify that. PGE began this process as the first large commercial power plant to undergo decommissioning. The claimed facility is part of that decommissioning plan.

In 1995, PGE moved four contaminated steam generators and a pressurizer tank to the regional commercial low-level waste disposal site at Hanford. The steam generators and the pressurizer tank contained about 10% of the nonspent fuel radioactivity.

In 1996, the NRC and the Oregon Energy Facility Siting Council approved the plan for decommissioning the Trojan plant.

And in 1999, PGE moved the reactor vessel to Hanford for disposal with about 90% of the nonspent fuel radioactivity.

Here is where the claimed facility's role in the decommissioning comes in. The spent fuel assemblies, fuel debris, radioactive waste materials still reside within the spent fuel pool at the Trojan site. As the name implies, this is a wet storage system.

The spent fuel, in the form of ceramic uranium fuel, is contained in sealed zirconium-alloy tubes. During commercial operations at Trojan, these tubes were placed in the spent fuel pool after they were removed from the reactor. The water in the pool provided for the heat transfer when the spent fuel assemblies first came out of the reactor. And the water also provides for shielding.

Less than 1% of the tubes became unsealed as a result of temperature and pressure in the reactor. For this reason, the wet storage system also includes a radioactive waste treatment system to remove the contamination from the water. This low-level radioactive waste from the treatment system is disposed of at Hanford.

The claimed facility, the Independent Spent Fuel Storage Installation, or ISFSI for short (that's a hard one to come off the tongue) provides for the dry storage of the spent fuel assemblies that are now in wet storage. It is a passive storage system with several distinctive portions.

PGE claimed thirty-four pressurized water reactors, or PWRs, capable of storing up to 24 spent fuel assemblies. They also claimed two greater than class C, or referred to as GTCC, sealed metal baskets capable of storing up to 28 individual canisters containing other radioactive waste. These baskets are about 15 feet tall and 5-1/2 (Background Noise..) They are on the inner core of the storage system. All of the elements of the storage system are shown in this second (microphone noise) from the door. The baskets are loaded with the spent fuel and radioactive waste and then moved out of the spent fuel pool.

The applicant claimed a transfer station and various transfer equipment to be used in this operation. And the station scheme is found right next to the door. The transfer station

will also be used to load the basket into the concrete casks. It will also be used to transfer to shipping casks or to a basket overpacks. The applicant also claimed various equipment for moving the concrete cask from one location to another.

Once the baskets are out of the spent fuel pool, a vacuum drying system would remove any of the residual water. The vacuum drying system will be contaminated after this one-time use and then it would be disposed of as radioactive waste.

The applicant also claimed a semi-automatic welding system to seal weld the baskets closed after the contents are dried. After its one-time use, the welding system will most likely be contaminated. If it is, then it would be disposed of as radioactive waste.

Each basket is then placed in its own ventilated concrete storage cask. These casks, they are giants. They are about 17 feet tall, 11 feet in diameter, their walls about 21 inches thick. And they weigh about 145 tons once they are fully loaded. The casks provide structural support for the basket and shielding of the radiation. After use, the casks will be contaminated and disposed of as radioactive waste.

As you might guess, it will take a pretty hefty pad to hold those 32 to 34 casks. And I say 32 to 34 because PGE, I think, has probably adjusted the number of casks that will actually be needed. The applicant claimed a reinforced concrete storage pad for this purpose. The concrete casks will remain on the pad until the U.S. Government is prepared to take the spent fuel.

All together, these distinct portion make up the ISFSI.

Before I talk about the Department's recommendation for preliminary certification, I would like to emphasize that I am not talking about the importance of the Independent Spent Fuel Storage. I am not talking about its importance to decommissioning Trojan. I am not talking about the importance to PGE's ratepayers. I am only talking about the relationship of the claimed facility to the pollution control facility tax credit regulations. (Background Noise.)

Kitty Purser, Assistant to the Director and Commission

Can you speak up a little bit?

Ms. Vandehey

Okay. For the ISFSI to meet the definition of a pollution control facility it must have a pollution control purpose. It must not include distinct portions that make an insignificant contribution to that purpose. (Microphone noise.) And if the facility does have a pollution control purpose then the facility must accomplish the pollution control in one of the manners describe in law.

Here today, I'm only going to address the purpose portion of the definition. I won't go into how the pollution control is accomplished. The staff report contains the full discussion of that.

The ISFSI was not required by DEQ or EPA. Therefore, it does not have a "principal purpose" of pollution control.

The applicant claimed the facility would have a sole purpose addressing a substantial quantity of air and water pollution. The Department reviewed the application from this perspective.

The statute provides, in part, that the sole purpose of the installation must be to prevent, control or reduce a substantial quantity of air or water pollution. Both the old and new rules gave additional meaning to mean "exclusive" purpose.

I'll describe the criteria contained in the sole purpose portion of the definition and I'll relate them to this facility.

One, the claimed facility must control air pollution as defined by air quality statute, or it must control water pollution as defined by water quality statute. The amount controlled must be a substantial quantity of air or water pollution. The facility purpose must be exclusively for pollution control.

The Department concluded that the claimed facility meets the first sole purpose criterion in that radioactive waste is included in the definition of an industrial waste as defined in water quality rule. The Department also concludes that radioactive waste could meet the definition of an air pollutant as defined by the air quality statute.

The Department was not able to conclude that the second and third sole purpose criteria were met. The ISFSI, in the Department's consideration would not control a substantial quantity of water or air pollution. And the purpose of the ISFSI is not exclusively pollution control.

In reviewing this second criterion, the applicant did not provide evidence that dry storage would control a "substantial quantity" of water or air pollution over what is currently provided in the wet storage system.

The applicant is required to provide safe storage of spent nuclear fuel and high level radioactive waste. Both dry storage and wet storage meet the requirements for safe storage.

The applicant disagrees with the Department's comparison of the conditions that would exist as a result of the dry storage system with the conditions that currently exist with wet storage system. Both the existing system and the claimed system provide for the storage of spent fuel – the same spent fuel – not a new waste stream. Both systems provide safe storage according to the Nuclear Regulatory Commission's Standards for Protection Against Radiation.

Looking at the quantity of pollution controlled under the current conditions is consistent with the program implementation. Using that information as a benchmark to determine if, in fact, the facility would provide substantial quantity of pollution control is consistent with program implementation.

I'd like to mention here that staff did not review any part of the claimed facility from the perspective of protecting the environment from pollution occurring as a result of any catastrophic event such as earthquakes or terrorist attacks. The Department does not consider that it has the discretion to determine when the protecting the environment from catastrophic events is within the scope of this tax credit program. Staff considers this perspective expands previous program implementation.

The Department does not consider that the ISFSI controls a substantial quantity of air or water pollution over what is currently being provided by the spent fuel pool. The recommendation to deny preliminary certification of application 5009 is based on this criterion.

If the Commission determines that the ISFSI controls a substantial quantity of pollution, the Commission must then consider the the third sole-purpose criterion. However, if the Commission determines that the ISFSI does not control a substantial quantity of air or water pollution then the Commission must deny the application.

Under the third sole-purpose criterion, the ISFSI must have an exclusive pollution control purpose.

Looking at the entire claimed facility rather than its distinct portions; 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 evidence available to the Department came from PGE's decommissioning plan. I noticed that the excerpt at the last page of attachment "B" was missing the last page. However, that did show, it did track the costs associated with operations and maintenance of both the existing system and the claimed facility.

According to the plan, the ISFSI would provide a \$6.8 million per year savings in operating and maintenance costs.

The staff report also includes an analysis of each distinct portion of the claimed facility. The Department concludes that distinct portions of the claimed facility make an insignificant contribution to the sole and exclusive purpose.

The vacuum drying equipment, the welding system, and the transfer station and various transfer equipment are used for installation and material handling. Including equipment purchased for the purpose of installation is not consistent with previous program implementation.

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 should the zirconium alloy tubes and baskets fail. The casks do provide shielding of gamma rays and they do provide structural integrity for the baskets to withstand a man-made or natural catastrophic events. Likewise, the concrete pad provides structural support for the casks.

The purpose of the sealed metal-baskets is for temporary storage of the spent fuel assemblies while in Oregon, during transportation within and outside Oregon, and then for long term storage at a federal repository. The Department considers that these baskets provide secondary containment and the tubes provide the primary containment.

To recap, staff concludes that the ISFSI does not control a substantial quantity of air or water pollution over what is currently being provided by the spent fuel pool. And on this point recommends denial of preliminary application number 5009. Additionally, the claimed facility would provide a \$6.8 million savings, sufficient enough to keep the facility from having an exclusive pollution control purpose. Staff also concludes that distinct portions of the ISFSI have purposes other than pollution control.

Chair Eden, I'd be glad to answer any questions. Also Dave Stewart-Smith from the Office of Energy is also here to answer any questions. And PGE representatives are also here.

Chair Eden

Thank you. First, let me ask counsel if there was any problem with PGE representatives speaking to us. Three people have signed up from the corporation.

Larry Knudsen, Legal Counsel to the Environmental Quality Commission

No, I think that it's fine and probably appropriate.

Chair Eden

Are there questions or comments from the Commission at this point?

(Background Talk.)

Commissioner Tony Van Vliet

(Indistinguishable.)

...and the Department of Energy. (Indistinguishable.)

Chair Eden

Do you have questions for him? Is Mr. Stewart-Smith available?

(Background Talk.)

Good Morning.

Dave Stewart-Smith, Oregon Office of Energy

Good Morning, Madam Chair. My name is Dave Stewart-Smith, Oregon Office of Energy. I'd be glad to answer any questions the Commission may have.

Chair Eden

(Background Talk.)

Do you have any questions?

Commissioner Tony Van Vliet

No, not at this point.

(Background Talk.)

Chair Eden

Three folks from PGE have signed up to address us on this issue. Well, they signed up for the eleven thirty public forum. And let me back up a little bit. We do have a public forum at eleven thirty and anyone who wishes to speak to us on any issue except on those on which public comment has closed are free to do so at eleven thirty.

However, I think it's appropriate for the PGE folks to address us at this point. And that would be Mr. Lei, Mr. Dursek, and Mr. Quennoz. I'm sorry if I'm butchering those names. Please join us. Please introduce yourselves for the record.

(Background Talk.)

I don't know if everyone has seen the video; I have seen the video. Have you seen the video?

Unidentified Person

This is as an outline the presentation...
(Indistinguishable.)

Chair Eden

I'm going to give you about fifteen minutes.
(Background Talk.)
That doesn't include questions.

Steve M. Quennoz, VP of Nuclear and Thermal Operations at Portland General Electric.

Madam Chair, Commissioners, thank you for this opportunity. For the record, I'm Vice president of Nuclear and Thermal Operations at Portland General Electric. I have responsibility for the Trojan plant. In addition to that, Boardman, Beaver-Coyote, ownership share of (indistinguishable.) A plant person, I've been responsible for the Trojan decommissioning throughout the shutdown period. So, I think I'm in a good position to try to explain the motivation behind the construction of the dry storage facility.

Feel free to ask any questions at any point. We have a summary that we handed out and also, a presentation. With me today I have Dr. Wayne Lei, who is the Director of Environmental Policy at Portland General Electric. Lanny Dursek, who's behind to work the slides. Lanny is the Manager of Nuclear Regulatory Affairs at the Trojan Plant. And also in the audience is Denise Saunders, who is outside counsel for the company.

The first slide just shows you a picture of the ISFSI. And the emphasis here is that it's a new facility comprised of sealed containers that are ready for disposal purpose. We put this in just to show you the comparison of this facility with the next slide, which is the spent fuel pool. We want to emphasize here that this pool was our fact of normal operations. It's designed to be open to facilitate the transfer of between the reactor and the pool. When we built the plant it was to support a closed-in fuel cycle where fuel was being continually discharged on a periodic basis from the reactor and sent to a reprocessing facility where it was, the fissile material was reclaimed and put back into the fuel. So, it was to support the operational aspect. It was designed under that basis.

We don't feel, on the next slide, that there's evidence to justify a comparison between the two facilities. They have two very different purposes. The ISFSI is for storage, which is more than temporary, of the spent fuel. And it's a disposal system. It packages those fuel assemblies in a medium and a manner that is acceptable to an off-site geological (indistinguishable) where the pool is an operational component of the plant. It was forced into service to store this fuel because of lack of performance by Department of Energy.

So, to point out here that DEQ does agree that the ISFSI is not a replacement facility and the DEQ sites no statute or rule requiring comparison. But if there is a comparison to be made, I think the company has submitted sufficient evidence in the record to that it does reduce a substantial quantity of air and water pollution.

I go back to this, these values, it eliminates 50 curies of radioactive gases and Tritium that's released annually to the atmosphere. Having an ISFIS would totally eliminate that source of radiation. The spent fuel pool at this point in time is the only source of off-site release left at the plant, especially after we finish this year of the decommissioning process. So, it would be a big advantage to bring about this system. It also eliminates the need to dispose of about 1200 gallons of contaminated resins annually that we use to process the water that circulates through this pool. And it does prevent pollution from catastrophic occurrences.

So, let me just give you some level of where we're at as a company with regard to substantial because I think that it's conceded that it does control pollution itself as far as the purpose of the facility. I go back to Admiral (indistinguishable) who started this whole nuclear power program. One of his basic tenants that we learned as an officer in his program was to respect even small amounts of radiation. And it continues in the commercial nuclear industry with a tenant or a doctrine called "as low as reasonably achievable." That we have a duty (indistinguishable) to reduce radioactive discharges, the effects on the environment and our occupational workers; as low as reasonably achievable, as low as practical. This is consistent with orders of excellence of the nuclear industry. So, we have a long history of operating under this type of doctrine.

Another thing that I think you want to take into account is the fact that this 50 curies – I do think that we underestimate environmental impact of this spent fuel. It is very serious and we take it very seriously. It is the single most potential environmental hazard that resides within the state. The proper operation and care of that fuel is tantamount to the protection of the general public. To say that it is not substantial, if you invite a comparison between the spent fuel pool and dry storage. I don't think I want to be on the record to say that it is not substantial. Fifty curies of radiation over a short duration say over a year or two could probably make that argument but the fuel is going to be here for 30 years, 40, perhaps 50 years or more. Those add up. So, I just want to emphasize that I think we're looking a short-term analysis where we're looking at a much longer term and it is substantial. Radiation is unique and among the substances that you deal with. And, in fact, it not only interacts with body on a chemical basis such as other pollutants through chemical reactions, oxidation that would cause cellular damage. But also directly, the fact that it can directly impinge upon genetic material. So, most of the substances that you deal with outside of radiation, there is a threshold value where the body can

accommodate that level of pollutant; it can repair itself. Radiation is not; even small amounts of radiation can cause genetic damage, latent to the individuals or succeeding generations. There is a distinct difference there that requires us to go lower than regulatory limits.

I again do not want to go on the record to say that this is not substantial. I mean our necessity to earn the trust of the general public would require me to disagree with that assessment, that this is not substantial.

To give you example after example, but one of them would be that of that 50 curries, 24 of that is Tritium. Tritium is a just a hydrogen molecule. It is common to the body. The body can't differentiate between Tritium and regular hydrogen within a water molecule. That Tritium, that 24 curries if diluted in water would contaminate about 300 million gallons of water above the federal limits. It is a significant amount of radioactivity. With that said, I want to go on the record that I disagree with the assessment that it is not substantial as compared to the spent fuel pool. And that the company believes strongly in this aspect.

The last bullet on this slide, I want to go back to it because there was a comment that the Commission has or the DEQ is not or would not allow comparisons with catastrophic occurrences. I think the precedence has already been made. It is not going to expand the program. I pointed out the double hulling of barges and the diapering of substations; all of which have been approved and are strictly there for catastrophic-type occurrences. So, we're not setting precedence that we can't deal with catastrophic occurrences.

The next series of pictures, is one that I think you had a great presentation last time about this system. The first one just shows the baskets and the transfer casks. Again, we are the first to come through with a system. It's quite a good technology and offers a significant reduction in pollution.

The next slide is the concrete casks. There was an assertion that it was only there for shielding. Quite the contrary, it is there for structural integrity. A by-product of that is shielding. I know, I asked my engineers if we just did it for structural integrity would it look any different? And they said, "no." No, because for a right circular cylinder to have proper stability against tip-over from ground motions, it has to have a certain height-to-width ratio for that. So, you get the, you have, you achieve first the structural stability of this integrated package first and then you get shielding.

The pad and the transfer station again, I want to emphasis there that you would want these system unshielded sitting out in the gravel in the lower portion of the site. This system will work. It's one integrated package that is needed to achieve the purpose. So, the pad is important to us. The transfer station is important and even the final equipment, the welding and the vacuum drying equipment is integral to achieving the integrity, the confinement, the containment that is the hallmark of this system. Contrary to what is said, they are not a one-time use system, we will keep these things, these pieces of equipment throughout the life of ISFSI. Because they would be use in an over-pack situation if we had problems with a basket on the pad. They have a design feature that we would encapsulate it in another (indistinguishable.) So, we would expect to evacuate

that container with the vacuum drying system and also weld it up with that automatic welding system. So it is, these systems have no use outside of the ISFSI and they have more than a one-time use.

Go back to the heart of the matter on the next slide, the sole purpose again is pollution control and we think we have met the dual criteria. The fact that it does have the purpose and that it does meet the requirement for the acceptable manner which it meets that purpose.

I don't think I need to read those. I hope that I have justified the substantial. I think you all agree that it does prevent pollution. Maybe a little more emphasis on the two acceptable manners that this is a disposal system and it does qualify as a treatment works. A treatment works is to treat, hold or stabilize waste. And it is certainly holding. It is consistent with past approval of tanks as treatment works. It does meet the treatment works definition and it is a disposal system. Its only purpose is to facilitate the disposal of this high-level waste.

The second tenant there is 2g and that it's used to detect, deter or prevent spills and unauthorized releases. And again this is the air pollution prevention from this stream and other radioactive gases. I think we disagreed with the conclusions in there that it needed to be prior to the discharge to the atmosphere. We felt that that was not a correct reading of the rule and that only had to be read in conjunction with rendering such gases as less noxious before discharge. So I think we feel we are on the side of the angels on both of those two requirements as far as acceptable methods for accomplishing pollution control purpose.

Again, this next slide is a reiteration...

Tape Change

This slide again reiterates our position that it does accomplish pollution control because it is a disposal system. And it does accomplish pollution control because it does prevent spills and a release of air contaminates.

The next slide again is to clarify our position on insignificant contributions. Because it was asserted that portions of this system have no significant contribution to the purpose of the facility. I'd just like you to revisit the ORS on what is an insignificant contribution and it does reference parking lots, and road improvements, landscaping, external lighting, signs and things of that nature. I honestly feel these supporting systems to this ISFSI do not meet that. I think we're well within statute with regard to insignificant contribution. We take exception (indistinguishable) with certain aspects would make an insignificant contribution. They are all needed exclusively to support that ISFSI, to provide the containment and the integrity that the system would enjoy.

In the next slide really is the heart of the matter...

Commissioner Van Vliet

Let me interrupt you. Are you saying that those are included in your request or are not included in your request?

Mr. Quennoz

They are. What we've included we feel are well within...

Commissioner Van Vliet

All of those things right there?
(Background Talk.)
Those are not included in your ori...?

Mr. Quennoz:

They are not, excuse me. What we have included meets that test. They are not landscaping and lighting.

Commissioner Van Vliet

Those are out?

Mr. Quennoz

Those are out.

Chair Eden

But they've included the pad and the welding ...

Commissioner Van Vliet

I understand... I just want to make sure

Mr. Quennoz

It gets down to the assertion of the exclusive purpose of this system. And I think there has been a lot of statements that have sent mixed-messages and I'll gladly clarify them here.

The purpose again is not to comply with regulations. This is not a principal purpose facility. It is not required. We did not have to do it other than (indiscernible) beyond regulations. The purpose is not for economic benefit. There is a focus in the denial that shows there was some O & M gains, I think missing a big part of the picture. You know, when a company, when it spends capital money up front does not just look at those cash flow (indiscernible). It has to look at the whole project. Normally you look at the payback period on a project like this of 5 years. With deregulation of the industry those metrics have been down to one to three years. Just an easy mental arithmetic on this, if it costs \$55 million and it's saving you six million a year then the pay-back period is nine years. Actually, we know we can drive that down. So the payback period is much longer than ordinarily would be acceptable for a company to invest those capital dollars. It's not because of financial considerations that we built this ISFSI.

I want to say here that it's, we're driven as our core value of our company on environmental stewardship. That's our business tenant and to make a decision strictly on

financial considerations is generally a wrong decision. (Indiscernible) It generally costs you more money. So, we didn't do this because of financial considerations.

Another one that was mentioned, lower insurance costs. We provided evidence that it won't reduce our insurance costs.

Another assertion was that it was done to facilitate decommissioning. Again, I want to point out we have 60-years (indiscernible) various methods equally acceptable as far as decommissioning. When we went into decommissioning process we looked at the economics of either path -- either safe storage or prompt decom and from a net present value both of them were the same. There was no financial gain between one or the other. Our motivation to go into prompt decommissioning was primarily, besides environmental stewardship, to bring Trojan into conclusion because it was our responsibility and not some other generation's responsibility. But other than that it was strictly to protect the company and the ratepayer against burial costs. And those burial costs are predicated on curie content and volume. And even with the spent fuel in the pool as it is, we've got rid of 99 point (indiscernible) percent of all non-fuel radioactivity on the site. We've just worked around the spent fuel pool and we've gotten rid of 80% of the volume that has to be sent off for burial. Of the 20% left most of that can be sent to a de minimis landfill by a waste processor at a much-reduced price. So, we have, without putting the spent fuel in dry storage, accomplished those objectives of decommissioning. Again, we can sit back, revise our decommissioning plan and go into a safe store, let nature, mother nature work on the rest of the site for a number of years and then come back and finish it. So, I don't see where people can say we that we did this to facilitate decommissioning.

Chair Eden

I want to ask you a question then. I understand that part of the fuel that part of the fuel that is in the spent fuel pool can be reused or (microphone interference) correctly. If this was just strictly for just operational purposes or if this was a pollution control system, why didn't you build this storage slash disposal system for the fuel that you couldn't reuse initially? Other words, why didn't you think this storage and disposal facility was important at the time the plant was operational -- important enough to build then?

Mr. Quennoz

One thing is when we did start it up (microphone interference). We were mandated by the Department of Energy, for nuclear proliferation concerns, that we have to take all the fuel and put it in a repository. So, those options really weren't open. We didn't have the latitude. At that point, all of the fuel had no economic value once it was discharged from the reactor. We can manage our flux within the reactor from cycle to cycle by reusing more and more of the fuel in different loading patterns but it really had no commercial value as far as reclaiming the isotopes or fissile materials once the decision was made by the Department of Energy. So, we were just stuck and no economic value to the fuel after that (indiscernible.)

Chair Eden

Well, that kind of begs my question or I'm not understanding your response. Why didn't you build this dry storage facility at that time if you had fuel that could no longer be...?

Mr. Quennoz

Oh, because...

Chair Eden

... had commercial value, could no longer be used. I mean as a country we're in the same place as we were then...

Mr. Quennoz

Exactly, and...

Chair Eden

...we still don't have a repository.
(Background Talk.)

Dr. Lei

Commissioner Eden, if I may, the longer history is actually very interesting. We just started (indiscernible) most recently. I can show you actual textbook that communicated that the spent fuel in a spent fuel pool will be held there for about six months and they'd do something else with it. In fact what they could have done as something else was actually reprocess the fuel. About two-thirds of the uranium was actually unused (indistinguishable.) The idea there of reprocessing was to reclaim it. As well as reclaim some of the plutonium that was actually created during the fission process. And then reuse that back into the nuclear fuel cells. As late as 1980 these kinds of possibilities were still on the table. At that time you wouldn't have built a structure that would load this stuff in a deep hole in the ground until the United States actually assumed the responsibility for the fact that was probably the best thing to do. (Indiscernible)

(Background Talk.)

Dr. Lei

...and also to follow along...

Langdon Marsh, Director of Department of Environmental Quality

Excuse me, could you identify yourself for the record?

Dr. Lei

I'm Wayne Lei, Director of Environmental Policy for Portland General Electric

Mr. Quennoz:

This technology didn't exist until most recently and there were some prototype configurations in the late '80s where utilities had one of these storage canisters on their site and were evaluating it. It wasn't until the time of about '92 there were a couple of other facilities, nuclear facilities that had ordered these systems. At the time we started, there were no licensed dual-purpose systems today, presently. We're the only ones that, well, there are about six of them in the process of being licensed. The technology just didn't exist. But now that the technology exists, I think it's again our duty to build a system like that because it offers an advantage.

What I'm trying to emphasize here is that there's a confusion, I believe, between benefits and the purpose of the facility. Hopefully, I've eliminated the fact that these benefits, they may or may not exist, but the only purpose of the facility is to control pollution. I think it would be poor policy on the part of the Commission to nullify the structure just based on concerns over those benefits. Cause if there are economic benefits, they certainly don't qualify for tax credits and I think that you can direct the staff to eliminate such benefits through the return-on-investment calculations, if you should agree that this is a facility that qualifies on the merits of purpose and acceptable methods. That's what we're trying to get at. I think we need to be very clear on the purpose. And hopefully, there is no purpose cited. There are only benefits.

Chair Eden

Commissioner Bennett

Commissioner Harvey Bennett

Back on your spent fuel pool (microphone noise)

Chair Eden

Can you speak up please?

Commissioner Bennett

Yes, back on you spent fuel pool (microphone noise.) It says that you need to eliminate 1200 gallons per year. Where do those go?

Mr. Quennoz

Those are resins (microphone noise). They are put in a high integrity container, and de-watered and packaged properly and transported by an exclusive carrier to Hanford and there they are buried in a low-level facility.

Commissioner Van Vliet

I take it the NRC has been interested in the various techniques of doing this. Have they been watching this particular design at all?

Mr. Quennoz

Yes.

Commissioner Van Vliet

... and they've passed on it as an acceptable design?

Mr. Quennoz

We're still, we have a storage license. There's a two part because it's a dual-purpose facility. You need to license it for storage. You need to license it for transportation. We have the storage license. We need to gain the transportation license and that's the responsibility of our vendor. That requires them to construct a part scale models and (indistinguishable) ensure that it can meet the hypothetical and normal conditions of transport accidents that you'd expect on transportation over public highways. We haven't got that yet and it looks like it's going to be a year, several years before we can get that.

Commissioner Van Vliet

I was going to say with that kind of tonnage in that container you probably couldn't get it on a semi, you're going to put it on a rail-car, aren't you?

Mr. Quennoz

Exactly.

Commissioner Van Vliet

Second question was, there's been a lot of talk about encapsulating this in glass over the years and putting it in salt. Where is Yucca Flats now ready to take it? Do you have any indication from the NRC, which hasn't been greatly helpful in disposing of waste? How far are you going to have to store this stuff on your site before you can look at storing it at the national level?

Mr. Quennoz

Well, we know that their latest schedule for implementation of Yucca Mountain was based on 2010 date. They are ten years off before they can fully construct (microphone noise) at Yucca Mountain. One of the interesting things that you may not know is that fact that the commercial industry paid into a fund to support this facility. So we put in \$45 (indistinguishable million/billion) dollars worth of private money to build this facility. But everybody wants access to it and the DOE has said that it would accept fuel on oldest fuel first basis. It won't accept all our fuel at anyone time. There is a cue and based on a 3,000 metric ton per year acceptance rate, it would take approximately twenty years for them to accept all fuel within our spent fuel pool and clear the pool out. So, that would mean ten years plus twenty years – a thirty-year period. Now the DOE because of funding considerations has most recently stated that it can only accept fuel on a 900-ton per year acceptance schedule because of, even though it is fund separate it is still a budget item and there is still budget consideration. So, with 900 you can expect that twenty years will expand out, I really haven't analyzed that; but it's at least going to double it. So, you're talking, honestly, forty, fifty years before all fuel...

Commissioner Van Vliet

You've gone way beyond your pay-back period of nine years because you're going to have maintenance of those for a long, long time. Is that calculated in your cost?

Mr. Quennoz

That pay-back period, we would expect to recover moneys for damages for nonperformance of DOE and to off-set those extended delays but I think it would be speculative how much money we will capture. But I think, one thing I can say, when we look at the economics of this project, it doesn't go to the corporate books. What it does is serve to reduce the cost of service to our ratepayers. That's our ratepayer's money that's constructing this facility. So, it reduces the cost of service, reduces (indistinguishable), reduces our prices. So, we're not looking at this as a windfall for the corporation. It is good for the ratepayers. I'm here today to really to meet our fiduciary responsibility to the ratepayers to get value for the money that they have.

Commissioner Van Vliet

Well, I understand that (indistinguishable.) The question is if you didn't have the tax credit, as you know, the tax credits have been under fire for a long time as maybe not being viable anymore. But, if you didn't have the tax credit would you be pursuing this particular technological avenue?

Mr. Quennoz

Well, you (indistinguishable.) I would say, I probably should ask my accountant (indistinguishable), but I would say we're going to do it anyway. Because no matter what, it is quite (indistinguishable.) It's going to pay off one way or another, whether it's tax credits or whatever reasons because it's the right thing to do for the people of Oregon. I think in my mind, I remember very distinctly at that time there was a big crisis with the (indistinguishable) basins at Hanford. And we interact with the people at Hanford quite a bit, for the Columbia Generating Station and also because our waste disposal site is there. That was really on my mind that the people of Oregon deserve something better than those (indistinguishable) where you have fuel that is disintegrating in those pools that are very close to the Columbia River. The company, you know you're dealing with a company that is going to do the right thing. But I think from those incentive basis, companies that are not regulated and driven by the bottom line, they need those incentives. So, those incentives, I don't think you should discount them. If you want people to go beyond regulation and you want environmental benefit for people of Oregon, those incentives are powerful motivators.

Dr. Lei

Commissioner Van Vliet, if I may add also, there is a draft environmental impact statement that's been issued by the Department of Energy out now for Yucca Mountain. It is expected to be finalized next year. That would be quite a milestone when that moves forward. The DOE expects to have licensing application in sometime around 2003 to the Nuclear Regulatory Commission. This is a facility that has to be licensed by the NRC. And an optimistic but a certainly doable date is somewhere around 2010 (indistinguishable) if you're subscribing to the question of pay-back and how long you'd have to (indistinguishable.) The DOE, and certainly this country has not had a great record in trying to close this nuclear fuel cycle. And so, but you can always get lucky, I mean that's part of the point there. I should add that this is the only fuel cycle out of all the others out there that actually is trying to be closed.

Commissioner Van Vliet

And that technology if you had to store it for fifty years on your hard pad would hold?

Mr. Quennoz

(indistinguishable) ...designed for forty years (indistinguishable.) It would have to re-licensed but we feel comfortable that we can re-license but it can't be re-licensed forever but one of the virtues of our system is that we can take and handle it and put it in new over-pack. And meet the re-licensing (indistinguishable.)

Chair Eden

Commissioner Malarkey?
(Background Talk)
Excuse me?

Lanny Dursek, Manager of Nuclear and Regulatory Affairs for PGE

Lanny Dursek speaking. The system is designed to for fifty years (indistinguishable) licensed for forty years. Typically what would happen when you get to the end of the forty years is to do a reassessment of (indistinguishable.)

Mr. Quennoz

(Indistinguishable)...what happens to an operating reactor (microphone noise) ...many of them are coming on to a protracted process of re-evaluating components and seeing if they are acceptable to continued operation. We've had several that have been brought up to re-licensing. (Indistinguishable) ...feel comfortable that people understand the effects of radiation on metals and (microphone noise)...

Chair Eden

Commissioner Malarkey

Commissioner Deidre Malarkey

I think I understand (indistinguishable) what I'm going to repeat Mr. Stewart-Smith said this last year at the hearing...

Ms. Purser

Commissioner Malarkey could you speak up?

Commissioner Malarkey

I'm sorry. Mr. Stewart-Smith said this last year at the 1999 meeting on this point; which is while there is no regulatory requirement for dry spent fuel facilities either at the state or federal level, other than time (indistinguishable.) The Nuclear Regulatory Commission has made it very clear that their preference for a closed reactor is dry interim storage of spent fuel rather than an active spent pool storage. So you can see the quandary, there's no specific regulatory requirement.

The fact that you may be extending your storage time there for longer than we expected does that eliminate the opportunity using for using the additional lands for either the park and recreation (indistinguishable) speaking of for an additional power source?

Mr. Quennoz

Yes and that's (indistinguishable.) There was a mention that we were doing this so we could release the land for unrestricted use and possible sell it. Maybe, I can clear that up. We have tried very hard to develop that land. There is six hundred acres. We work there and it's a very good site. Unfortunately, we have had no success in trying to attract tenants on that site. (Indistinguishable,) It's just too far from the current population sources. We've had a couple of tenants, small time people that have leased buildings or, excuse me, rooms within building. But we have tried very hard even attracting our own people to come out within Portland General Electric to locate at the site. We have not been successful.

So, the site from a commercial value is very low. It has probably the most value as a park. And there was mention that we would want to develop that part of the site for future generations. Well, with SB 1149 and electric restructuring of the Oregon electrical

industry, it's very clear that our large industrial customers want choice. And want to go on the market to buy what they think would be a cheaper source of power and long-term contracts for supplies of power from energy providers.

So, we're in the process of looking at our future load and finding that we have right now much more generation than we ordinarily need because of the expected loss of these customers.

So, I don't think re-powering is in the future for us at that site anytime this decade. That's just, you know, me speaking. But I do follow that. I don't think we could sell the site to a developer because the real money that's being made on developing the (indistinguishable) project is the natural development itself and also the marketing of that power. Just the land itself, most of these developers come in, they want the land free. In addition, they want a bunch of tax cuts. Other wise, they'll go to someplace else. So, we're not going to make a lot of money for our ratepayers on the land itself. So,

Commissioner Malarkey

A gas-fired plant is not an option (indistinguishable?)

Mr. Quennoz

It's an option we preserve and it's just for prudence (indistinguishable.) We've got excellent infrastructure there but the fact of it is we're submitting our rate case for 1149 this next month and we realize that we're not going to be building a lot more generation because have more generation currently than we need to supply our residential customers.

So, maybe in conclusion then, hopefully I have eliminated any of these other assertions that we are doing these for reasons other than pollution control. I really think that we need the letter of the law and we need the spirit of the law. And it's really consistent with Governor Kitzhaber's desire to provide incentives for people who go beyond the regulation. This is what we've done and we've provided substantial evidence. This has been our claim. (Indistinguishable) on the merits of it and not be concerned about the benefits of it because you'll have ample opportunity to control those concerns.

Chair Eden

Thank you. Are there other questions of Portland General Electric representatives at this time? Ms. Vandehey do you have any response?

Ms. Vandehey

I would like to emphasis that radiation or radioactivity is not a recognized pollutant – it is not regulated by air quality rules – it is not regulated by water quality rules. To have a sole purpose the pollution control, the facility must reduce, control or eliminate air or water pollution.

I would like to briefly discuss replacement facilities. The Department did not, as PGE mentioned, did not consider that the Independent Spent Fuel was a replaced facility according tax credit regulation. Replacement facilities are a term reserved for those facilities that have been previously certified. That is not the criterion on which the

Department compared the spent fuel pool and the claimed facility. The department made that comparison based on the fact that we're looking at the same spent fuel. We made the comparison on the fact that the department looks at conditions as they currently exist to determine if a substantial quantity of pollution will be controlled as a result of the claimed facility.

Chair Eden

So, are you saying that 50 curries and 1200 gallons of resin are not substantial quantities because they don't have air or water pollution or because those amounts are not substantial?

Ms. Vandehey

Madam Chair, may I ask Dave Stewart-Smith to address the quantities.

Mr. Stewart-Smith

Thank you Madam Chair, again, my name is Dave Stewart-Smith, Oregon Office of Energy. Maybe some perspective will help. It's kind of hard to get your arms around measurements like curries. It's not something that all of us deal with on a regular basis. PGE has stated that about half of 50 curries a year released from the spent fuel pool is Tritium. Tritium is a radioactive isotope of hydrogen. Most of the Tritium in the environment is naturally produced in the upper atmosphere. About three curries an hour of Tritium in the Columbia River, I estimate, flow by the Trojan plant as a result of the natural amount of Tritium that there is in surface water in the state of Oregon.

The rest of it is a noble gas, Krypton 85; it's a gas with about a ten-year half-life. Twenty-five curries a year of Krypton 85 is probably similar to the amount of noble gases released from a larger metropolitan area medical facility. But they release a different radioactive isotope primarily Xenon 133 – it's a radioactive noble gas used in medical imaging systems – probably on the order of the same radioactivity of the material of a shorter half-life material.

The 1200 gallons of resin is low-level radioactive waste. Part of a radioactive waste treatment system that PGE has had in place to extract radioactive isotopes from the water in the spent fuel pool. There's perhaps on the order of one percent of the spent fuel in the spent fuel pool, the individual pins are no longer hermetically sealed. That's typical for spent nuclear fuel. That's a pretty harsh environment inside a reactor in terms of temperatures and pressures. Some of the pins are no longer hermetically sealed and that results in a small amount of radioactive fission products leaching from the spent fuel ceramic into the surrounding waters. That's also the source of the Krypton 85 – it is also a fission product. But the material that is dissolved in that water is removed from it through a low-level rad-waste treatment system. It's similar to a water softener – ion exchange resins that take dissolved components out of aqueous solution and concentrate them in styrene matrix beads; small plastic beads that have an affinity for absorbing dissolved chemicals in solution.

Commissioner Mark Reeve

The one percent of the fuel rods that may be leaking; is there a design life, is there an expectation over like 5, 10 perhaps even 50 years if we were to stay with the fuel pool that that number would increase substantially?

Mr. Stewart-Smith

I don't believe so. Most of the damage to spent fuel pins happens in the active nuclear energy process – in the reactor itself. Once it is in the spent fuel pool, the purpose of the spent fuel pool is to provide, initially, cooling for the spent fuel. There is enough residual heat in spent radioactive fuel that it must remain in an active aqueous cooling system for five years. After five years the amount of residual heat in the spent fuel could be dealt with through air circulation which is what the dry spent fuel storage cask is designed to do – to keep the fuel cool through air circulation. But for the initial five-years, it must be done with water because water is more efficient for transfer. But in the spent fuel pool, I would not expect there would be any additional damage to the spent fuel.

Commissioner Van Vliet

So what you are saying is that that is basically a very safe structure for forty years in the water of the spent fuel.

Mr. Stewart-Smith

Properly maintained, there is no reason why the spent fuel pool could not continue to store spent fuel like it does. It is an active system. It requires ongoing staff, ongoing maintenance to keep the pump and radioactive waste treatment system operating properly. So, it has the disadvantage over the dry spent fuel storage in that it takes active maintenance on the part of Portland General Electric. That's one of the advantages of dry storage that once the baskets are welded shut and place inside the concrete silos, it is much more of a passive protective system. It is not completely without active intervention, for example, there are air vents at the bottom and the top of the spent fuel storage casks that must be kept clear. There are active radiation detection and heat detection sensors that must be kept in proper working order. And there are security requirements. So, it's not without, it's not like you can put it in the cask and walk away from it. But it requires less active intervention on the part of staff than the spent fuel pool does. But the spent fuel pool functions well. It's similar to spent fuel storage at active reactor sites around the country – over a hundred of those.

Commissioner Reeve

How about in terms of comparing the low-level (microphone noise) generation – obviously with a fuel pool your looking at whatever, however many years of use or service times the 1200-gallons or what ever it turns out to be as far as the resin generation? And it appears to me that the transfer to the ISFSI would likely result in a one-time creation or generation of a low-level waste, what with the vacuum system, etc. Has any comparison been made with the two competing systems as far as the waste generation?

Mr. Stewart-Smith

It is correct that the spent fuel pool will continue to generate low-level radioactive waste. Although the amount of radioactivity in that waste, even if the volume stays the same will continue to go down over time as fission products in the spent fuel undergo natural radioactive decay. They will reach a point of diminishing returns and I don't think they've reached that yet. Some years in the future, they will reach a point where there will be little decrease in the concentration of radio-nuclides in the rad-waste treatment storage resin over time. But it would generate a low-level radioactive waste stream for as long as the spent fuel pool were kept in active operation. I think your analogy is correct; keeping the spent fuel in operation results an annual production of low-level radioactive waste. By putting the spent fuel storage in dry storage casks would not have an annual amount. And the spent fuel pool itself would become decommissioned and become a low-level radioactive waste stream and that would be roughly a one-time event.

Commissioner Van Vliet

We have dealt a lot in the last several years with catastrophic events (indistinguishable) scenarios such as Umatilla and things like that. Talk about earthquake and pump and redundant systems going down in the waste pool.

Mr. Stewart-Smith

The spent fuel pool, I don't think we have a graphic of it available. I don't know if there is one available or not. The spent fuel pool is a substantial structure. The walls of the spent fuel pool are about 5' thick, the base is about 8' thick reinforce concrete and it's built on solid basaltic bedrock. Trojan is built on a basalt outcropping adjacent to the Columbia River. There is no cover over the top of the spent fuel except for about 20', or so, of de-ionized water. The de-ionized water both serves as a cooling medium and as shielding for the radiation given off by the spent fuel. Twenty feet of water is a pretty good radiation shield as is the concrete in the dry spent fuel casks. The spent fuel pool is a substantial structure. PGE has estimated what kind of earthquake energy that it would take to damage the structure. And I can't recall it right off hand but it would take, I believe more that a credible earthquake in the Trojan area to actually damage the spent fuel pool. Now you'd probably slosh a lot of water out of it in the event of a significant earthquake with a significant amount of horizontal acceleration gravity. If the earth under the spent fuel pool moved sideways, quickly, you would loose a fair amount of water out of it. And that water would need to be replaced. It could result in damage to the equipment, the pumps, perhaps some of the piping that connect the rad-waste treatment system to the spent fuel pool itself. But it is a substantial structure and I would expect that any natural event, the spent fuel pool would withstand this kind of forces.

Tape 3

Commissioner Bennett

... covering radiation in general. So if you want to think about it in terms of ambient radiation, that's not with your purview (microphone noise) definition of pollutants for the purposes for this program.

Mr. Stewart-Smith

I think that's what Maggie's position is.

Unidentified Person

If I could just (indistinguishable.) I think radioactive substances such as the Tritium that we're talking about (indistinguishable), that does come within (indistinguishable) of an air pollutant under this Department's rules.

(Microphone Noise.)

Mr. Stewart-Smith

...that the Krypton, Tritium and solid waste – these are all materials that are radioactive materials. It is not radiation, it is the actual energy that's being emitted by these radioactive substances (indistinguishable) that radiation...

Unidentified Person

... and so, it is our position that the radioactive substances given off by the pool (indistinguishable) are significant and obviously the Department has a different (microphone noise).....

Chair Eden

... and so the Department is saying that (microphone noise) are not. Is that correct?

Ms. Vandehey

That's correct. We were not able to determine that those amounts were significant with the information that we have.

Chair Eden

Maggie, you sound like an attorney.

Ms. Vandehey

Thank you – or maybe not.

Mr. Stewart-Smith

Again, my name is Dave Stewart-Smith, Office of Energy. When Maggie asked me to help her understand some of these issues. One of the questions she had for me was, "Well, so what?" "What's a curie and how can a curie be significant?" One of the things I told her was that not all curies are created equal.

A curie of Tritium, which is a radioactive isotope of hydrogen, is much less significant from an environmental and public health standpoint than a curie of iodine 131; which is a biologically significant radioisotope – concentrates in a portion of the body – and per unit of radioactivity taken into the human body can produce a great deal more radiation dose and potential biological damage than Tritium does. So not all curies are the same. And that's one of hard things to get your arms around.

The same can be said of noble gases. A noble gas has little or no biological significance. By that I means if you are surrounded by a cloud of air that contains a

concentration of noble gases, and we all are because there are natural isotopes of noble gases that we breathe all the time. The noble gas itself is inhaled and exhaled. It's not the type of chemical that has a great deal of biological significance. That probably doesn't have much to do with your rules but she was trying to get a handle on what's significance.

So, 50 curies sounds like a big number and if it were 50 curies of Strontium 90 or Iodine 131, or Radium 226, I'd be real exited. Taking a look at 50 curies of Tritium and Krypton 85, primarily, being released from the surface of the spent fuel pool, it would be difficult to estimate the amount of radiation dose from the general public from that amount of material. Now I applaud Portland General Electric for taking actions to reduce that. I am a radiation protection professional. And I too live by the maxim begun by the early nuclear industry that we are to maintain radiation doses and releases to the environment as low as reasonably achievable. And I believe that PGE is taking responsible action by proposing a facility like this. Were I to try and do a calculation for the amount of radiation dose to a member of the public from that 25 (or so) of Tritium and that 25 (or so) of noble gases released from the spent fuel pool, it would be a very small number and a very difficult calculation to do because of the nature of those isotopes.

Chair Eden

Dr. Lei

Dr. Lei

Again, Wayne Lei with Portland General Electric.

I'll expand on some of his comments. I'll even expand a little bit more graphically, if I may. If you were to bring 50 curies in here, and Dave would react the same way, and didn't tell us what the 50 curies were, our very first inclination would be to get very far away from it. The reason is, precisely what he just said, you just don't know what it is. It could be very (indistinguishable) you just can't sense it otherwise. The underlying scientific principal that all of the standards and regulations in the United States as radiation protection, together with the world in fact, is this theory is that the only safe exposure is zero. And any incremental piece beyond that can be deleterious. It's very arguable scientifically as low dosage, that in order to be conservative and protective, the scientific body in this country, and it was done 45-50 years ago. And then world came to the agreement that this would be the conservative principal in which case, all protection standards. And in fact, this only operating philosophy that I know of for any industry that is actually mandated by law. You'll find that in 10 CFR 20. In fact when I worked at Trojan for five years, that actually was the department that I ran. There is called as low as reasonably achievable department by the way. (Indistinguishable) Every nuclear power plant will have one of these. In fact it even specified how many staff you have to have at a minimum to address these issues. There's a lot of science in how you do it, plenty of engineering, and a little bit of art in how you do that. (Indistinguishable.) That is in the philosophy of radiation (indistinguishable.)

Chair Eden

Commissioner Bennett.

Commissioner Bennett

(Indistinguishable.) Are we listening to good on the one hand, a policy on the other-hand, and the question of opening a policy beyond where the funding structure works? Is that what we're listening to here? I mean it sounds like no one would want to suggest that we want to build facilities less than what is going on here. On the other-hand we have a policy that doesn't fit this process and in that process we have other agencies or institutions which would come under this same opening. I think we could go on and on about trying to define whether this is good or not, I don't hear anyone challenging whether that's the case. I'm just wondering where we go in a one day meeting with this project – how much further?

Chair Eden

Commissioner Van Vliet.

Commissioner Van Vliet

Talk about the general public understanding what we're talking about today. They don't understand the difference between fusion and fission and they are only interested in whether they will glow in the dark, so to speak, from some kind of facility. But one of the things that interests me about this because it doesn't fit tightly in our requirements. It is new technology which we have tried to foster in our outlook. And, I hate to be talking on the positive side of this because I have been anti- tax credits for a long, long time. But also, there is a factor of what I consider environmental safety that has to be considered that is a little difficult with radiation than it is with other types of pollutants that we deal. One of the questions that was in Maggie's first statement, "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 2." And I fall under that particular area of thinking that it has a pollution control purpose. Then if you look under 2, "If the Commission determines that the pollution control would be accomplished in one of the specific manners described in statute and rule" and that's where I think the hang-up is right now is on that number 2.

And, I guess we could argue about whether it meets the letter of the law in all the particular areas but I do feel that it basically is a jump into new technology, which meets one of our requirements – the one on recoverable materials, it does not. But then when dealing with radiation, you're dealing with diminishing materials basically overtime and so you have a different kind of standard that we never addressed in the law. So how do we dance on the head of a pin?

Commissioner Bennett

On the edge.

Chair Eden

I want to move to the next issue for a few minutes and that is if you could tell me how you determine what is sufficient to persuade you that the saving is part of the purpose.

Ms. Vandehey

What I used, (microphone noise) the evidence that was before us in the decommissioning plan. In the decommissioning plan it listed the O & M costs for both the dry storage and the wet storage. That was from 1997 figures; of what we had available to us. That shows \$6.8 million savings.

Chair Eden

I can do the math. And I have done the math and I've figured out that over the period of what we're talking about, 40 or 50 years, there's a net savings of \$217 million. And my question is, "What's the standard by which the Department is saying that something is sufficient enough or something is large enough to move into the realm of that's the real purpose rather than the exclusive purpose being pollution control?" I just want to understand your thinking.

Ms. Vandehey

The thinking is based on past Commission discussions, past Commission direction. And we looked at the amount of the entire facility and looked at the amount of \$6.8 million over 10 years. That was within the bounds of what the Commission has directed the Department before. We did not look at specific cost analysis. That is beyond the scope of this preliminary application process.

Chair Eden

And what specific are you talking about when you say previous Commission direction? I mean, I hate it when you throw it back at us where it belongs. But I mean in terms of is there some kind of percentages?

Ms. Vandehey

No, there is not a percentage...

Chair Eden

... you're just talking about past cases and...

Counsel

... Again, I don't know if this will be helpful but let me give it a shot, this has come up in previous cases, in Tidewater, for example, and others. And I think the Commission has taken the position that when you're operating under the sole purpose test, you can only have one purpose. And so if there are any other benefits, they must truly be incidental. And I think you've also taken the position previously, that in making that determination, you would apply an objective test – what a reasonable person might find incidental or not. And beyond that I don't think I can provide any assistance but I do believe that is true.

Chair Eden

Maybe incidental might have been decreased insurance premiums for the double-hulled barges as opposed to the purpose that we ultimately decided.

Counsel

Well, actually, I believe the Commission's view was that a decreased insurance premium was more than incidental and would have controlled the matter. But in Tidewater, we actually had affidavits establishing that it wasn't going to affect the insurance premiums.

Chair Eden

Okay.

Mr. Quennoz

Madam Chair, Steve Quennoz again. I just want to try to clarify the idea of cost savings. The company does not earn any return on cost of service – only on investment in that plant. So whether the cost of operating the facility is ten million dollars or four million dollars, it is irrelevant to the corporation. There is no saving in it for the corporation. There is a savings associated with the ratepayer. And the ratepayer, we're going to proceed (indistinguishable) against the Department of Energy to make them whole (indistinguishable), in any case. But it's not about the money because it doesn't enter into the equation.

Commissioner Bennett

It's got to be about money. That's what we've been talking about all morning. Cost to build or tax credits or something else.

Chair Eden

Are there other questions or comments?

Ms. Saunders

I'd just like to add, Denise Saunders again (microphone noise) ... the cost savings, the statute says, when it talks about sole purpose it asks you to look at primary purpose and it does specifically, the rules (indistinguishable) were filed under says there may be other economic benefits and that's not going to be tracked from the sole purpose requirement. Those are going to be taken into account when you do the return on investment calculations. In terms of looking at whether this qualifies as a sole purpose, the economic benefits shouldn't come into play; those need to be looked at in the next round when you do final application.

Counsel

As your legal counsel, I'm not sure I concur with that advice. Certainly, I don't disagree with the notion that there may be incidental benefits. And that those incidental benefits can be addressed through the cost allocation equation if it's a qualifying tax credit facility. But it is clear under the sole purpose test that you can have only one purpose and if those other benefits are sufficient to become a purpose then you are not a sole purpose facility. If we loose sight of that then we loose sight of the statutory distinction between the primary purpose test and the sole purpose test.

Chair Eden

We've been at this for an hour or more – two hours. And so, we need to table this or we need to (indistinguishable.)

Commissioner Bennett.

Commissioner Bennett

We had a very brief statement somewhere in this that said, I believe from PGE, that said review it and take the business gain out of it and see what's left. I thought I heard that somewhere in the discussion.

Counsel

I think what you heard was the notion that the company believes that this facility qualifies under the sole purpose test. And if you do that and if you make that determination and then when they come back for their actual tax credit, you will be able to back out these economic benefits, O & M savings and what not, you'd be able to back them out at that time. I think that was the point of those comments.

Commissioner Malarkey

How would that mean, in a sense the motion would be to approve or deny the preliminary (indistinguishable.)

Counsel

Yes, today, you'd need to either approve it or deny it or send it back to us with some instruction to get you some more information.

Ms. Vandehey

I would like also like to clarify that if you do approve it then we will not revisit any of the distinct portions. We will not revisit it if this facility is built as planned then it meets the definition of a pollution control facility. We will review the cost of the facility and we will review the percentage of that cost that is properly allocable to pollution control.

Counsel

My recommendation would be quit frankly that we address this in segments. Both in terms of whether or not it meets the sole purpose test and then also the other two points: how it does so or does not and the issue of divisible components. I think we should address all those in an order.

Chair Eden

Well, assuming the preliminary certification is approved, then we would have a separate motion on each of the components?

Counsel

Yes.

Chair Eden

What's the pleasure of the Commission?

Commissioner Malarkey

Prior to the, following the (Indistinguishable.) Correct? Not within the motion?

Counsel

For example, you might find that it qualifies as a sole purpose, that it does so in the following ways and that each of the components contribute significantly or that only some of the components contribute significantly. I think that is what we are looking for.

Ms. Vandehey

That's correct. We would have to look at all the distinct portions. Distinct portions are eliminated under what is not included as a pollution control facility. It states that any distinct portions that does not contribute to the sole purpose of the facility should be eliminated as being eligible.

Commissioner Van Vliet

You want to get the ball rolling Madam Chair? I'll move that we accept preliminary certification of application 5009.

Commissioner Malarkey

Seconded.

Chair Eden

It has been moved and seconded that we approved preliminary certification of tax credit application number 5009. Is there further discussion?

Commissioner Reeve

Madam Chair?

Chair Eden

Commissioner Reeve

Commissioner Reeve

I'll put my thoughts on the table for a moment here. I would not be able support the motion simply because, although I applaud PGE for what it is trying to do, I can't in good conscience under our statutes and rules as written, believe that this is a qualifying facility. I think they are doing the right thing but under our current statute, I don't think they are entitled to a tax credit for doing so. I think that at least when we looked at the Tidewater application and I think a couple of others, but certainly Tidewater comes to mind. We did at that point look closely at the statute and the sole purpose section of the statute really does require an exclusivity of purpose and it does require reduction of a substantial amount of pollutants. I'm persuaded by the Department's analysis and I concur in it that essentially we are not dealing with a facility that qualifies under the statute as a sole purpose facility.

I think it would be a much different analysis if for example, the NRC got off its tail and said, "All these pools all over the country are not quite as safe as they ought to be. They are not as low as reasonably achievable. And that we should not have pools; we should

have dry cask storage" in the regulation. Then we'd be looking at the primary purpose. They haven't done so.

I'm persuaded by Mr. Stewart-Smith's analysis of the radiation and the fact that the rules don't require the dry storage and that what is occurring in the pool is safe even if it isn't as safe as possible.

Just in summary, I don't think this facility qualifies as (indistinguishable.)

Commissioner Van Vliet

If the argument is over sole purpose, I think I would be probably be long gone if I wait for the NRC to take any kind of definitive action. And I'm not prepared to probably subject the people of State of Oregon to waiting for the NRC, which hasn't been forthright in their actions for getting things done. Sole purpose to me, in this particular case, is the general protection of the public by sealing up radioactive material. That's as simple as I can put it. And I think that under sole purpose, and I think that's where the argument comes in our definition between what is how we call the shots as far as the law is stated now. I guess the question is whether that is a valid conclusion that the safety of the general public in dealing with radioactive material can be classified as a sole purpose and I look at...(microphone noise.)

Chair Eden

Comments? Are we ready to vote? It's been moved and seconded the Commission approved preliminary certification of tax credit application number 5009. We'll probably need a role call.

Director Marsh

Commissioner Malarkey – Aye
Commissioner Van Vliet – Aye

Commissioner Reeve – No
Commissioner Bennett -- Aye
Chair Eden – No

Chair Eden

So, that's three to two. So, the preliminary certification has been approved. What's the next step?

Counsel

Madam Chair, we need to understand whether or not that applies to all the components of the facility or not?

Ms. Vandehey

Additionally, Madam Chair, I would like to know if this extends to medical and industrial applications – if it sets precedence?

Chair Eden

Well that's a question that will be determined as we go down the road.

So, if you want to make a motion on each particular component or if you want to make a motion that indicates that all of the components in (indistinguishable.)

Counsel

Are we all clear what the components are?

(Background Talk.)

Ms. Vandehey

Would you like me to? The vacuum drying station, the welding system, the transfer station and the associated equipment (the vehicles), the pad...

(Background Talk.)

Counsel

Perhaps the best way to do it would be to see if there is a motion to exclude any of those items on the theory that it doesn't contribute a significant amount.

Chair Eden

Commissioners? I won't be making that motion.

Commissioner Van Vliet

I need an explanation on the transfer station whether that is something that is really into the future or whether that is something basically an integral part of the system right now.

Ms. Vandehey

(Microphone Noise.)

(Background Talk.)

Yes, the transfer station and auxiliary materials will be used to move the casks.

Madam Chair, there is also another policy decision inherent in approving the transfer station. And that policy decision is that in the past the Department has not allowed costs associated with material handling. Also inherent in the decision for all of the equipment, with the exception of the baskets and the casks, those components used for the installation or during the movement of the facility have not been allowable.

Chair Eden

Like air ducts?

Ms. Vandehey

Like air ducts. Like conveyor belts.

Commissioner Van Vliet

But you would do that in your analysis as you go through it.

Ms. Vandehey

No, I would not be able to. According to the 1998 rules, as you have approved certification of this facility, we will not look at the individual parts because you would have already approved the purpose of the facility.

Denise Saunders

Madam Chair, if I might make a suggestion. It might be better to put this off until the next meeting and then we can address each one of the components. It might be more helpful to you to do that. For example, we do disagree that they haven't granted certification for facilities like these in the past. (Indistinguishable) at our Boardman plant we have (indistinguishable) certification for our ash handling system. There are a number of considerations that go into looking at the individual components. The one option might be to put that off to the next meeting. Just a suggestion.

Commissioner Van Vliet

Is the next meeting 2005?

Chair Eden

The next meeting is November 30th – December 1st. And what does that meeting look like?

Ms. Purser

It's horrible.

Chair Eden

So we either do it today – it doesn't sounds like we don't have time to do it next time. So we either do it today or we do it in the meeting after that.
(Background Talk.)
And the Department is indicating displeasure with that decision.

Lydia Taylor, Deputy Director

Could we go into it later in this meeting and we could come back to you? And see if that would be satisfactory for you to look at a little more detail, so we could map it out?

Commissioner Van Vliet

Great.

Chair Eden

Sure. At the end of the end of the agenda, is that what you want to do? Like 3:00 o'clock in the afternoon?

Ms. Vandehey

You set the time and we'll be ready with what we can (indistinguishable.)

(Background Talk.)

Commissioner Van Vliet

Two forty-five.

Helen Lottridge, Administrator Management Services

We could come – Helen Lottridge – if we could have an hour or more that would be good.

(Background Talk.)

Ms. Vandehey

After the rest of the tax credits.

Chair Eden

Right, we have to do the rest of the tax credits and...

(Background Talk)

...then we'll probably want an hour after that. And then the corporation would rather...

(Background Talk)...

we put this off so they can come back.

Ms. Saunders

We're willing to come back this afternoon. Whatever your pleasure is.

Chair Eden

All right. Then why don't we take this up at one o'clock; right after lunch.

Ms. Purser

You have a time-certain public comment at one o'clock.

(Background Talk.)

Chair Eden

Time certain public comment is... oh, we can do it right after that though. Can we not?

Okay. So right after the public comment on Agenda Item "J", we can take up this tax credit again.

Ms. Lottridge

Okay.

Commissioner Bennett

Madam Chair?

Chair Eden

Commissioner Bennett?

Commissioner Bennett

Before we leave, the Environmental Quality Commission memo that was sent on September 29th, on page 2. You outline six items. Are there more than six items.

Ms. Vandehey

Those items are what PGE identified as the distinct portions.

Commissioner Bennett

So, is there either six or fewer?

Ms. Vandehey

Well, no, there are more, less-distinct components within these.

Commissioner Bennett

Thank you.

Chair Eden

Okay. So, let's take a break until 10:15 on the clock at the back of the room.

(Background Talk.)

Application 5009 Reconvened

Chair Eden

Okay, are we back to Agenda Item B?

Ms. Purser

I've got to switch the tape before we do this.

TAPE 7

Counsel

... if that's okay with her.

Ms. Purser

Okay then.

Chair Eden

Counsel?

Counsel

Yes, I want to just clarify what you decided in our earlier proceedings. And what I think were decided by implication but I'm not sure, so I'd like to get it on the record. The earlier vote, you determined that the facility did meet the sole purpose of pollution control. But there is still an issue about which method allowed by statute was used to meet that purpose. And I'm assuming, there are three, it could have been air pollution air cleaning device, it could have been water pollution treatment works, or a solid waste process. And my understanding, based upon what is in the staff report, is that the Commission was assuming that this would be a water pollution treatment works. Because the staff report it essentially said that if you were to make the earlier determination that it was a pollution control facility that staff didn't believe that it could meet the air pollution air cleaning device test or the material recovery process test. So, for purposes of drafting an order

when we get there, I'd like to know whether or not I can assume this is a water pollution treatment works method.

Ms. Saunders

Madam Chair, can I just say something? I think there is another method that we...

Chair Eden

Identify yourself, please.

Ms. Saunders

I'm sorry. Denise Saunders, counsel for PGE. There was another method that we identified in our various letters and that was under the rule, I don't know exactly which one, it was subpart "g" under the rules that were in effect at the time we filed our application. It said that is it could be accomplished by detecting, deterring, or preventing (indistinguishable.) And that's the portion that we maintain that it falls under.

Chair Eden

Counsel?

Counsel

Counsel for PGE is correct, although the statute doesn't encompass another test, there is one in the rules for spill prevention. My recollection is that the staff report did not recommend the acceptance of that on the notion that this really not really the type of product that would spill in the traditional sense of the word. But counsel for PGE is correct that that is forth method that is at least envisioned by the rule.

Ms. Saunders

It doesn't just talk about spills, it talks about released too. And if you'll recall the discussion this morning, we have a lot of (indistinguishable) releases such as Tritium from the spent fuel pool. (Indistinguishable.) We think it falls under all three but we think that is the most evident. (Indistinguishable.)

Commissioner Malarkey

We (indistinguishable) motion, person (indistinguishable) made the motion.
(Background Talk.)

Chair Eden

I can't hear what you are saying.

Commission Malarkey

Oh, I'm waiting... Tony made the motion (indistinguishable.)

Commissioner Van Vliet

Well, it goes to releases and spills, it changes really what the Department has looked at as their particular interpretation of this. I personally like releases and spills but it doesn't include both air and water. The more narrow interpretation is to look at the water only. And so, I think that so be a decision by the Commission here, which one they want to operate under on this.

Ms. Lottridge

For the record, my name is Helen Lottridge, I'm the Administrator of the Management Services Division for DEQ. Would you want to hear from staff at this point?

Chair Eden

Certainly.

Ms. Vandehey

Considering that the Commission determined that the sole purpose was pollution control...

(Background Talk.)

Ms. Lottridge

Madam Chair, let me clarify, I understood that wanted to know what staff's consideration was as far as the spill portion of the regulation. Is that the clarification that you would like at this point?

(Background Talk.)

Ms. Vandehey

I had asked counsel to help me come up with where the spill portion of the rule was derived. We were not able to tell where the authority came through. Our best guess is that it is a left over from when spills had an eligible component under the pollution control tax credit law. However, that is still a part of the rule. And by that, we thought that spills came under water quality versus under air. And that is why we looked at the water quality component.

Commissioner Van Vliet

And you didn't look at air at all...

(Background Talk.)

...under the release part?

Ms. Vandehey

Yes, we did. However, we could not track back to the authority.

Commissioner Van Vliet

You just tracked the water side.

Ms. Vandehey

That's right because we had clearer indications that it came out under (microphone noise) spills to waters of the state (microphone noise.)

(Indistinguishable. Background Talk.)

Chair Eden

... Well, it's the wish of the Commission probably is that this was the method in the state that probably was applicable. But it sounds to me as though we need a motion.

Counsel

It would be helpful. Otherwise, I will have to suppose when I draft this order. And I would prefer not to.

Commissioner Bennett

I so move.

Ms. Purser

What is he moving?

Chair Eden

Yes, what are you moving? That the method by which the Commission is applying the...

Counsel

... that the sole purpose of pollution control is accomplished by virtue of this being a treatment works by disposing of or eliminating water pollution.

Chair Eden

That would be your motion?

Commissioner Bennett

Yes.

Commissioner Malarkey

I second it.

Chair Eden

Okay, it has been moved and seconded that the rational for meeting the sole purpose test under the previous action by the Commission was under the water pollution portion of the statute.

(Background Talk.)

Do we need a role call again? All those in favor signify by saying "aye." Opposed?

Vote from Written Record

Commissioner Malarkey – aye

Commissioner Van Vliet – aye

Commissioner Reeve – no

Commissioner Bennett – aye

Chair Eden – no

Chair Eden

Three to two.

(Background Talk.)

Chair Eden

Do you wish to continue? Counsel?

Ms. Lottridge

Thank you counsel. Chair Eden, we appreciate your taking the time to give us that clarification on the actions that were taken this morning. So, we'll move now then to the request, as we understood it, of the Commission that the Department come back with a recommendation on each of the discrete elements of the pollution control facility. And in order to approach that recommendation, the question that needs to be answered is, "Does this distinct portion of the facility make a significant contribution to the sole purpose of pollution control?" So, that's the question really to be asked of each of the distinct portions, each of the six. And so I'm going to ask Maggie to present the Department's recommendation for each of the six elements of the facility. And I think you'll find those six elements listed in your staff report. I'm sorry, I don't have the page number.

Chair Eden

Let me ask a question of Larry first. Should we do a separate motion for each of these distinct components?

Counsel

It would be helpful. I hate to have you take the time but I think it would be helpful.

Chair Eden

Okay. We'll do it that way then.

Ms. Vandehey

We did look at how pollution control was accomplished for each of the distinct portions of the facility.

Number one, we looked at the baskets. The baskets are a clear fit under the pollution control tax credit regulations considering that you determined that the sole purpose of the facility is pollution control. They provide secondary containment of spent fuel, debris, and other radioactive waste. The baskets control industrial waste with the use of a treatment works as allowed in the tax credit regulations and water quality statutes. The reason that it's defined as a treatment works is because it "holds" the waste.

Chair Eden

Questions or comments of staff regarding the baskets? ... Let's do them one-by-one.
(Background Talk.)

Commissioner Van Vliet

(Background Talk.)...move to accept the baskets.

Ms. Saunders

Madam Chair (indistinguishable) ...

Chair Eden

Why would you object to this?

Ms. Saunders

We're not objecting. It's just in terms of the process. Our fundamental premise in this is that you can't break it up into individual components. And that you need to look at it as a whole. So, we kind of put together an outline based on that premise. So, if I might ask that we present our whole thing as one piece after they get done and then maybe you vote individually on each component after you've had a chance to see it.

Chair Eden

I'll go along with that but I'm going to give you five minutes at the end of this presentation. Staff.

Ms. Vandehey

Number two - the casks. The casks provided structural support for the baskets. Structural support of pollution control facilities are allowable costs. However, the casks do provide shielding of radiation. Radiation is not a pollutant regulated by DEQ, it's not a pollutant that is eligible under the tax credit regulations. Shielding is required by the NRC (indistinguishable) Siting Council. Therefore, the casks do not have an exclusive pollution control purpose.

Number three – the pad. The pad provides structural support of the cask. However, the casks do not have an “exclusive” pollution control purpose.

Items 4, 5 and 6 -- the vacuum drying system, the welding system and the transfer station are equipment used to install the baskets. It is difficult for us to determine where the pollution control begins and ends. We have brought that before the Commission many times. Where is the beginning and end of a pollution control? Inclusion of items used to install a pollution control facility is beyond current program practices. Upon final application, the Department would not be able to include this equipment because it will no longer be in use at that time – with the facility having been constructed already. These items make an insignificant contribution to the sole and exclusive purpose of water pollution control.

Thank you Madam Chair, Commissioners.

Chair Eden

Is that all you have to say about these individual components? (Indistinguishable.) Okay. Counsel? (Background Talk.) I thought this was going to take a lot longer. They have five minutes

Mr. Quennoz

Okay. I'll improvise here. Madam Chairman, Commissioners. Thanks again for the opportunity to come back and actually present more information with regards to the major components.

Chair Eden

Would you identify yourself again, please for...

Mr. Quennoz

Yes, Steve Quennoz, Portland General Electric. We did take the time to during this interim period to look at the ISFSI major components and we addressed all six of them; the same components that DEQ has mentioned.

i would like to show again a slide or at least talk to you on the Oregon statute regarding insufficient contribution. And it's very clear what level, what threshold is presented by those statute with regard to what is and what is not within the letter of the law regarding insufficient contribution. And again I don't need to mention, it's landscaping and company related signs and things like that. I don't think any of the components associated with this fall into that range.

With that being said, Id' like to go back. The sole purpose again is to prevent pollution all based on integrity. If you provide integrity, you prevent the pollution. So, when we get into baskets, again the baskets I think we are in agreement there. We acknowledge that the baskets meet the disposal definition, that they are considered a treatment works, and they function by providing integrity preventing pollution.

Now the vacuum drying system. It is the next one on your list and it removes water, residual water, evacuates the baskets and also allows, facilitates the helium. All of those are need to provide the integrity of the baskets. Without it, you have corrosion. Without the helium, you have overheating of the pins. High stresses and strains due to (indistinguishable), a phenomenon, it would jeopardize the integrity of the fuel pins if we didn't have the proper thermal coupling.

The welding system again, it's a seal. You need to have that system to provide that seal. Without the seal, without the integrity, you're not preventing pollution.

The storage casks, I do agree that there is a provision there, incorporated in the design with regard to shielding. But the primary purpose of those casks are to provide structural integrity included natural circulation cooling. Without the cooling, you're going to overheat the pins and you're going to have a problem. Without the structural integrity, you're going to have a problem. Again I want to mention that you wouldn't want to have these things unshielded on the lower portion of the sight in a pole barn. It's just not integral to the safety of that system.

The transfer system, something that we use as far, if you consider it a disposal system that it processes the fuel from the reactor building to the pad then also to eventual shipment to a geological repository. Those supporting systems such as the transfer station, such as the transfer casks are all integral to the safe and pollution free handling of that package through that disposal process. We also feel there that the approval of the transfer station won't expand the tax credit program. The Commission has already approved the handling such as the Boardman fly-ash transfer system.

The concrete pad. I'll make the same appeal to logic there. Without that pad, you're subjecting the system to tip-over and other types of events due to external. It would jeopardize the integrity of the package and jeopardize the pollution free nature of it.

So, the conclusion we have, again, I applaud you because I know you are struggling with some policy issues and I know you have concerns with the overall dollar amounts that you are approving. But I think you have been extremely judicious by looking at the statutes and seeing if it meets the statutes and voting on its merit. I just ask you again to please consider these on its merits. And if there is the concern about costs and I would say, and I wouldn't disagree that there is incidental benefits that need to be eliminated by the staff through their return-on-investment calculations. But this is not the process to do it. If you want to be consistent and you want to be fair, you need to understand that all of these work as an integral package. By consistency and fairness, I mean that when you voted for vehicles, for example, you didn't say just the engine, we're going to just allow the tires and headlights. I think you look at insignificant along those lines. You look at it as a package. And I encourage you to do the same way. We've look at other things that have been approved and I think you don't disallow it because of the structural integrity. If you've approved a waste neutralization system, you approved it as a package. The approval was through things of hydraulics and pneumatics and instrumentation and charts. And I think to be consistent and fair, you need to do that here. So, integrity is the only, the primary function of this system we've designed. And all these directly support this.

Chair Eden

Thank you very much.

Commissioner Malarkey

Madam Chair?

Chair Eden

Yes, Ma'am, Commissioner Malarkey.

Commissioner Malarkey

As I see it and I'm not a physicist and I can't give any argument you. But you speak of the structural integrity and the prevention of over-heating. To me these are the elements that are at issue as far as the potential of water pollution. But the very fact that, as Maggie say's, that radiation shielding is not part of the rules, limits us (indistinguishable) how we view (indistinguishable.) Myself, I see three things in here that are acceptable in how I (indistinguishable) but which would limit some of the others in the integrity of (indistinguishable.)

Mr. Quennoz

Yes, I know you're concern there and again, there may be some off-set and balance between integrity and shielding. One follows the other in my mind. I mean, we designed the system for structural integrity, it provides for shielding. Other designs use all metals, for example. And do that for (indistinguishable.) You can use a number of materials. But to have a robust design, you're not going to come up with a package that is much different from what we have here. Because, when we designed it, we designed it strictly for structural considerations and then we go back and analyze it for the shielding effects. Those calculations, we have never have had yet to revise that, the structural design to get adequate shielding.

Chair Eden

Dr. Lei.

Dr. Lei

Wayne Lei, Director of Environmental Policy, Portland General Electric.

I should have addressed that point for you because this is probably one of the most fundamental pieces of confusion about radioactivity and radiation. There is kind of a serious disconnect about how you view these kind of things because if you're worried about the radioactivity, which this certainly contains. Fundamentally, following that, you're worried about the toxic nature of it. And the relatively unique nature of it is the radiation comes off it. That's just the fact of the matter here. And it does make radioactivity a unique pollutant in that regard. It is the only pollutant that I know that has (indistinguishable) that can literally penetrate (indistinguishable.) And that's pretty much what you are worried about. So that (indistinguishable) toxicity. So, you're really worried about one, contain the one, really you have to understand the quality of it (indistinguishable.)

Chair Eden

Other questions or comments? Thank you very much. Then if the Commission is to move forward on this then we need a motion with respect to each of these components that staff has, despite the companies position, that staff has delineated.

Commissioner Van Vliet

I think we have already done number one, the baskets. (Background Talk.)

Chair Eden

We stopped, didn't we?

Counsel

The motion was made (Background Talk.)

Ms. Purser

I don't have it down.

Chair Eden

I don't think we did baskets, I think we figured out the method of pollution control. So we haven't done any of the components. Is that correct?

Ms. Purser

Yes.

Chair Eden

So, is someone moving to approve?

Commissioner Van Vliet

I'm moving to approve baskets.

Commissioner Malarkey
Second.

Chair Eden
To include baskets under the tax credit application ...

Counsel
I think to make the baskets make are a significant contribution... (Background Talk.

Chair Eden
Do you want to read back Tony's motion to him?

Commissioner Van Vliet
You just said make a significant contribution.

Chair Eden
Okay. All those in favor signify by saying "aye."

Vote from Written Record
Commissioner Malarkey – aye
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden
Number 2 – Casks.

Commissioner Van Vliet
I move that we accept casks as making a significant part of the pollution control.

Chair Eden
Second?

Commissioner Malarkey
Second.

Chair Eden
(Indistinguishable.) Discussions? All those in favor signify by saying "aye." How many is that? Three? Opposed?

Vote from Written Record
Commissioner Malarkey – aye
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden
Pad.

Commissioner Van Vliet

I don't think you can store those things without the pad, Madam Chair. So, I'll move that the pad be accepted (indistinguishable) contribution.

Chair Eden

Contribution?
(Background Talk.)
Is there a second?

Commissioner Bennett

Second.

Chair Eden

Discussion? All those in favor signify by saying "aye." Opposed?

Vote from Written Record

Commissioner Malarkey – no
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden

That one failed, 3-2

Chair Eden

Vacuum-drying system.

Commissioner Van Vliet

Since you're drawing water out of there, Madam Chair. I move that we accepted the vacuum drying system as part of the significant purpose.

Chair Eden

Is there a second?

Commissioner Malarkey

Second.

Chair Eden

Discussion? All those in favor signify by saying "aye." Opposed?

Vote from Written Record

Commissioner Malarkey – aye
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden

Transfer station.

Commissioner Van Vliet

(Indistinguishable) from “A” to “B”, Madam Chair. I move that the transfer station is part of the significant process.

Chair Eden

Is there a second?

Commissioner Bennett

Second.

Chair Eden

Discussion? All those in favor signify by saying “aye.” Opposed?

Vote from Written Record

Commissioner Malarkey – no
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden

That one failed. The welding system.

Commissioner Van Vliet

(Indistinguishable.) Madam Chair, without putting the lid on, I move that we accept it as part of the process.

Chair Eden

Is there a second?

Commissioner Malarkey

Second.

Chair Eden

Discussion? All those in favor signify by saying “aye.” Opposed?

Vote from Written Record

Commissioner Malarkey – aye
Commissioner Van Vliet – aye
Commissioner Reeve – no
Commissioner Bennett – aye
Chair Eden – no

Chair Eden

That one passed. Is there anything more to be decided, or discussed or be asked about, or voted upon?

Counsel

Only one more, I'm afraid. I need to have you decide if you want to do the order or if you would like to delegate the Director to sign the order on this since there is possibility of appeal we want to prepare a formal written order.

Chair Eden

I'd like to see the order.

Counsel

So, we'll bring it back at the next meeting.

Chair Eden

Yes. Tony wants to see it, too.

Commissioner Van Vliet

In writing that order, I think there ought to be some wording in there that we were dealing with a special kind of pollution in this particular case that would somewhat explain why we deviated probably from the strict interpretation of some of the previous interpretation of the statute.

Chair Eden

Commissioner Bennett

Commissioner Bennett

Would you just review quickly, what we did and didn't pass (indistinguishable)?

Counsel

My understanding is that the Commission determined that this was a sole purpose pollution control facility. It accomplishes pollution control as a water pollution treatment works. That baskets, casks and vacuum drying systems were significant components but that the pad, transfer station and welding system were not.
(Background Talk)

Chair Eden

No, the welding system was approved as making a significant contribution.

Counsel

I'm sorry. Yes, the transfer system and the pad were not. (Indistinguishable.)

An aside on the order denying of the Willamette Industries tax credit ensued.

Chair Eden

This was a difficult decision, we appreciate your coming down here and arguing with us about it. (Indistinguishable) your information, it's very helpful. We don't always decide what you want us to and sometimes we do. This is a first, in my tenure on this Commission.

Mr. Quennoz

I'd just like to equally extend the company's gratitude. In my observation, this is the first time I've been before this Commission. And I'm very impressed with your deliberations and time (indistinguishable) time you've taken. Thank you for all consideration on this (indistinguishable.)

Chair Eden

Yes, and thank you for the materials. I think they were quite helpful.

Approved _____
Approved with Corrections _____

Minutes are not final until approved by the EQC

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

**November 6, 2000
Special Meeting**

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

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

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

Chair Eden called the meeting to order at 9:05 a.m. The EQC went immediately into executive session. During this time final candidates for the position of Director for the Oregon Department of Environmental Quality were interviewed. The Environmental Quality Commission also deliberated on the candidate's suitability for the position. The executive session was held pursuant to ORS 192.660(1)(h). A representative of the media was in attendance, and was informed he could not report on any of the deliberations that occur during the session.

At 2:00 p.m. the Commission came back into regular session.

Chair Eden indicated they had had twenty-one applications for the position of Director and narrowed the field to six applicants that were interviewed by Chair Eden and Vice-chair Van Vliet. Two final candidates were interviewed today in executive session. She also expressed thanks to Vice-chair Van Vliet, Interim Director Lydia Taylor, and the Department of Administrative Services for their participation in the hiring process.

A motion was made by Vice-chair Van Vliet to appoint Stephanie Hallock Director of the Department of Environmental Quality. It was seconded by Commissioner Malarkey and a roll call vote was taken: Commissioner Malarkey, yes; Vice-chair Van Vliet, yes; Commissioner Reeve, yes; Commissioner Bennett, yes; and Chair Eden, yes. The motion passed with five "yes" votes.

There being no further business, the meeting was adjourned at 2:10 p.m.


A press conference with the new director followed.

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 7, 2000

To: Environmental Quality Commission

From: Stephanie Hallock, Director 

Subject: Agenda Item F, Total Maximum Daily Load (TMDL) Process and Update on the Tualatin TMDL, EQC Meeting November 31 - December 1, 2000

Statement of Purpose

To provide the Commission with an overview of:

- Oregon's water quality, surface water quality concerns and the TMDL process;
- Status on how the Department is currently proceeding with TMDL development statewide;
- Areas in which the Department will be developing general rules for Commission approval to guide TMDL development and implementation process; and
- Plans for repealing Tualatin Sub-Basin specific rules that were developed in the 1988 to implement Oregon's first TMDL.

Background

Oregon has over 114,000 miles of river and streams (approximately 45% of these are perennial), 6,000 lakes and 206 square miles of estuaries. Under the Federal Clean Water Act, the state is to identify waters which currently do not meet water quality standards (303(d) list), establish a schedule and develop TMDLs for these listed waters. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. It is the sum of the allowable loads from point and nonpoint sources and natural background and includes a margin of safety.

The Department has committed, through the Oregon Plan and in a Memorandum of Agreement (MOA) with the Environmental Protection Agency (EPA), to complete TMDLs by 2007 (based on the waterbodies listed on the 1998 303(d) list). Generally, these will be done on a sub-basin basis level (see attached figure). There are 91 sub-basins in Oregon. This MOA is an integral part of a Consent Order signed by Judge Hogen in May 2000, which was the culmination of lawsuit and settlement discussions between EPA and Plaintiffs (Northwest Environmental Advocates and Northwest Environmental Defense Center) over Oregon TMDLs. The Consent Order requires EPA to complete TMDLs if Oregon fails to meet its schedule.

Memo To: Environmental Quality Commission

Agenda Item F, Total Maximum Daily Load (TMDL) Process and Update on the Tualatin TMDL, EQC Meeting Page 2

In 2000, the Department has:

- completed and received EPA approval of the Grand Ronde Sub-basin TMDLs;
- recently closed comment or has out for comment the Tualatin Sub-basin, Umatilla Sub-basin and South Fork Coquille TMDLs; and
- will shortly have out for comment Tillamook, Hood, Williamson, Sprague, and Upper Klamath Lake Sub-basin TMDLs.

TMDLs are submitted to EPA for approval. EPA generally takes 30 days to act on the submittal. If they disapprove, either the state modifies the TMDL to satisfy the concerns or EPA establishes the TMDL. The pace of completion of TMDLs is accelerating, especially with 9 Willamette Sub-basin TMDLs due by 2003.

The Department will be developing some general rules regarding TMDLs that will enhance and clarify TMDL development and implementation. These rules will be based upon much that has been agreed upon in the MOA with EPA. The Department will be bringing these proposed rules to the EQC for approval, likely towards the end of 2001.

The Tualatin was the first TMDL completed by the Department in 1988. The EQC established, under *Special Policies and Guidelines*, rules for implementing the Tualatin Basin TMDLs for phosphorus and ammonia. The first few TMDLs (Tualatin Sub-Basin (OAR 340-41-470 (9)), Yamhill Sub-Basin (OAR 340-41-470 (10)), Bear Creek Watershed (OAR 340-41-385) as well as the Upper Grande Ronde Sub-Basin (OAR 340-41-745)) were implemented this way. The rules either established loading capacities and/or set up timing and program requirements for developing program plans from cities, counties or other agencies. The major reason for rules was that other program requirements such as SB1010 to address agricultural contributions or storm water permits to address urban runoff were not in place at that time. These requirements are currently in place.

Given the number of TMDLs that the Department has been working on, the Department indicated to the EQC (Agenda Item O, December 13, 1990) in 1990 that it would not continue to establish TMDLs by rule but would implement them via permit modification and agreements.

In May 2000, the Department asked for an extension of current Tualatin TMDL EQC compliance order until December 2000 so that the Department could complete the revision and update of the Tualatin TMDL. The Tualatin TMDL has been out for public comment between August 1 – October 27, 2000. The Department is reviewing comments and the TMDL will be revised, if needed based on comments, and submitted to EPA in December 2000. The TMDL modifies the current phosphorus and ammonia TMDLs and establishes new TMDLs for

Memo To: Environmental Quality Commission

Agenda Item F, Total Maximum Daily Load (TMDL) Process and Update on the Tualatin TMDL, EQC Meeting Page 3

temperature, bacteria and low dissolved oxygen (in tributaries). This will be a total of nearly 90 individual TMDLs (TMDLs are counted for each pollutant on each water quality limited segment that was identified on the 1998 303(d) List).

The Department is proposing to come back to the EQC in January 2001 with a proposal to repeal the Tualatin Rule and replace it with a Department Order. The repeal of the Tualatin Rule is currently out for public comment. The Department will implement the revised TMDL through permit revisions for point sources and through programs such as the Forest Practices Act (forestry), Agricultural Water Quality Management Area Plans (Agriculture) and Federal water quality management plans.

Authority of the Commission with Respect to the Issue

Establishment of TMDLs is in accordance with Section 303 of the Clean Water Act and 40 CFR, part 130.7 and OAR 340-41-026(4)(d). ORS 468B.020, ORS 468B.035, ORS 468B.048 and ORS 468B.110 provide authority for implementation of the Clean Water Act and the setting of water quality standards. ORS 183.310 to 183.550 provide authority to adopt, modify or repeal rules for the administration of water quality standards.

The 1988 rules promulgated by the EQC amend OAR 340-41-470 by establishing instream criteria (TMDLs) for both total phosphorus and ammonia-nitrogen at various locations on the main stem Tualatin River and at the mouths of selected tributaries and requirements and timelines for program plans.

Alternatives and Evaluation

- Develop Regional, Basin, Sub-Basin or Watershed specific implementation rules – this would be likely be redundant and time consuming;
- Develop general TMDL development and implementation rules and repeal sub-basin or watershed specific rules – this is the Department's preferred option;

Summary of Public Input Opportunity

This agenda item is informational only and has not had public comment. The Tualatin TMDL, its revision, proposed repeal of the Tualatin Rule (OAR 340-41-470 (9)) and any proposed general TMDL rules, each will have their own public review and comment.

Conclusions

The Department believes that TMDLs should be implemented through existing federal and state authorities (permits, Forest Practice Act, SB 1010, etc.) and not through individual rule making for each sub-basin or each TMDL.

Intended Future Actions

The Department intends to return to the Commission in January 2001 regarding repeal of the Tualatin Rule (OAR 340-41-470 (9)) and will return to the Commission at some future date regarding development of general rules related to TMDLs.

Department Recommendation

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

Attachments

Reference Documents (available upon request)

1. Memorandum of Agreement between the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality Regarding the Implementation of Section 303(d) of the Federal Clean Water Act. February 1, 2000.
2. Consent Decree between Northwest Environmental Defense Center (NEDC) and Northwest Environmental Advocates (NWEA) vs Carol Browner, Administrator of the United States Environmental Protection Agency. May 2000.
3. EQC Agenda Item O, Status Report on the Establishment of TMDLs, December 13, 1990.

Approved:

Section:

Andrew I. Schaedel Dick Pedem

Division:

Neil Mullane Greg J. Prof

Report Prepared By: Andy Schaedel

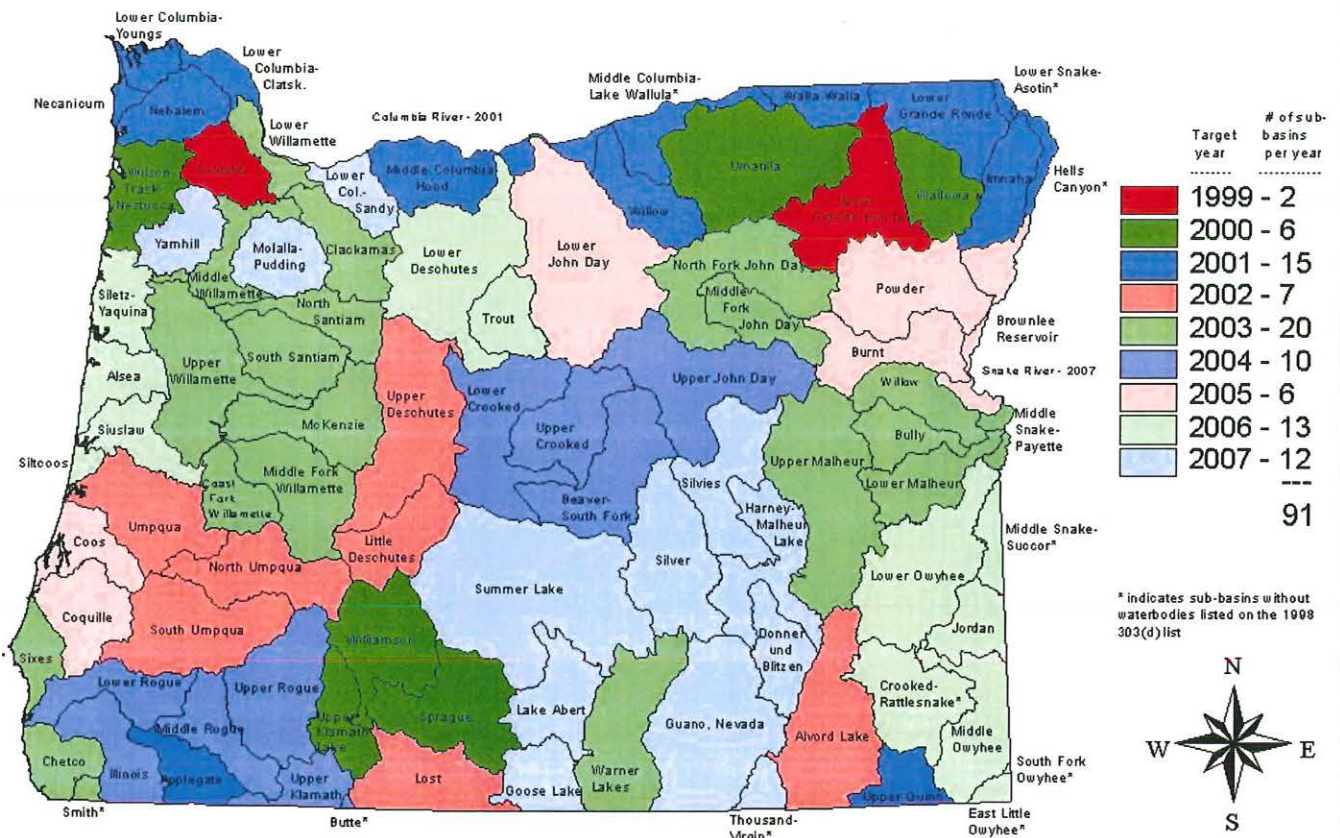
Phone: 503-229-6121

Date Prepared: October 18, 2000

Memo To: Environmental Quality Commission

Agenda Item F, Total Maximum Daily Load (TMDL) Process and Update on the Tualatin TMDL, EQC Meeting Page 5

Sub-Basin Target Dates for Completion of TMDL's for Waters Listed in the 1998 303(d) List



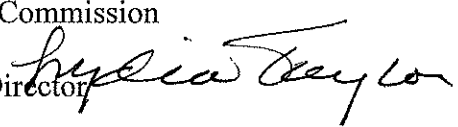
Revised Target Dates 9/14/99

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 22, 2000

To: Environmental Quality Commission

From: Lydia Taylor, Deputy Director 

Subject: ~~h~~ Addendum to Agenda Item G
December 1, 2000, EQC Meeting
Correction – Denial of Application Number 5423

The Department used the wrong set of factors to determine the percentage of the facility cost that could be allocated to pollution control on Leupold and Stevens' application number 5423. This resulted in a recommendation to deny certification. Instead of considering return on investment factors, staff should have considered the percentage of time the facility is used for pollution control. This is the correct factor to consider for facilities with costs that do not exceed \$50,000.

The Department recommends that the Commission approve application 5423 as corrected on the attached Review Report.



Tax Credit Review Report

EQC 0012

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: **manufacturer of period
reproduction lighting fixtures.**

Taxpayer ID: **93-0372974**

The applicant's address is:

**14400 N.W. Greenbrier Parkway
Beaverton, OR 97006-5790**

Director's
Recommendation: **APPROVE**

Applicant	Leupold and Stevens, Inc.
Application No.	5423
Facility Cost	\$42,360
Percentage Allocable	100%
Useful Life	10 years

Facility Identification

The certificate will identify the facility as:

**Installation of a Beckhart
Environmental 250 gallon batch water
treatment system with filter press.**

The applicant is the owner of the facility located
at:

**14400 N.W. Greenbrier Parkway
Beaverton, OR 97006-5790**

Technical Information

The claimed facility is the installation of a Beckhart Environmental wastewater treatment system that removes regulated metals from a wastewater stream generated by the applicant's parts cleaning operations. The Beckhart Environmental "Water Wash" treatment system uses agitation, aeration, and the addition of flocculation polymers to precipitate regulated metals out of the waste stream. These metals include cadmium, chromium, copper, lead, nickel, silver, and zinc. The treatment system also uses hydrated lime for pH neutralization and clarification. The claimed facility is comprised of:

- An equalization tank to receive the raw wastewater.
- A reaction and mix tank where the waste water and the injected treatment chemicals are mixed
- An automatic treatment chemical pumping and metering system.
- A clarifier section to remove suspended solids from the waste stream.
- A filter press and filtrate tank system to remove the floc from the wastewater stream before being discharged to the sewer.

Prior to the installation of the claimed facility, the applicant had to dispose of about 500 gallons/week of contaminated wash water. The claimed facility reduced the discharge of regulate metals well below the levels required by the applicant's Industrial Wastewater Discharge Permit (IWDP). The comparison of pre-treatment and post-treatment results to the IWDP allowed daily maximum levels is as follows:

	<u>Pre-treatment</u> (mg/L)	<u>Post-treatment</u> (mg/L)	<u>Allowed by IWDP</u> (mg/L)
Cadmium	not detected (ND)	ND	0.11
Chromium	0.50	ND	2.77
Copper	1.26	0.40	3.38
Lead	4.77	0.51	0.69
Nickel	ND	ND	2.00
Silver	ND	ND	0.43
Zinc	3.32	0.20	2.61

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new wastewater treatment system installation** is to prevent, control or reduce **water pollution** in compliance with regulations imposed by the Unified Sewer District (Permit #133-032-1, issued 10/29/99).

ORS468155(1)(b)(A) The control is accomplished by reducing water pollution with a treatment system that meets the definition of treatment works in ORS 468B.005(6).

Timeliness of Application

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

<i>Application Received</i>	06/20/00
<i>Application substantially complete</i>	06/20/00
<i>Construction Started</i>	07/16/98
<i>Construction Completed</i>	08/31/98
<i>Facility Placed into Operation</i>	09/02/98

Facility Cost

Facility Cost	\$ 42,360
Eligible Facility Cost	\$42,360

The claimed facility cost was less than \$500,000; therefore, an independent accounting review was not required. Per 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, the only factor used to determine the percentage of the facility cost that is allocable to pollution control is the percentage of time the facility is used for pollution. 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. No previous tax credits were identified.

DEQ and other Permits issued to facility:

ACDP #AQGP-004 issued 08/09/99

1200-Z Stormwater Discharge Permit #10067 issued 10/28/97

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ

Environmental Quality Commission


- Rule Adoption Item
- Action Item
- Information Item

**Agenda Item G
December 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>		
Air (12 applications)	\$4,412,966	\$2,188,933
CFC (1 application)	\$1,800	\$900
Field Burning (4 applications)	\$462,968	\$207,823
Noise (2 applications)	\$343,741	\$171,871
Perc (3 applications)	\$83,843	\$41,922
Plastics (10 applications)	\$499,167	\$249,583
Solid Waste (7 applications)	\$1,621,566	\$806,658
USTs (13 applications)	\$2,245,197	\$1,054,789
Water (8 applications)	\$658,628	\$329,314
Approve (60 applications)	<hr/>	<hr/>
	\$10,329,876	\$5,051,792
<i>Deny</i>		
Air (1 application)	\$38,267	\$19,133
Water (4 applications)	\$228,382	\$93,011
Deny (5 applications)	<hr/>	<hr/>
	\$266,648	\$112,144
<i>Reject</i>		
Air (6 applications)	\$831,166	\$415,583
Water (2 applications)	\$1,773,781	\$886,891
Reject (8 applications)	<hr/>	<hr/>
	\$2,604,947	\$1,302,474
<i>Transfer</i>		
Certificate 4067		
Certificate 4063		
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. Reject the issuance of tax credit certificates for the application presented in Attachment D.		
Transfer Certificates as presented in Attachment E.		
<i>Margaret C. Vandenberg</i> Report Author	<i>J. R. Ross</i> for HELEN LOSTRIDGE Division Administrator	<i>Lydia Taylor</i> Director

November 7, 2000

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

Date: November 07, 2000
To: Environmental Quality Commission
From: Lydia Taylor, Interim Director 
Subject: Agenda Item G, December 1, 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.
- Applications recommended for Rejection are presented in Attachment D
- Certificates presented for Transfer are in Attachment E.

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, or the Pollution Prevention Tax Credit Programs.
2. Includes one replacement facility.
3. Do not represent any preliminary applications for the Pollution Control Tax Credit Program.
4. Are organized in application number sequence.

Application 4979 – Willamette Industries

Application number 4979 was originally scheduled for EQC consideration at four meetings: November 18, 1999, February 10, 2000, May 17, 2000 and September 29, 2000. The Department considered additional information regarding the unsubstantiated costs that had previously been removed from the eligible facility cost. The Review Report reflects this additional information.

Application 5236 – Smurfit Newsprint Corporation

On application 5236, the applicant claimed six major components: two baghouses, a pneumatic conveyor system, two wood-waste truck bins and a trailer loading area. The Department recommended the approval of the truck bin enclosure as the only component of the application that met both the eligibility requirements and the filing deadline.

On September 26, 2000, the applicant's attorney submitted a letter to provide additional information on the timing of the project. Mr. Thomas R. Wood of Stoel Rives stated that the applicant believes that the dust bin enclosure was essential to the baghouse project. This is important because the definition of "substantial completion" means the completion of all elements that are essential for the facility to perform its pollution control purpose.

For the Department to change their recommendation the applicant would have to provide documentation verifying that the baghouses, the pneumatic conveying system and the truck bins were not operating as pollution control equipment until July 26, 1997 or after. The application documents and Mr. Wood's letter do not provide such documentation. Therefore, the Department recommends excluding the two baghouses, the pneumatic conveying system and the truck bins for untimely submittal.

Application Number 5345 – Van Beek Dairy

The September 29, 2000 EQC Staff Report stated that the claimed facility was a replacement facility for a previously certified animal waste system. The applicant demonstrated that both animal waste systems are currently operating. Staff corrected the Review Report.

Application Number 5432 – Times Litho, Inc.

Times Litho, Inc. received a tax credit application on December 13, 1991 for a TEC Phoenix Thermal 7000 Turbomix oxidizer. The previously certified facility developed cracks that allowed VOCs to bypass the combustion chamber. The applicant replaced the previous equipment with the Regenerative Thermal Oxidizer claimed on application 5432. The new facility is eligible for the remaining value of the original certificate according to ORS 468.155 (2)(e)(B). The original certificate is provided behind the Review Report for application number 5432.

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 is not eligible for a second tax credit with two exceptions.

1. If the facility was installed in response to a new DEQ, EPA or a regional air pollution authority requirement; or
2. If 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.

4

When the Commission approves a replacement facility for the remaining certificate value, the original certificate is reissued. The certificate will show the original conditions of 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 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, or 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.

Application Number 5167 – Willamette Industries

Application number 5167 was removed from the EQC Agenda on four occasions: November 18, 1999, February 10, 2000, May 17, 2000 and September 29, 2000.

Application Number 5299 – Willamette Industries

Application number 5299 was removed from the EQC Agenda on four occasions: November 18, 1999, February 10, 2000, May 17, 2000 and September 29, 2000.

Background REJECTIONS – Attachment D

Staff recommends the rejection of the applications presented in Attachment D because the Oregon taxpayer failed to file a final Pollution Control Facility Tax Credit Application within two years after substantial completion of construction of the pollution control. Rejection of the applications in Attachment D:

1. Is based on the timing requirements set forth in ORS 468.165(6) and the Pollution Control Facilities Tax Credit regulations.
2. Does not represent any preliminary approvals for the Pollution Control Tax Credit Program.
3. Is consistent with the guidance document *000802_Topic_Deadline for Filing*.
4. Is consistent with the Commission's direction – most recently provided on May 17, 2000 in regards to application 4570.

Mitsubishi Silicon America

Applications Numbered 5049, 5100, 5101, 5102, 5103, 5104, and 5105

The Department included the Mitsubishi Silicon America applications in several EQC Staff Reports. Due to confusion regarding the date that construction of the claimed pollution control facility was completed, both parties worked toward a common understanding of the circumstances and timing of construction completed and when the facilities began operating for their intended purposes. On May 17, 2000, the Commission provided clear direction on the deadline for filing a pollution control facility tax credit application. Consistent with this direction, the staff recommends the rejection on the Mitsubishi Silicon America applications. Mitsubishi Silicon America reviewed the pending applications according to the guidance document *000802_Topic_Deadline for Filing*. The applicant confirmed that the applications did not meet the deadline for filing according to the guidance document. A letter from the applicant is shown behind application number 5049.

Background TRANSFERS – Attachment E

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 4063 – Miller's Sanitary Service, Inc.

Jonathan M. Angin requested the transfer of Certificate Number 4063 from Miller's Sanitary Service, Inc. to Waste Management of Oregon, Inc. The request was accompanied by copy of the Articles of Merger and descriptive pages of the Plan of Merger.

Certificate Number 4067 - David L. Towery, Sr.

Gary W. Lebold requested the transfer of Certificate Number 4067 from David L. Towery, Sr. to Lebold Business Development Incorporated. The request was accompanied by the Warranty Deed recorded in Marion County on August 16, 2000.

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 reject certification for the tax credit applications as presented in Attachment D of the Department's Staff Report. The Department recommends the Commission transfer the certificate presented in Attachment E of the Department's 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.

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Attachments

- A. Summary
- B. Approvals
- C. Denials
- D. Rejections
- E. Transfers

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:

Margaret Vandehy for JER

Division:

JRR for HELEN LOTTRIDGE

Report Prepared by: Margaret Vandehy

Phone: (503) 229-6878

Date Prepared: November 7, 2000

Attachment A

Summary

Department Recommendation

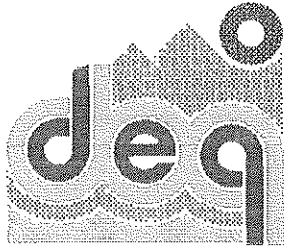
	App. No.	Media	Applicant	Certified Cost	Percent Allocable	Value
Approve	4979	Air	Willamette Industries, Inc.	\$ 638,662	100%	\$ 319,331
Approve	5236	Air	Smurfit Newsprint Corp.	\$ 24,184	100%	\$ 12,092
Approve	5271	Air	Eagle-Picher Minerals, Inc.	\$ 1,415,430	100%	\$ 707,715
Approve	5314	Plastics	Agri-Plas, Inc.	\$ 48,891	100%	\$ 24,446
Approve	5332	Noise	Oregon Steel Mills, Inc.	\$ 99,246	100%	\$ 49,623
Approve	5333	Noise	Oregon Steel Mills, Inc.	\$ 244,495	100%	\$ 122,248
Approve	5345	Water	Van Beek Dairy	\$ 98,823	100%	\$ 49,412
Approve	5361	FB	Indian Brook, Inc.	\$ 155,970	100%	\$ 77,985
Approve	5402	Air	ESCO Corporation	\$ 531,950	100%	\$ 265,975
Approve	5406	Water	Doherty & Russell	\$ 8,774	100%	\$ 4,387
Approve	5408	Air	REXAM Graphics, Inc.	\$ 847,898	100%	\$ 423,949
Approve	5409	FB	McKee Farms	\$ 14,857	100%	\$ 7,429
Approve	5413	Air	Lanz Cabinet Shop, Inc.	\$ 154,264	100%	\$ 77,132
Approve	5414	SW	Lanz Cabinet Shop, Inc.	\$ 3,300	100%	\$ 1,650
Approve	5415	SW	Lanz Cabinet Shop, Inc	\$ 55,000	85%	\$ 23,375
Approve	5416	Air	LANZ Cabinet Shop, Inc	\$ 390,000	91%	\$ 177,450
Approve	5417	Air	LANZ Cabinet Shops, Inc.	\$ 13,000	100%	\$ 6,500
Approve	5421	FB	James Van Leeuwen	\$ 13,772	100%	\$ 6,886
Approve	5422	USTs	Robert E. Miles	\$ 107,437	99%	\$ 53,181
Approve	5424	Water	Rejuvenation, Inc	\$ 79,909	100%	\$ 39,955
Approve	5426	Water	Portland General Electric	\$ 81,781	100%	\$ 40,891
Approve	5431	Air	Fujimi America Inc.	\$ 61,356	100%	\$ 30,678
Approve	5432	Air	Times Litho, Inc.	\$ 284,119	100%	\$ 142,060
Approve	5433	Perc	Thomas Joseph, Inc.	\$ 7,867	100%	\$ 3,934
Approve	5436	USTs	Traughber Oil Company	\$ 75,465	79%	\$ 29,809
Approve	5438	USTs	Barman: RJ & MC Barman	\$ 493,653	94%	\$ 232,017
Approve	5442	Plastics	Denton Plastics, Inc.	\$ 12,600	100%	\$ 6,300
Approve	5443	USTs	Truax Harris Energy LLC	\$ 324,491	93%	\$ 150,888
Approve	5444	USTs	Truax Harris Energy LLC	\$ 275,020	93%	\$ 127,884
Approve	5445	USTs	Truax Harris Energy LLC	\$ 324,162	93%	\$ 150,735
Approve	5446	USTs	Truax Harris Energy LLC	\$ 304,129	96%	\$ 145,982
Approve	5449	SW	Newberg Garbage Services	\$ 1,000	100%	\$ 500
Approve	5451	USTs	Stein Oil Co., Inc.	\$ 7,758	100%	\$ 3,879
Approve	5452	USTs	Stein Oil Co., Inc.	\$ 36,037	100%	\$ 18,019
Approve	5454	USTs	The Jerry Brown Co., Inc.	\$ 153,195	92%	\$ 70,470
Approve	5455	CFC	Dailey's Tire & Auto	\$ 1,800	100%	\$ 900
Approve	5457	USTs	Stein Oil Co., Inc	\$ 6,605	100%	\$ 3,302
Approve	5461	Air	Riverview Abbey Mausoleum	\$ 16,263	100%	\$ 8,132
Approve	5464	Plastics	Ernst Manufacturing Inc.	\$ 45,000	100%	\$ 22,500
Approve	5466	Air	Forrest Paint Co.	\$ 35,840	100%	\$ 17,920
Approve	5469	SW	Rexius Forest By-Products	\$ 49,765	100%	\$ 24,883
Approve	5470	Water	Art & Ann Hop	\$ 38,481	100%	\$ 19,241
Approve	5471	SW	Western Bank	\$ 821,356	100%	\$ 410,678
Approve	5472	Plastics	BOWCO Industries, Inc.	\$ 6,025	100%	\$ 3,013
Approve	5473	Plastics	BOWCO Industries, Inc.	\$ 140,075	100%	\$ 70,037
Approve	5474	Water	Portland General Electric	\$ 49,984	100%	\$ 24,992
Approve	5475	FB	Neils Jensen Farms Inc.	\$ 278,369	83%	\$ 115,523

Department Recommendation

	App. No.	Media	Applicant	Certified Cost	Percent Allocable	Value
Approve	5476	Water	Full Sail Brewing Co.	\$ 211,243	100%	\$ 105,622
Approve	5477	SW	Bert's Auto Salvage	\$ 24,798	100%	\$ 12,399
Approve	5479	USTs	New Pacific Corporation	\$ 57,907	100%	\$ 28,954
Approve	5480	Water	The Halton Company	\$ 89,633	100%	\$ 44,817
Approve	5481	USTs	Seaside Stop & Go	\$ 79,338	100%	\$ 39,669
Approve	5482	Plastics	NPI, Inc.	\$ 78,217	100%	\$ 39,109
Approve	5483	Perc	Kim's Cleaners	\$ 35,000	100%	\$ 17,500
Approve	5484	Perc	Thomas Joseph, Inc.	\$ 40,976	100%	\$ 20,488
Approve	5485	Plastics	Agri-Plas, Inc.	\$ 73,438	100%	\$ 36,719
Approve	5486	Plastics	Agri-Plas, Inc.	\$ 85,446	100%	\$ 42,723
Approve	5487	Plastics	Denton Plastics, Inc.	\$ 4,500	100%	\$ 2,250
Approve	5488	Plastics	Denton Plastics, Inc.	\$ 4,975	100%	\$ 2,488
Approve	5491	SW	Western Bank	\$ 666,347	100%	\$ 333,174
Deny	5167	Air	Willamette Industries, Inc.	\$ 38,267	100%	\$ 19,133
Deny	5276	Water	Teledyne Industries, Inc.	\$ 132,705	100%	\$ 66,353
Deny	5286	Water	Teledyne Industries, Inc.	\$ 22,500	100%	\$ 11,250
Deny	5299	Water	Willamette Industries, Inc.	\$ 30,817	100%	\$ 15,409
Deny	5423	Water	Leupold and Stevens, Inc	\$ 42,360	0%	\$ -
Reject	5049	Air	Mitsubishi Silicon America	\$ 278,399	100%	\$ 139,200
Reject	5100	Water	Mitsubishi Silicon America	\$ 1,599,606	100%	\$ 799,803
Reject	5101	Air	Mitsubishi Silicon America	\$ 37,358	100%	\$ 18,679
Reject	5102	Air	Mitsubishi Silicon America	\$ 95,170	100%	\$ 47,585
Reject	5103	Air	Mitsubishi Silicon America	\$ 145,824	100%	\$ 72,912
Reject	5104	Air	Mitsubishi Silicon America	\$ 146,236	100%	\$ 73,118
Reject	5105	Air	Mitsubishi Silicon America	\$ 128,179	100%	\$ 64,090
Reject	5357	Water	Oregon Steel Mills, Inc.	\$ 174,175	100%	\$ 87,088

Attachment B

Approvals



Tax Credit Review Report

EOC 0012

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **4979**
Facility Cost **\$638,662**
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: **a C Corporation**
Business: **particleboard manufacturer**
Taxpayer ID: **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 of equipment 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 natural gas pilot light.
- Installation of ductwork re-routing 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 attached Facility Cost Worksheet for additional information.)

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	\$ 165,087	\$ 165,087	\$ -
Phase II			
<u>Excavation/concrete:</u> The ESP foundation cost is allowable. However, excavation and concrete costs not associated with the installation of the ESP foundation are not allowable.	\$ 15,265	\$ 8,429	\$ 6,836
<u>Engineering/environmental testing:</u> Professional service costs associated with the ESP installation are allowable. Compliance testing on the boilers and replacement boiler parts are not allowable.	\$ 17,026	\$ 15,056	\$ 1,970
<u>ESP equipment and installation:</u>	\$ 595,000		\$ 595,000
<u>Ancillary equipment and installation:</u> Crane services associated with the ESP installation are allowable. Relocating overhead power lines and spare boiler parts are not.	\$ 52,156	\$ 38,705	\$ 13,451
<u>Air piping and installation:</u> Costs associated with duct connection to the ESP are allowable. Exhaust duct from the boilers to the ESP and from the ESP to the dryer, negative air piping, insulation and structural steel brackets are not.	\$ 89,118	\$ 80,926	\$ 8,192

<u>Electric supply equipment & installation:</u> The ESP electrical cost is allowable. However, electrical costs not associated with the installation of the ESP are not allowable.	\$ 44,910	\$ 31,697	\$ 13,213
<u>Miscellaneous Supplies:</u> Unsubstantiated costs are not allowable.	\$ 3,641	\$ 3,641	\$ -
Phase II	\$ 817,116	\$ 178,454	\$ 638,662
Total	\$ 982,203	\$ 343,541	\$ 638,662

A certified public accountant's statement was not provided because the claimed costs exceed \$500,000. The reviewers performed an analysis of the facility cost on behalf of the Department after receiving additional information from the applicant.

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

Facility Cost Worksheet

	Claimed	Non-allowable	Allowable
Phase I			
Computer Combustion controls	\$ 36,643		\$ -
Installed to optimize combustion efficiency and reduce fuel consumption--not pollution control.		\$ 36,643	
Air piping and installation	\$ 128,444		\$ -
<i>Western Pneumatics</i>			
(6/5/95) Fabrication and Installation of the Boiler Exhaust--no reduction in pollution.		\$ 62,998	
(9/25/95) Fabrication and Installation of a 36" damper--no reduction in pollution.		\$ 3,785	
(7/28/95) Fabrication of Pipe Fittings		\$ 3,061	
<i>E.J. Bartells Co</i>			
(7/19/95) Insulate hot flue gas duct and steam & condensate piping--no reduction in pollution.		\$ 58,600	
Total Phase I	\$ 165,087	\$ 165,087	\$ -
Phase II			
Excavation/concrete	\$ 15,265		
<i>Doug Thompson, General Contractor</i>			
ESP 25' x 28' Foundation-extra concrete for slab edge&labor: 6/19/96			\$ 6,836
3' x 28' Slab Addition, date 10/28/96		\$ 1,259	
<i>Bend Aggregate & Paving Co</i>			
Paving 153 square yards, job completed 9/5/96		\$ 3,147	
<i>Deschutes Ready-Mix Sand & Gravel: illegible</i>		\$ 115	
<i>Jack Robinson & Sons, Excavation Contractor</i>			
Dump Truck, Backhoe: illegible 6/17/96		\$ 2,376	
Utility Ditch: Back Hoe, Backhoe with Hydra Hammer: 6/19 - 6/25		\$ 440	
Remove Concrete: Back Hoe, Backhoe with Hydra Hammer, Dump Truck, Foreman: 7/1		\$ 738	
Ramp:Back Hoe, Dump Truck, Foreman, Crusher Reject:7/18 - 7/19		\$ 274	
One pole hole: Auger Truck, Power Auger: 6/14		\$ 80	
Engineering/environmental testing	\$ 17,026		
<i>Century West Engineering Corporation</i>			
Professional Services related to Equipment Slab, 100% complete 6/28/96			\$ 1,970
<i>BWR Associates, Inc.</i>			
Particulate Sampling, Testing Dates 11/5, 11/6, 7/96		\$ 9,431	
<i>NW Industrial Mechanics, Inc.</i>			
Replacement Fireeye Flame Safeguard: 10/23/95		\$ 5,625	
ESP equipment and installation	\$ 595,000		
<i>Wellons (2/23/96) Equipment & Services</i> for installation of ESP			\$ 595,000
Ancillary equipment and installation	\$ 52,156		
		\$ 20,291	
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 provides no pollution control.			
<i>NW Industrial Mechanics, Inc.</i>			

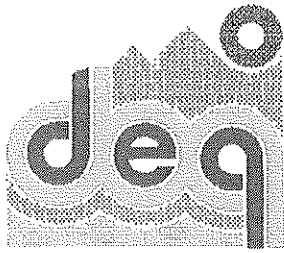
Facility Cost Worksheet

	Claimed	Non- allowable	Allowable
Fireye Flame Safeguard: 10/3/95		\$ 2,927	
Sootblower System Boiler #2 with Installation: 11/18/96		\$ 11,673	
<i>Barrett Equipment Company</i>			
Altek Thermocouple: 9/26/96		\$ 839	
<i>DeWald Northwest Co.</i>			
Self-Dumping Hoppers and Lids: 10/31/96		\$ 1,548	
<i>Nick's Crane Service</i>			
33 Ton Crane Service: invoice date illegible/96			\$ 2,300
35 Ton Crane Service, invoice date 9/25/96			\$ 938
33 Ton Crane Service, invoice date illegible/96			\$ 1,024
<i>Grainger</i>			
1 rpm AC Gearmotor		\$ 574	
<i>DBJ Bend Rental</i>			
Concrete Floor Saw, date 6/21/96			\$ 305
<i>Ivy Hi-Lift</i>			
All around scaffold rental			\$ 8,884
Unsubstantiated amount		\$ 853	
Air piping and installation	\$ 89,118		
<i>Western Pneumatics 6/24/96 Invoice.</i> Air systems included exhausting the two boilers to the ESP and exhausting the ESP to the dryers. Fab & Install Conveyor Negative Air Piping, Expansion Joints, and ESP Piping			
<i>Thermal Services, Inc.</i>			
Thermal Insulation		\$ 14,515	
<i>Pneumon Systems, Inc</i>			
Plasma Cut Plates and brackets: 6/10/96		\$ 591	
<i>Nick's Crane Service</i>			
Boom Crane Service			\$ 8,192
Unsubstantiated amount:		\$ 3,251	
Electric supply equipment and installation	\$ 44,910		
<i>ESCO Electric Supplies (6/25/96).</i>			
			\$ 13,213
<i>Eoff Electric Co (9/6/96) Gardner Bender B2000 Cycone Bender</i>			
		\$ 5,152	
Unsubstantiated amount:		\$ 26,545	
Miscellaneous Supplies – Various	\$ 3,641		
Unsubstantiated amount		\$ 3,641	
Phase II	\$ 817,116	\$ 178,454	\$ 638,662
Total	\$ 982,203	\$ 343,541	\$ 638,662

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.



Tax Credit Review Report

EQC 0012

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**

The applicant's address is:

**427 Main Street
Oregon City, OR 97045**

Facility Identification

The certificate will identify the facility as:

**An enclosure around truck loading
area.**

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 baghouse dust control systems, the removal of two cyclones and rearrangement of existing pneumatic conveyor piping, and the installation of two 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 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.

20

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 trucks.

Enclosed truck-loading area: The truck 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 from becoming airborne and escaping the plant property. The enclosure is specifically designed to prevent dust from becoming airborne when the bins are being emptied into trucks for disposal.

Eligibility

ORS 468.155(2) The pneumatic conveying systems and the two waste-wood truck bins make an **insignificant contribution** to the principal purpose of the facility.

ORS 468.155 (1)(a) The **principal purpose** of this **new baghouse installation and enclosed truck loading area** is to prevent, control or reduce a substantial quantity of **air pollution** as described in the consent order with DEQ.

The pneumatic conveying systems and the two waste-wood truck bins do not meet the principal purpose requirement in that they are not required by DEQ, EPA or a regional air pollution authority.

ORS 468.155 (1)(a) The pneumatic conveying systems and the two waste-wood truck bins do not meet the sole purpose requirement in that their purpose is to provide for material handling and storage.

ORS 468.155 (1)(b)(B) The **new baghouse installation and enclosed truck loading area** accomplish the **elimination of air pollution** with the use of an air cleaning device as defined 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.

<i>Application Received</i>	7/26/99
<i>Requested additional information</i>	8/30/99
<i>Received information</i>	9/24/99
<i>Requested additional information</i>	10/7/99
<i>Received letter from applicant's attorney w/o requested information</i>	12/8/99
<i>Application Substantially Complete</i>	12/8/99
<i>Construction Started</i>	12/1/95
<i>Claimed Construction Completed (from examination of applicant's ledger)</i>	11/1/97
<i>Majority of baghouse installation and piping, truck bins, major portion of pneumatic conveying system</i>	9/96
<i>Final portion of pneumatic conveying system,</i>	3/97
<i>Enclosed truck loading area</i>	11/97
<i>Placed into Operations (from examination of applicant's depreciation ledger)</i>	
<i>Majority of baghouse installation and piping, truck bins, major portion of pneumatic conveying system,</i>	12/96
<i>Final portion of pneumatic conveying system,</i>	3/97
<i>Enclosed truck loading area</i>	11/97

Facility Cost

Claimed cost	\$ 318,325
Portion that missed filing deadline	(\$294,141)
Eligible Facility Cost	\$24,184

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 adjusted facility cost did 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%**.

The claimed facility exceeded \$50,000. Therefore, the following factors were considered.

Factor	Applied to This Facility
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

Approve_5236_0012_Smurfit.doc Last printed 11/07/00 10:51 AM

STOEL RIVES LLP

A T T O R N E Y S

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September 26, 2000

THOMAS R. WOOD
Direct Dial,
(503) 294-9396
E-mail trwood@stoel.com

By Fax and By Mail

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

Re: Pollution Control Tax Credit Application No. 5236

Dear Ms. Vandehey:

As you know, this firm represents Smurfit Newsprint Corp ("SNC") in relation to its application for a pollution control tax credit for equipment installed at its wood products facility in Sweet Home, Oregon. This letter is in response to your request that we provide additional information as to why the tax credit application was timely filed for all portions of the pollution control project.

Nature of the Project

The SNC Sweet Home plant makes particle board that is encased in a recycled paper coating. In 1995, SNC determined that it needed to improve the control of particulate emissions from its plant in order to ensure compliance with Oregon regulations. SNC entered into a Mutual Agreement and Order ("MAO") with the Department recognizing that SNC needed to install a baghouse system to ensure continuous compliance with the particulate control requirements and imposing a compliance schedule for the equipment. The ultimate goal of the project was to reduce particulate emissions from 8.6 tons per year to 200 pounds per year.

The baghouse system consists of two interdependent components. The baghouse component filters the emissions from the manufacturing process. However, once the baghouse component collects this fine wood dust, it must manage the dust in such a way as to avoid the particulate getting reintroduced into the air. Before the baghouse system was installed, SNC had collected dust from the manufacturing process, but had managed the material in such a way as to

Ms. Maggie Vandehey
September 26, 2000
Page 2

allow a portion of it to be emitted out the back end of the control equipment. This was the basis of the MAO entered into by the Department and SNC; SNC had to ensure that the dust was handled appropriately so that it came out, and stayed out, of the air. In order to comply with this requirement, SNC designed the baghouse system so that the dust was removed by the baghouses, placed into dust bins and the bins were enclosed to minimize the possibility of the dust being reintroduced into the air when the bins were emptied. The bins are like large dumpsters suspended in midair. When the bins are full, a truck comes beneath them and doors on the bottom of the bins open. If the bin is not adequately enclosed, the force of thousands of pounds of dust falling into a truck bed is sufficient to resuspend a significant amount of the dust. Thus the baghouses could not effectively clean the air of wood dust unless and until the truck bins and enclosures were installed.

In 1996, SNC engineered and collected proposals to commence construction of the baghouse system. The first stage of the project was to install the baghouse components themselves. Work continued on these components until January 1997. While this work was proceeding, SNC started installation of the equipment necessary to manage the dust as it flowed out of the baghouse. However, construction was delayed of this component when it was determined that the bin enclosure would require a variance because its footprint would extend to within 14 feet of the property line. A variance was granted on May 5, 1997. Construction of the bin enclosure was completed by November 1, 1997. With that step, the last of the elements essential to the baghouse project was complete. A pollution control tax credit application was submitted on July 23, 1999.

Timeliness of Tax Credit Application

You have informed SNC that the Department would recommend in favor of a tax credit for the costs associated with enclosing the wood dust bin, but would recommend against a tax credit for the costs associated with the baghouse components. The reason given for these recommendations is that while the Department recognizes that all of the work otherwise meets the tax credit criteria, you believe that the baghouse structures were a separate project from the wood dust bin enclosure and that the tax credit for the baghouse structures was sought outside the two year window.

We believe that the dust bin enclosure was an essential element of the baghouse project. We believe that putting in the baghouse structures without the wood dust bin installation and enclosure is akin to placing a leaking bucket under a roof leak. The bucket looks good, but all the water goes all over the floor anyway. Unless and until you plug the leaks in the bucket, you will never fulfill the essential purpose of keeping the water off the floor. Until SNC stopped the leaks out of the tail end of the baghouse system, *i.e.*, by enclosing the dust bin, it had not achieved the aim of cleaning particulate out of the air. ORS 468.165(6) states that a tax credit

Ms. Maggie Vandehey
September 26, 2000
Page 3

application must be submitted "within two years after construction of the facility is substantially completed." The Department's regulations define substantial completion as "the completion of the erection, installation, modification, or construction of all elements of the claimed facility which are essential to perform its purpose." OAR 340-016-0010(11) (emphasis added). SNC constructed baghouse components that collect dust and essentially funnel the dust into a pipe. Until the appropriate equipment was in place to prevent the wood dust from, in essence, blowing out the end of the pipe, all elements of the baghouse system were not complete. Therefore, the relevant date for determining substantial completion of the project is the date on which the dust bin enclosure was completed.

We believe that there was a misconception as to the fact that the dust bin enclosure is a critical element of the operation of the baghouses. The Department's consultant viewed the bin component of the baghouse project as a separate project. However, to view the baghouse component of the project as a complete pollution control facility before the "back of the pipe" was sealed, would contradict the clear intent of the law. To further document the fact that the bin and baghouse components were part of a single project, we have enclosed as Exhibit 1 an internal ledger of all the vendors and costs associated with the baghouse project. Exhibit 1 demonstrates that SNC treated the baghouse project as a single project with a single objective, reducing emissions through the collection and retention of wood dust. Exhibit 1 shows that work was being performed on the baghouse component of the system in 1997, just as elements of the bins were being purchased in early 1996. Because the components were part of a single project finished in November 1997, the July 1999 tax credit application was timely.

The Department's consultants appeared to place great weight on the fact that SNC commenced depreciation of elements of the baghouse project prior to substantial completion of all essential elements of the project. However, Internal Revenue Service guidance has long recognized that SNC can begin depreciation of components of a facility before the all elements of an overall facility that are essential to perform its purpose are complete. See, Rev. Rul. 76-142, 1976-1 C.B. 8. For example, Exhibit 1 shows that SNC appropriately began depreciating components of the baghouse structure in September 1996 when they arrived on site; those components were not installed until several months later. Depreciation does not depend upon when construction was completed of the essential elements of the project. Therefore, depreciation dates cannot be determinative of when the project was completed.

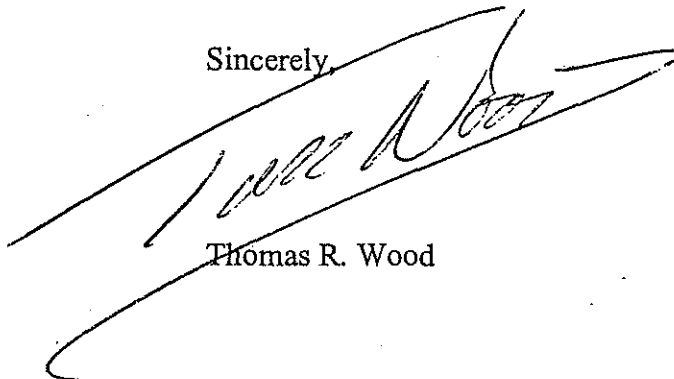
We appreciate this opportunity to provide further detail about the baghouse system and why the July 23, 1999 tax credit application was timely. We understand that this application and the Department's recommendations will be presented to the Environmental Quality Commission

STOEL RIVES LLP

Ms. Maggie Vandehey
September 26, 2000
Page 4

on December 1, 2000. We hope that this letter and Exhibit 1 will cause the Department to change its recommendation to support a tax credit for the entire SNC baghouse project. If that is not the case, we would like to request the opportunity to address the Commission. Please call if you have any questions.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Tom Wood', is written over the word 'Sincerely,' and extends below the name 'Thomas R. Wood'.

Thomas R. Wood

Enclosure

cc: Mr. Mike Hibbs

SNC - SWEET HOME

CLEAN AIR SYSTEM/BAG HOUSE
34-95-16 & 34-95-16S

TOTAL SPENT: 318,326.35
COMMITTED: 0.00
FORECAST: 0.00
TOTAL PROJECT: 318,326.35
AMOUNT CAPITALIZED: 318,325.00
AMOUNT EXPENSED: 1.35

AUTHORIZED CAPITAL: \$321,100

1880 BALANCE: 0.00

1881 BALANCE: 0.00

AVAILABLE: 2,773.65

Month	Invoice	Ref Num	Subledger	VENDOR	ITEM	AMOUNT	9/96 CAPITLZN	12/96 CAPITLZN	3/97 CAPITLZN	11/97 CAPITLZN
Oct-96			101	STERLING NELSON	ENGINEERING RE-ALLOCATION	2,119.90				
Dec-95	10310	34-05683	101	PACIFIC WESTN MACHINERY	USED BAG HOUSE EQUIPMENT	24,000.00				
Jan-96	10310-2	34-05683	101	PACIFIC WESTN MACHINERY	USED BAG HOUSE EQUIPMENT	30,000.00				
Dec-95	JE 24034	34-05683	101	JACOBSEN PACIFIC	USED BAG HOUSE EQUIP. DEPOSIT	6,000.00				
Oct-96			102	STERLING NELSON	ENGINEERING RE-ALLOCATION	1,110.32				
May-96	34754	34-05985	102	FORREST PAINT	PAINT	542.40				
Dec-95	15380	WO-0026	102	ELITE ELECTRIC	BAG HOUSE DISCONNECT	270.48				
Apr-96	96/02/07	WO-0030	102	SANTIAM INDUSTRIAL	ASSEMBLE/INSTALL BAG HOUSE	14,688.97				
Feb-96	960190	WO-0030	102	SANTIAM INDUSTRIAL	DISMANTLE BAG HOUSE EQUIPMENT	14,688.97				
Jun-96	960213	WO-0030	102	SANTIAM INDUSTRIAL	RENTAL EQUIP. FOR SETUP	1,777.12				
Jun-96	960215	WO-0052	102	SANTIAM INDUSTRIAL	PRIMER & PAINTING	5,349.85	100,548.00			USED BAGHOUSE/BUNKERS
Oct-96			103	STERLING NELSON	ENGINEERING RE-ALLOCATION	1,451.46				
Jul-96	7364	34-06092	103	PANEL EQUIP. SALES	USED KNIFE FEEDER/WASTE BUNKER CYCL	4,500.00				
Jul-96	2791	34-06134	103	QUALAIR PNEUMATICS	USED KNIFE FEEDER/WASTE BUNKER CYCL	4,606.00	9,106.00			USED KNIFE FEEDERS(2)
Jul-96	2811	WO-0069	103	QUALAIR PNEUMATICS	FILTRATION SYSTEM	9,194.00				
Aug-96	2870	WO-0069	103	QUAL AIR PNEUMATICS	BAGHOUSE AIR SYSTEM INSTALL	1,694.00				
Aug-96	172725463	WO-0069	103	OAK HARBOR FRT	BAGHOUSE AIR SYSTEM INSTALL	250.00				
Aug-96	27583	WO-0069	103	QUAL AIR PNEUMATICS	BAGHOUSE AIR SYSTEM INSTALL	2,449.00				
Jul-96	2736	WO-0069	103	QUALAIR PNEUMATICS	FILTRATION SYSTEM	18,388.00	33,426.00			AIR FILTRATION PIPING SYSTEM
Mar-96	55726/55779	34-05757	104	KLAMATH IND. SUPPLY	LAUNDER/FILTER BAGS	2,366.86	2,367.00			FILTER BAGS 1 SET
Apr-96	409251601	34-05940	104	POWER TRANSMISSION	HANGER BEARING	102.82				
May-96	15885	34-06001	104	STAR ELECTRIC	MOTOR REBUILD/REPAIR	202.86				
May-96	15861	34-06001	104	STAR ELECTRIC	MOTOR REBUILD/REPAIR	930.00				
May-96	15883	34-06001	104	STAR ELECTRIC	MOTOR REBUILD/REPAIR	888.68				
Jun-96	20682	34-06074	104	SANTIAM SUPPLY	MOTOR BELTS	231.62	2,356.00			RECONDITIONED MOTORS
Oct-96			105	STERLING NELSON	ENGINEERING RE-ALLOCATION	1,200.68				
Jul-96	PR INTERFACE		105	PLANT LABOR	PLANT LABOR	245.92				
Mar-96	PAYROLL		105	PLANT LABOR	PLANT LABOR	1,170.04				
Jan-96	554358	34-05751	105	PLATT ELECTRIC	FEEDER COMPONENTS	1,606.65				
Feb-96	606307	34-05751	105	PLATT ELECTRIC	FEEDER COMPONENTS	639.37				
Jan-96	563541	34-05751	105	PLATT ELECTRIC	FEEDER COMPONENTS	442.25				
Apr-96	313205100	34-05912	105	NORTH COAST ELECTRIC	CONTROL PANEL/MODULE	3,724.00				
Mar-96	803130	34-05913	105	PLATT ELECTRICAL	ELECTRICAL SUPPLIES	117.89				
May-96	313265200	34-05915	105	NORTH COAST ELECTRIC	CONTROL SYSTEM COMPONENTS	108.34				
Apr-96	313205503	34-05915	105	NORTH COAST ELECTRIC	CONTROL SYSTEM COMPONENTS	198.63				
Apr-96	313205500	34-05915	105	NORTH COAST ELECTRIC	CONTROL SYSTEM COMPONENTS	2,192.17				
Apr-96	313269700	34-05944	105	NORTH COAST ELECTRIC	ELECTRICAL SUPPLIES	189.34				
Apr-96	882931	34-05971	105	PLATT ELECTRIC	ELECTRICAL COMPONENETS	234.66				
May-96	946104	34-05993	105	PLATT ELECTRIC	POWER FEED	3,332.61				
May-96	1026927	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	71.97				
May-96	1021586	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	87.29				
May-96	1027194	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	123.19				
May-96	1037600	34-06044	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	23.29				

SNC - SWEET HOME

CLEAN AIR SYSTEM/BAG HOUSE
34-95-16 & 34-95-16S

TOTAL SPENT: 318,326.35
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May-96	1032324	34-06044	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	1,140.25				
Apr-96	P1234	PAYROLL	105	PAYROLL INTERFACE	PLANT LABOR	714.71				
Mar-96	16270	WO-0047	105	ELITE ELECTRIC	BAG HOUSE ELECTRICAL	1,047.35				
May-96	16845	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	560.56				
Aug-96	17465	WO-0048	105	ELITE ELECTRIC	CONTROL PANELS/CIRCUIT INSTALL AIR LOC	370.44				
Apr-96	16405	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATION	1,294.19				
May-96	16555	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	1,036.84				
Jun-96	16940	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	713.44				
May-96	16765	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	1,267.10				
Apr-96	16515	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	678.16				
Jul-96	17120	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	207.76				
Jun-96	17000	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	374.36				
Apr-96	16355	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATION	1,311.48				
Aug-96	17395	WO-0048	105	ELITE ELECTRIC	CONTROL PANELS/CIRCUIT INSTALL AIR LOC	182.28				
May-96	16840	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	969.22				
May-96	16700	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	1,064.77				
Sep-96	17585	WO-0048	105	ELITE ELECTRIC	CONTROL PANELS/CIRCUIT INSTALL AIR LOC	464.52				
May-96	16885	WO-0048	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	2,505.66				
Sep-96	17540	WO-0048	105	ELITE ELECTRIC	CONTROL PANELS/CIRCUIT INSTALL AIR LOC	109.76				
Mar-96	16180	WO-0048	105	ELITE ELECTRIC	BAG HOUSE ELECTRICAL	830.51				
Apr-96	16455	WO-0051	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	1,307.32				
May-96	16890	WO-0056	105	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS	560.56				
Jul-96	17225	WO-0098	105	ELITE ELECTRIC	CONDUIT TO GREEN END AIR LOCK	305.76				
Jul-96	17265	WO-0098	105	ELITE ELECTRIC	CONDUIT TO GREEN END AIR LOCK	273.05				
Aug-96	17340	WO-0098	105	ELITE ELECTRIC	CONDUIT TO GREEN END AIR LOCK	185.22	35,164.00			ELECTRICAL SYSTEM
Oct-96			106	STERLING NELSON	ENGINEERING RE-ALLOCATION	2,031.85				
Jan-96	2025155	34-05728	106	AMERICAN STEEL	STEEL FOR BASE PLATES/TRUCK BINS	340.00				
Jan-96	2025147	34-05728	106	AMERICAN STEEL	STEEL FOR BASE PLATES/TRUCK BINS	142.50				
Jan-96	2025128	34-05728	106	AMERICAN STEEL	STEEL FOR BASE PLATES/TRUCK BINS	398.04				
Jan-96	2025143	34-05728	106	AMERICAN STEEL	STEEL FOR BASE PLATES/TRUCK BINS	580.00				
Feb-96	1982	34-05754	106	SOUTH FORK IND.	DRILL ANCHOR PLATES	536.64				
Mar-96	10121	34-05824	106	YODER EXCAVATING	HAULING COSTS	235.20				
Apr-96	396	34-05897	106	LIBERTY ROCK	BASE ROCK FOR FOUNDATION	450.00				
Mar-96	1152	WO-0037	106	RM SUTHERLAND CONST.	INSTALL BAG HOUSE FOUNDATION	26,250.63				
Mar-96	1160	WO-0037	106	RM SUTHERLAND CONST.	INSTALL BAG HOUSE FOUNDATION	7,560.70				
Feb-96	1140	WO-0037	106	RM SUTHERLAND	INSTALL BAG HOUSE FOUNDATION	6,534.64				
May-96	960212	WO-0053	106	SANTIAM INDUSTRIAL	BRACING/PIPING-FOUNDATION SUPPORT	3,268.30				
Apr-96	960211	WO-0053	106	SANTIAM INDUSTRIAL	BRACING/PIPING-FOUNDATION SUPPORT	595.84	48,924.00			SITE PREP/FOUNDATION
Oct-96			107	STERLING NELSON	ENGINEERING RE-ALLOCATION	841.23	24,292.00			ACCESS CATWALKS/RAILS
Apr-96	2040788	34-05947	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	648.80				
Apr-96	2041004	34-05947	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	552.00				
Apr-96	2041354	34-05947	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	128.93				
Apr-96	2041950	34-05966	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	279.15				

SNC - SWEET HOME CLEAN AIR SYSTEM/BAG HOUSE
34-95-16 & 34-95-16S

AUTHORIZED CAPITAL: \$321,100

1880 BALANCE: 0.00

1881 BALANCE: 0.00

AVAILABLE: 2,773.65

TOTAL SPENT: 318,326.35
 COMMITTED: 0.00
 FORECAST: 0.00
 TOTAL PROJECT: 318,326.35
 AMOUNT CAPITALIZED: 318,325.00
 AMOUNT EXPENSED: 1.35

Month	Invoice	Ref Num	Subledger	VENDOR	ITEM	AMOUNT	9/96 CAPITLZN	12/96 CAPITLZN	3/97 CAPITLZN	11/97 CAPITLZN
Apr-96	2043062	34-05977	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	863.68				
Apr-96	2043127	34-05977	107	AMERICAN STEEL	STEEL ACCESS CATWALKS	447.12				
May-96	JE30034	34-05982	107	STEEL CO	STEEL ACCESS CATWALKS	1,353.21				
Sep-96	33517	34-06299	107	WESCO DISTRIBUTING	BAGHOUSE REFLECTORS/GUARDS	117.01				
Oct-96	37956	34-06311	107	WESCO DISTRIBUTING	BAGHOUSE REFLECTORS/GUARDS	241.34	358.00			SAFETY GUARDS/REFLECTORS
May-96	JE30034	WO-0053	107	SANTIAM INDUSTRIAL	SAFETY CATWALKS/CAGE	1,532.72				
May-96	JE30034	WO-0053	107	SANTIAM INDUSTRIAL	SAFETY CATWALKS/CAGE	3,810.24				
Jun-96	960216	WO-0053	107	SANTIAM INDUSTRIAL	HANDRAILS/CATWALKS	3,408.00				
Jun-96	960214	WO-0053	107	SANTIAM INDUSTRIAL	RENTAL EQUIP. CATWALKS	6,875.22				
Aug-96	960233	WO-0105	107	SANTIAM IND.	STEEL SIDING/ELEC. PANELS	3,551.91				
Oct-96			109	STERLING NELSON	ENGINEERING RE-ALLOCATION	71.82				
Aug-96	960228	WO-0076	109	SANTIAM IND.	STEEL CHIP BUNKER WALLS	2,032.79	2,105.00			STEEL CHIP BUNKER WALLS
Oct-96			114	STERLING NELSON	ENGINEERING RE-ALLOCATION	264.99				
Aug-96	2870	WO-0069	114	QUAL AIR PNEUMATICS	BAGHOUSE NY BLOWER 44" HI EFFEC. FAN	7,500.00	7,765.00			NY BLOWER 44" HI EFFICIENCY FAN
Oct-96			115	STERLING NELSON	ENGINEERING RE-ALLOCATION	(9,092.25)				
Jan-96	TEPPER	JE 07036	115	STERLING NELSON	ENGINEERING COSTS	1,579.50				
Feb-96	TEPPER	JE 07036	115	STERLING NELSON	ENGINEERING COSTS	627.75				
Apr-96	TEPPER	JE 08090	115	STERLING NELSON	ENGINEERING CHARGES	1,012.50				
Mar-96	TEPPER	JE08036	115	STERLING NELSON	ENGINEERING	627.75				
Dec-95	TEPPER	JE08036	115	STERLING NELSON	ENGINEERING COSTS	2,065.50				
Mar-96	EDMUNDS	JE24034	115	STERLING NELSON	ENGINEERING	3,179.25		0.00		ENGINEERING

TOTAL SPENT THRU 9/30/96 266,431.37 266,431.00

Oct-96	2950	WO-0069	103	QUAL AIR PNEUMATICS	BAGHOUSE AIR SYSTEM INSTALL	9,194.00		9,194.00		AIR FILTRATION
Nov-96	865577602	34-06447	104	CONSOLIDATED FRT	FRT ON PLEXIGLASS	40.80				PIPING SYSTEM
Oct-96	17745	WO-0098	104	ELITE ELECTRIC	AIR LOCK CONDUIT	352.80				
Oct-96	21616900	34-05891	104	MILL SUPPLY	BELTS	175.75				
Oct-96	25012323	34-06447	104	PORT PLASTICS	PLEXIGLASS WINDOW	586.00				
Nov-96	3023	WO-0232	104	QUALAIR PNEUMATICS	BAGHOUSE INSTALLS	1,212.00				
Nov-96	3021	WO-0222	104	QUALAIR PNEUMATICS	SEAL JAWS ON WASTE BUNKER	280.16				
Oct-96	16361	34-06393	104	STAR ELECTRIC	MAGNEHELIC GAGES	121.25		2,769.00		MECHANICAL CHANGE OVER
Oct-96	17970	WO-0048	105	ELITE ELECTRIC	ELECTRICAL MLO PANEL HOOK UP	872.84				
Nov-96	18270	WO-0048	105	ELITE ELECTRIC	INSTALL INDICATOR LIGHTS	90.00				
Nov-96	313285600	34-05915	105	NORTHCOAST ELECTRIC	CONTROL SYSTEM COMPONENTS	413.85				
Nov-96	1648022	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	57.07				
Oct-96	1607714	34-06434	105	PLATT ELECTRIC	ELECTRICAL COVERS	34.84				
Nov-96	1648005	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	126.55				
Nov-96	1649272	34-06030	105	PLATT ELECTRIC	ELECTRICAL SUPPLIES	146.15		1,741.00		BAG HOUSE ELECTRICAL SYSTEM
Nov-96	TEPPER	JE 11036	107	CORVALLIS SHOP	CATWALKS/ACCESS WALKS TO BAGHOUSE	(57.65)				

SNC - SWEET HOME CLEAN AIR SYSTEM/BAG HOUSE

34-95-16 & 34-95-16S

AUTHORIZED CAPITAL: \$321,100

1880 BALANCE: 0.00

1881 BALANCE: 0.00

AVAILABLE: 2,773.65

TOTAL SPENT: 318,326.35
 COMMITTED: 0.00
 FORECAST: 0.00
 TOTAL PROJECT: 318,326.35
 AMOUNT CAPITALIZED: 318,325.00
 AMOUNT EXPENSED: 1.35

Month	Invoice	Ref Num	Subledger	VENDOR	ITEM	AMOUNT	9/96 CAPITLZN	12/96 CAPITLZN	3/97 CAPITLZN	11/97 CAPITLZN
Nov-96	TEPPER	JE 07036	107	CORVALLIS SHOP	CATWALKS/ACCESS WALKS TO BAGHOUSE	2,898.82				
Nov-96	TEPPER	JE 11036	107	CORVALLIS SHOP	CATWALKS/ACCESS WALKS TO BAGHOUSE	(229.02)				
Nov-96	TEPPER	JE 11036	107	CORVALLIS SHOP	CATWALKS/ACCESS WALKS TO BAGHOUSE	(828.24)				
Nov-96	TEPPER	JE 09036	107	CORVALLIS SHOP	CATWALKS/ACCESS WALKS TO BAGHOUSE	1,480.10				
Nov-96	3018	WO-0242	107	QUALAIR PNEUMATICS	BELT GUARDS AND ACCESS DOORS	1,775.29		5,039.00		CATWALKS/ACCESS
Oct-96	37956	34-06311	107	WESCO	ELECTRICAL	(0.01)				
							18,743.00			
Jan-97	3168	34-06401	110	QUALAIR PNEUMATICS	AF40 85DBA SILENCER	2,885.03				
Jan-97	3153	WO-0241	110	QUALAIR PNEUMATICS	INSTALL SILENCER ON AF40 FAN	2,254.00		FAN SILENCER		5,139.03
Feb-97	EDMUNDS	JE22034	104	JIM FORD	PROGRAMMING BAG HOUSE	600.00				
Feb-97	EDMUNDS	JE22034	104		INSTOCK GEARHEADS (2)	3,200.00				
Feb-97	16555	WO-0048	104	ELITE ELECTRIC	ELECTRICAL INSTALLATIONS/UNEARNED DIS	21.16				
Feb-97	17745	WO-0098	104	ELITE ELECTRIC	AIR LOCK CONDUIT/UNEARNED DISCOUNT	7.20		MECHANICA		3,828.36
Mar-97	MARCH97	340464	112	CITY OF SWEET HOME	VARIANCE APP FEE - BUNKER EXTENSIONS	275.00				
Apr-97	TEPPER	JE07036	112	STERLING NELSON	BUNKER EXTENSIONS	263.25				
May-97	TEPPER	JE08036	112	STERLING NELSON	BUNKER EXTENSIONS	465.75				
Jun-97	1373	WO-0306	112	RM SUTHERLAND	DWN PAYMENT BUNKER EXTNS	5,491.20				
Jun-97	TEPPER	JE09036	112	STERLING NELSON	BUNKER EXTENSIONS	384.75				
Jul-97	TEPPER	JE06036	112	STERLING NELSON	BUNKER EXTENSIONS	810.00				
Jul-97	970219	340591	112	CITY OF SWEET HOME	BLDG PERMIT	228.66				
Aug-97	TEPPER	11036	112	STERLING NELSON	BUNKER EXTENSIONS	121.50				
Nov-97	1302	WO-0306	112	RM SUTHERLAND	BUNKER EXTENSIONS	16,144.13		BUNKER EXTENSIONS		24,184.24

TOTAL SPENT	318,326.35	266,431.00	18,743.00	8,967.39	24,184.24
TOTAL CAPITALIZED 9/96	266,431.00			8,967.00	
TOTAL EXPENSED 9/96	0.37			0.39	
TOTAL CAPITALIZED 12/96	18,743.00			24,184.00	
TOTAL EXPENSED 12/96	0.35			0.24	
CURRENT MONTH A/P ACCRUAL	0.00				
PAYROLL ACCRUAL	0.00				
TOTAL IN PROCESS	0.00				



Tax Credit Review Report

EQC 0012

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: **a diatomaceous earth
processing plant**

Taxpayer ID: **31-1188662**

The applicant's address is:

P.O. Box 779

Cincinnati, Ohio 45201-0779

Director's
Recommendation: **APPROVE**

Applicant **Eagle-Picher Minerals, Inc.**
Application No. **5271**
Facility Cost **\$1,415,430**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**Seven baghouses--Fabric Filters Air
Systems, Inc., Model 72-5, Model 30-5,
Model 289-10, Model 144R-10, Model 16-
5, and 2 Model 12-5 baghouses**

The applicant is the owner of the facility located
at:

**Celatom Plant - Unit #2
2630 Graham Boulevard
Vale, Oregon 97918**

Technical Information

The claimed facility consists of seven new baghouses. All are manufactured by Fabric Filters Air Systems, Inc. and were installed at the plant as part of an expansion project which added a second processing line. The process at the plant is to crush, mill, and classify raw ore. Soda ash is then added to the ore and the mixture is fed into a kiln for calcining (removing combined moisture). The calcined material is then crushed and classified into various filter aid products.

A pulse jet bin vent type baghouse (Equipment number **2-7B**) was installed on the fine ore bin vent. It is a Model 72-5, capable of handling 2,300 acfm with a material loading of 105 pounds per hour. It has a filter area of 424 square feet and an air-to-cloth ratio of 5.4:1 and 155 tons of particulate is removed annually. The discharge air quality is 0.01 grains/scfm through a fan rated for 2,300 acfm (2072 scfm) at 12 inches static pressure. When the bin is being filled, the air displaced from the bin is vented through the baghouse. When the bin is full and venting is complete, the captured particulate in the baghouse is pneumatically dumped back into the bin.

A pulse jet bin vent baghouse (Equipment number **2-18A**) was installed on top of the soda ash bin to control particulate when venting. It is a Model 30-5 capable of handling 1,000 cfm with a material loading of 80 pounds per hour. It has a filter area of 176 square feet and an air-to-cloth ratio of 2.9:1. It removes 7.8 tons per year. The discharge air quality is 0.01 grains/scfm through a fan rated for 20,500 acfm (17,050 scfm) at 19 inches static pressure. The captured particulate is returned to the soda ash bin.

A pulse jet baghouse (Equipment number **2-25**) was installed on the new dryer and kiln exhaust, downstream of the new wet end classification cyclone. The baghouse is a Model 289-10 capable of handling 34,000 cfm with a material loading of 1,378 pounds per hour. It has a filter area of 20,426 square feet and an air-to-cloth ratio of 2:1. It removes 3,504 tons of particulate a year. The discharge air quality is 0.01 grains/scfm through a fan rated for 29,400 acfm (21,000 scfm) at 18 inches static pressure. The captured particulate is discharged to an enclosed screw conveyor installed below the baghouse which is connected to a 3-inch duct. The duct is pressurized by a 5-HP pressure blower and is routed to the surge bin which feeds the kiln. The screw conveyor and the pressure blower and blower enclosure are part of the claimed facility, but the duct is excluded.

Emissions from the finish end classification cyclone are routed to a pulse jet baghouse (Equipment number **2-70**), Model Number 144R-10. It is capable of handling 25,000 acfm with a material loading of 1,120 pounds per hour. It has a filter area of 10,177 square feet and an air-to-cloth ratio of 2.9:1. It removes 2,432 tons of particulate a year. The discharge air quality is 0.01 grains/scfm through a fan rated for 20,500 acfm (17,050 scfm) at 19 inches static pressure. The captured particulate is returned to the surge bin, which feeds the kiln.

A bin vent type baghouse (Equipment number **2-51A**) was installed on the main product bin. The baghouse is a Model 16-5, capable of handling 500 acfm with a material loading of 180 pounds per hour. It captures 544 tons of particulate per year. It has a filter area of 94 square feet and an air-to-cloth ratio of 5.3:1. The clean air is discharged to the atmosphere through fan 2-71 and the captured particulate is dumped to the main product bin.

From the main product bin, product is either loaded in bulk rail cars (emissions vented back to the main bin), bulk-bagged, or packed in smaller bags. A bin vent baghouse was installed on the line bulk bagger bin (Equipment number **2-56D**) and a bin vent baghouse was installed on the packer bin (Equipment number **2-56E**); both are Model 12-5. Baghouse 2-56C is sized for 350 cfm. Baghouse 2-56E is sized for 650 cfm and is 95% efficient. Both have a filter area of 70 square feet and an air-to-cloth ratio of 4.6:1. They each remove 82.4 tons of particulate annually. The discharge air quality is 0.01 grains/scfm through a fan rated 650 acfm (620 scfm) at 15 inches static pressure. The captured particulate is returned to the respective bins being vented.

Without the baghouses, uncontrolled particulate emissions would be emitted into the air. The baghouses maintain particulate emissions to less than 20% of the permitted levels.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new baghouse equipment installation** is to comply with a requirement imposed by the Department to **prevent** air pollution. The requirement is imposed by the applicant's ACDP #23-0032.

The material handling equipment, the opacity meter, and the duct insulation do not meet the principal purpose requirement.

ORS 468.155 (1)(b)(B) The **prevention** is accomplished by the elimination of air pollution and the use of the installed baghouses which meet 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). The reviewers validated the construction completion date.

<i>Application Received</i>	9/30/1999
<i>Application Substantially Complete</i>	4/26/2000
<i>Construction Started</i>	7/01/1996
<i>Construction Completed</i>	10/01/1997
<i>Facility Placed into Operation</i>	11/12/1997

Facility Cost

	Claimed Facility Cost	Ineligible Costs	\$ 1,496,798
Material Handling Equipment			
Pressure Blower and Enclosure (2-27)		\$15,940	
Pressure Blower Installation		2,006	
Pressure Pot (2-73)		20,100	
Pressure Pot Installation		1,504	
Insignificant Contribute to Pollution Control			
Opacity Meter		18,835	
Duct Insulation		19,058	
Air Quality Permit		3,925	
		<u>\$ 81,368</u>	<u>(\$ 81,368)</u>
	Eligible Facility Cost		\$1,415,430

The claimed facility cost exceeds \$500,000. The reviewers performed an accounting review on behalf of the Department. Copies of invoices and purchase orders, a copy of the internal Project Capital Cost Summary Sheet, and the internal Job No. accounting sheet itemizing the equipment costs for the project were provided which substantiated 100% of the eligible facility cost.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility costs exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The baghouses capture particulate that is fed back into production. The applicant sells their product to various manufacturers. End products manufactured include diatomaceous earth and perlite filter aids, and mineral fillers. Filter aids are used in commercial filtration operations with typical applications in the fields of antibiotics, brewing, cane, beet and corn sweeteners, alginates, edible oils and fats, and industrial water reclamation and potable water. Mineral fillers are used in the formation of products such as paint, paper, polishes, molded insulation and insulation cements, and catalyst supports. This product is competitive with diatomite producers in California and Washington.
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 captured particulate returns an average annual cash flow of approximately \$51,250.
ORS 468.190(1)(c) Alternative Methods	Wet scrubbers were considered but not used because they are not as efficient for this application.
ORS 468.190(1)(d) Savings or Increase in Costs	The gross annual income in the first year of operation was approximately \$177,000. Annual operating expenses for the same year were approximately \$125,000.
ORS 468.190(1)(e) Other Relevant Factors	The baghouses were acquired exclusively for pollution control, not to recover product or increase income.

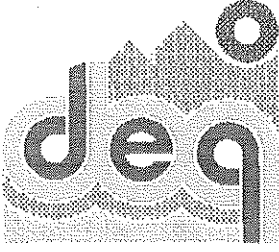
Considering these factors, the percentage allocable to pollution control is **100%**.

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 plant:

- ACDP #23-0032, issued 1985
- UST #JCFG, JGPH, JGFJ, issued 1985
- DOGAMI #23-0183, 13-0064, 13-0062, issued 1984

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 0012

Director's
Recommendation: **APPROVE**

Applicant **Agri-plas, Inc.**
Application No. **5314**
Facility Cost **\$48,891**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **95-4543069**

The applicant's address is:

**948 McNary Estates Dr. N.
Keizer, OR 97303**

Facility Identification

The certificate will identify the facility as:

**One Caterpillar model GP25
forklift, serial number 5AM02291,
one Philadelphia Tramrail Model
3400HD baler; one custom built
baler loading platform and one
hundred wooden collection bins.**

The applicant is the owner of the facility
located at:

**3615 Chemawa Rd. NE
Salem, OR 97303**

Technical Information

This equipment is used to collect, sort, clean and bale plastic hay baling twine that is then sold to other companies that use it to manufacture a reclaimed plastic product.

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>	09/21/1999
<i>Preliminary approval granted</i>	09/23/1999
<i>Date of investment</i>	02/17/2000
<i>Final application received</i>	10/17/2000
<i>Application substantially complete</i>	10/17/2000

Facility Cost

Claimed Facility Cost	\$48,891
Eligible Facility Cost	\$48,891

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.

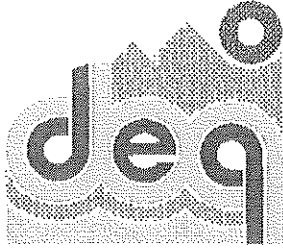
Factor	Applied to This Facility
OAR 340-017-0030 (2)(a) Extent used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, equipment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

Considering these factors, the percentage allocable to pollution control is **100%**.

Compliance

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

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Oregon Steel Mills, Inc.**
Application No. **5332**
Facility Cost **\$99,246**
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:

**Concrete sound deadening
enclosure at the rotary shear**

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 a rotary metal shear. This shear was relocated from inside the steel mill to a location on the Northeast portion of the applicant's plant site near the Willamette River. The shear operates during day and night manufacturing operations at Oregon Steel Mills (OSM). Prior to the installation of the claimed facility, the rotary shear produced noise levels objectionable to residents of Sauvies Island (approximately ¼ mile across the Willamette River).

At the same time, the peak sound pressure level was measured at 86dB on the Willamette dike wall (at the OSM East property line). This field measured sound pressure level calculates to a peak sound pressure level of 59 dB if measured across the river at the noise sensitive Sauvies Island property. This is below the required peak of 80 dB during the 10pm to 7am time period per OAR 340-035-0035(1)(B)(ii)(d)(B).

Eligibility

ORS 468.155 (1)(a)(B) The **sole purpose** of this **new structure** is to prevent, control and reduce a substantial quantity of noise pollution. The information provided by the applicant indicates that this facility was not required by any governing agency.

OAR 340-035-0035(1)(B)(ii)(d)(B) requires that noise levels be less than 80 dB after 10 p.m., as measured at the noise sensitive property line. Field measurement results and subsequent calculations indicate that the claimed facility meets these requirements

ORS 468.155 (1)(b)(C) The noise pollution control is accomplished by the substantial reduction as defined by rule of the Environmental Quality Commission.

OAR 340-016-0060(4)(f) The facility reduces noise pollution as 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>5/26/97</u>
<i>Construction Completed</i>	<u>12/01/97</u>
<i>Facility Placed into Operation</i>	<u>12/01/97</u>

Facility Cost

Facility Cost	\$99,246
Insignificant Contribution ORS 468.155(2)(d)	
Eligible Facility Cost	<u>\$99,246</u>

The facility cost was less than \$500,000; therefore, an independent accounting review was not required. The reviewers performed an analysis of the facility cost on behalf of the Department. Invoices supplied by the applicant substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

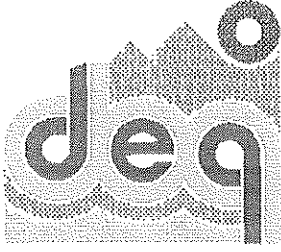
The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **100%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	There is no saleable or useable commodity associated with this facility.
ORS 468.190(1)(b) Return on Investment	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.

Reviewers: Darrel Allison, P.E. HCMA Consulting Group
Maggir Vandehey, DEQ



Tax Credit Review Report

EQC 0012

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**

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 the Oregon Steel Mills (OSM) hand scarfing area. The noise sources are varied from this area. They include crane gearbox noises, dropped steel risers, tipped slabs of steel, and noise from hand-operated cutting torch operations (scarfing). This scarfing operation is in a building that was originally open on the East side-nearest the dike of the Willamette River.

Director's
Recommendation: **APPROVE**

Applicant **Oregon Steel Mills, Inc.**
Application No. **5333**
Facility Cost **\$244,495**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility
as:

**A building enclosure addition
with sound deadening
insulation at the west end of
scarfing building.**

The applicant is the owner of the facility
located at:

**14400 N. Rivergate Blvd
Portland, OR 97203**

The claimed facility is an end-wall addition to the existing building. The claimed facility includes a sound deadening material applied to the interior surfaces of the new end-wall and to the existing sidewalls of the existing building. The sound deadening material was specifically selected for its ability to deaden sounds in the objectionable noise frequencies. The scarfing activities occur during day and night manufacturing shifts at OSM. Prior to the installation of the claimed facility, the scarfing operation produced noise levels objectionable to residents of Sauvies Island (approximately ¼ mile across the Willamette River).

Sound pressure tests performed by an independent consultant in October 2000 indicated a peak noise level inside the claimed facility of 107 dB while the hand scarfing operations were taking place. The noise level measured immediately outside the enclosure was 95dB, or a reduction of 12dB. A 6dB drop in noise level represents a 50% reduction in sound pressure level. Thus, this 12-dB reduction represents a 75% reduction in peak sound pressure level outside the building.

At the same time, the peak sound pressure level was measured on the Willamette dike wall (at the OSM East property line) at 93 dB. This measured sound pressure level calculates to a peak sound pressure level of 65 dB if measured across the river at the noise sensitive Sauvies Island property. This is below the required peak of 80 dB during the 10pm to 7am time period per OAR 340-035-0035(1)(B)(ii)(d)(B).

Eligibility

ORS 468.155 (1)(a)(B) The **sole purpose** of this **new structure** is to prevent, control and reduce a substantial quantity of noise pollution. The information provided by the applicant indicates that this facility was not required by any governing agency. OAR 340-035-0035(1)(B)(ii)(d) requires that noise levels be less than 80 dB after 10 p.m. measured at the noise sensitive property line. Field measurement results and subsequent calculations indicate that the claimed facility meets these requirements

ORS 468.155 (1)(b)(C) The control is accomplished by the substantial of noise pollution as defined by rule of the Environmental Quality Commission.

OAR 340-016-0060(4)(f) The facility substantially reduces noise pollution 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>04/01/97</u>
<i>Construction Completed</i>	<u>07/01/98</u>
<i>Facility Placed into Operation</i>	<u>07/01/98</u>

Facility Cost

Facility Cost	\$244,495
Insignificant Contribution ORS 468.155(2)(d)	
Eligible Facility Cost	\$244,495

The facility cost was less than \$500,000; therefore, an independent accounting review was not required. The reviewers analysed the facility cost on behalf of the Department. 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) Salable or Usable Commodity	There is no saleable or useable commodity associated with this facility.
ORS 468.190(1)(b) Return on Investment	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.

Reviewers: Darrel Allison, P.E. HCMA Consulting Group
Maggie Vandehy, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a partnership**

Business: **a dairy farm**

Taxpayer ID: **93-1147363**

The applicant's address is:

**26405 McFarland Road
Monroe, OR 97456**

Director's
Recommendation: **APPROVE**

Applicant **Van Beek Dairy**
Application No. **5345**
Facility Cost **\$98,823**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Animal Wastewater Storage Pond

The applicant is the owner 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 **not a replacement** facility for a previously certified animal waste system. It is used in conjunction with the previously certified pond.

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</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 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.

<u>Factor</u>	<u>Applied to This Facility</u>
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.

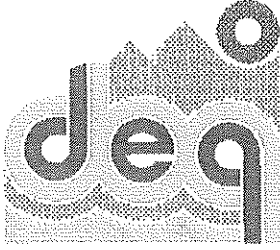
Considering these factors, the percentage of facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

Certificate number 2734 was issued on December 13, 1991 for the pre-existing storage pond. The pond previously certified in still in operation. 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

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Tax Credit Review Report

EQC 0012

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S Corporation**

Business: **a grass seed farm**

Taxpayer ID: **93-1108884**

The applicant's address is:

**13512 Doerfler Rd.
Silverton, OR 97381**

Director's
Recommendation: **APPROVE**

Applicant **Indian Brook, Inc.**
Application No. **5361**
Facility Cost **\$155,970**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**26' Shulte Mower (S/N C50290206807),
Case IH 8585 Baler (S/N CFH0142115),
John Deere 8200 Tractor (S/N RW8200-
P002743)**

The applicant is the owner of the facility
located at:

**13512 Doerfler Rd.
Silverton, OR 97381**

Technical Information

Indian Brook, Inc. does not own the land, but provides some equipment needed to farm the acres that IOKA Farms owns and rents. None of the equipment in this application is replacement for any equipment already receiving tax credit.

The applicant **currently has 3200 acres** under perennial grass seed production. At one time this applicant open field burned as many acres as the weather and smoke management program permitted. The applicant experimented with disking under the straw loads, but now chops or mows fields, rakes, bales and stacks the straw.

According to the applicant's calculations, as a result of using alternative practices, **3000 acres have been removed from being open field burned** (1400 acres with this equipment, and 1600 acres using equipment issued previous tax credits).

The applicant purchased this 26' Shulte Mower (serial # C50290206807), Case IH 8585 Baler (serial # CFH0142115), and John Deere 8200 (serial # RW8200-P002743) to be used for chopping or mowing fields, raking and baling straw, and for stacking baled straw.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent a substantial quantity of air pollution.
- ORAR-016-025 (2)(f)(A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>1/12/00</u>
	<i>Application Substantially Complete</i>	<u>10/09/00</u>
	<i>Construction Started</i>	<u>7/98</u>
	<i>Construction Completed</i>	<u>7/99</u>
	<i>Facility Placed into Operation</i>	<u>7/99</u>

Facility Cost

Facility Cost	<u>\$155,970</u>
Eligible Facility Cost	<u>\$155,970</u>

The facility cost was greater than \$50,000 but less than \$500,000. Therefore, Hoots, Weyant & Baker, P.C., performed an accounting review according to Department guidelines on behalf of the Applicant.

Facility Cost Allocable to Pollution Control

The facility cost was greater than \$50,000. According to ORS 468.190 (1), the following factors were considered in determining the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	The baled straw is a salable commodity
ORS 468.190(1)(b) Return on Investment	The average annual cash flow was negative (\$3,150); therefore, the percent allocable to pollution control is 100%. The useful life of the facility is 10 years.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.
Considering these factors, the percentage of facility cost allocable to pollution control is 100% .	

Compliance and Other Tax Credits

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

The applicant is an entity known as Indian Brook, Inc. with principals, David Doerfler and John Duerst. Mr. Doerfler and Mr. Duerst are also principals of IOKA Farms, Inc. All four of the above-mentioned entities have been issued previous tax credits.

Other tax credits issued to Indian Brook, Inc.:

App. #	Description of Facility	Facility Cost	Cert. #	Issue Date
4338	Baler, Loader & Squeeze	\$173,000	3428	03/03/1995
4775	Baghouse—Facility designed to separate dust particles from the exhaust air and deposit them in a hopper	\$50,000	3875	04/03/1998

Reviewers: Maggie Vandehey, DEQ
Dannelle Aleshire, DEQ
Jim Cramer, ODA



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Air Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **an C corporation**

Business: **steel foundry producing
castings for the construction
and mining industries**

Taxpayer ID: **93-0989423**

The applicant's address is:

**2141 N.W. 25th Avenue
Portland, OR 97210-2578**

Facility Identification

The certificate will identify the facility as:

**Installation of a Griffin Model
238G baghouse.**

The applicant is the owner of the facility
located at:

**2141 N.W. 25th Avenue
Portland, OR 97210-2578**

Technical Information

The claimed facility consists of the Griffin Model 238G four-compartment, pulse cleaning fabric filter dust collector, commonly called a baghouse. The claimed system also includes two air-handling fans to pull the contaminated air through the baghouse, foundations, support steel, electrical controls, and approximately 150 ft. of ductwork from the roof exhaust pickup points to the baghouse. The baghouse services a manufacturing area where metal castings are produced. This batch casting operation generates smoke, dust and metal fumes as molten steel is poured into sand molds staged on an open pouring floor.

DEQ approved the Notice of Intent to Construct on July 30, 1998 based on the same plans and specifications that were presented with the application.

Prior to the installation of the claimed facility, all emissions from the casting operation were uncontrolled. These emissions were released to the atmosphere via roof vents as fugitive emissions. Based on U.S. Environmental Protection Agency AP-42 emission factors, an

Director's
Recommendation: **APPROVE**

Applicant **ESCO Corporation**
Application No. **5402**
Facility Cost **\$531,950**
Percentage Allocable **100%**
Useful Life **10 years**

estimated 25 pounds per hour of particulate (52.5 tons per year) were emitted from the uncontrolled casting operation. The claimed facility was installed to capture these emissions and discharges from several existing fans that exhausted to atmosphere. It also replaces two obsolete baghouses used at other nearby operations. The collection efficiency of the claimed facility is 90% and the filter efficiency is 98%. The estimated particulate emission rates after the installation of the claimed facility are 3 pounds per hour or 6.25 tons per year – a reduction of 88%.

Eligibility

- ORS 468.155 (1)(a) 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 ducting is **not** to prevent, control or reduce a substantial quantity of air pollution.
- OAR 340-16-025(g)(B) **Replacement:** This facility is also a replacement for two baghouses that were obsolete. No tax credits were requested for the two replaced baghouses.
- ORS 468.155 (1)(b)(B) The control is accomplished by the **reduction of air polluton** through the use of the baghouse which is an air cleaning device 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>	03/24/00
<i>Application Substantially Complete</i>	09/21/00
<i>Construction Started</i>	10/01/98
<i>Construction Completed</i>	12/01/99
<i>Facility Placed into Operation</i>	12/01/99

Facility Cost

Facility Cost	\$542,632
Ineligible Costs – Interior capture hood on cooling floor	(10,682)
Eligible Facility Cost	\$531,950

The reviewers analyzed the facility cost on behalf of the department. Invoices substantiate the cost of the facility in conjunction with the engineering cost estimate worksheet.

The eligible facility cost was greater than \$50,000 but less than \$500,000. The reviewers analysed the facility cost on behalf of the Department. Paid invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

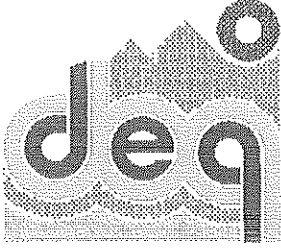
The facility cost exceeds \$50,000. According to ORS 468.190 (1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **100%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	There are no salable or usable commodity produced by the claimed facility.
ORS 468.190(1)(b) Return on Investment	No revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	None
ORS 468.190(1)(d) Savings or Increase in Costs	There were no savings or cost increases claimed.
ORS 468.190(1)(e) Other Relevant Factors	None

Compliance and Other Tax Credits

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

Reviewers: Darrel Allison, P.E. HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **a Partnership**

Business: **a car wash adjacent to a gas
station**

Taxpayer ID: **93-1266564**

The applicant's address is:

**716 Mt. Adams
Boardman, OR 97818**

Director's
Recommendation: **APPROVE**

Applicant **Doherty & Russell**
Application No. **5406**
Facility Cost **\$8,774**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**1,000-gallon oil/water separator
and four 1,000-gallon sand traps**

The applicant is the owner of the facility
located at:

**Boardman Car Wash
104 S. Main St.
Boardman, OR 97818**

(adjacent to 101 SW Front St. gas station—
DEQ facility ID 4188)

Technical Information

The facility consists of one 1,000-gallon oil/water separator and four 1,000-gallon sand traps. The filters remove vehicle oils from the waste and stormwater runoff that would otherwise discharge into the sewer or storm drain.

Eligibility

ORS 468.155 (1)(b) The **sole purpose** of this **new installation** is to reduce a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) The **disposal or elimination** of or redesign to eliminate **industrial waste** and the use of treatment works for industrial waste as defined in ORS 468B.005

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

Timeliness of Application

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

<i>Application Received</i>	<u>4/14/2000</u>
<i>Application Substantially Complete</i>	<u>10/17/2000</u>
<i>Construction Started</i>	<u>4/28/1998</u>
<i>Construction Completed</i>	<u>11/5/1999</u>
<i>Facility Placed into Operation</i>	<u>11/5/1999</u>

Facility Cost

Facility Cost	<u>\$8,774</u>
Eligible Facility Cost	<u>\$8,774</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices and/or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

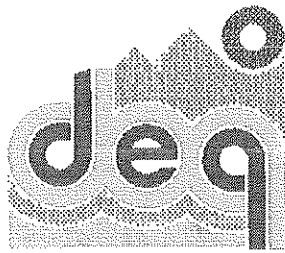
The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to the applicant:

UST 25-4188-1998 OPER

The partner Don Russell is owner of Russell Oil Company which has received other tax credits.

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EOC 0012

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C corporation**

Business: **precision coated imaging
papers**

Taxpayer ID: **04-3115717**

The applicant's address is:

**PO Box 3349
Portland, OR 97208**

Director's
Recommendation: **APPROVE**

Applicant **Rexam Graphics, Inc.**
Application No. **5408**
Facility Cost **\$847,898**
Percentage Allocable **100%**
Useful Life **7 years**

Facility Identification

The certificate will identify the facility as:

Regenerative thermal oxidizer

The facility is located at:

**12238 North Portland Road
Portland, OR 97217**

Technical Information

The claimed facility includes a regenerative thermal oxidizer (RTO), two paper coater enclosures and lower explosion limit monitors. Durr Environmental, Inc manufactured the RTO. It destroys approximately 100 tons of VOC emissions per year that are generated in the process of applying coatings to paper. The RTO is rated for 41,000 cfm. The RTO has a destruction efficiency of 95% and operates at 1400°F. The two paper coater enclosures were constructed to capture the process VOC emissions. Each enclosure is a 15-foot by 10-foot room that is 16 feet high (approximate dimensions). The enclosures are exhausted to the RTO. The lower explosion limit monitors ensure the flammable vapors do not buildup in the enclosures to levels that could result in an explosion.

Eligibility

ORS 468.155 Regenerative Thermal Oxidizer

(1)(a)(A) The **principal purpose** of this **new equipment installation** is to comply with a requirement imposed by the applicants Oregon Title V Operating Permit, #26-0012 to **control** VOC emissions, which meet the definition of air pollution.

ORS 468.155(2)(d) The following components **do not** make a substantial contribution to the pollution control purpose:

- The #1 and #2 enclosures were constructed and installed to capture and direct the VOC emissions generated by the paper coaters to the thermal oxidizer. The enclosures provide means of reducing employee exposure to hazardous solvent fumes during processing.
- The lower explosion limit monitors are used to monitor the concentration of flammable vapors and sound an alarm if the levels enter the explosive range. The Uniform Fire Code requires the monitoring of the explosive range inside the enclosures.
- Hazardous material removal does not reduce air pollution.
- Source testing verifies the destruction efficiency of the thermal oxidizer and does not reduce air pollution.
- The stairs and sidewalks do not qualify for tax credits since they do not reduce air pollution.
- Painting of existing duct is maintenance not air pollution control.

ORS 468.155 (1)(b) The **control** is accomplished by the **elimination of air contaminants** and the use of a regenerative 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>	04/21/2000
<i>Application Substantially Complete</i>	06/08/2000
<i>Construction Started</i>	05/01/1998
<i>Construction Completed</i>	12/01/1998
<i>Facility Placed into Operation</i>	02/01/1999

Facility Cost

Claimed Facility Cost		\$1,226,403
Ineligible Costs:		
#1 & #2 Enclosures (construction & testing)	\$ 109,946.60	
Lower explosion limit monitor	210,046.01	
Hazardous materials removal	6,150.00	
Source Test	4,800.00	
Concrete sidewalk and stairs	13,465.78	
Painting of existing ducting & doors	15,318.00	
Engineering assistance for source test and enclosure	18,778.33	
	Total Ineligible Costs	(\$378,505)
Eligible Facility Cost		\$ 847,898

The claimed facility cost exceeds \$500,000, therefore the reviewers performed an analysis of the facility cost on behalf of the Department. Copies of invoices substantiated 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 7 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	The applicant considered upgrading their existing solvent recovery system. The cost was equivalent to a new RTO. However, it could not meet DEQ requirements.
ORS 468.190(1)(d) Savings or Increase in Costs	Operating costs remained unchanged.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors were provided.

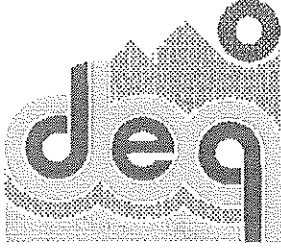
Considering these factors, the percentage of the eligible facility cost allocable to pollution control is **100%**.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility:

Oregon Title V Operating Permit Number 26-0012, Expiration Date October 1, 2002.

Reviewers: Dennis Cartier, Associate, SJO Consulting Engineers
 Lois Payne, PE, SJO Consulting Engineers
 Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Partnership**

Business: **a grass seed farm**

Taxpayer ID: **93-0989750**

The applicant's address is:

**23350 SW McKee Rd
Amity, OR 97101**

Director's

Recommendation: **APPROVE**

Applicant

McKee Farms

Application No.

5409

Facility Cost

\$14,857

Percentage Allocable

100%

Useful Life

10 years

Facility Identification

The certificate will identify the facility as:

**A John Deere Model 2018 20' Rotary
Mower (S/N W02018F003156)**

The applicant is the owner of the facility
located at:

**23350 SW McKee Rd
Amity, OR 97101**

Technical Information

The applicant owns 620 acres and leases another 340. All acreage is under perennial grass seed production. In the past the applicant open field burned as many acres as the weather and smoke management permitted. In an attempt to replace the open field burning process, some acreage has been baled off, forage harvested, or chopped each year. **The applicant states that as a result of using these alternative practices over the last three years, all 960 acres have been removed from being open field burned.**

The applicant purchased this John Deere 2018 20' Rotary Mower (serial # W02018F003156) to chop down full straw loads on the grass seed fields. The mower cuts a 20-foot swath of the remaining straw residue into smaller particles to be left on the field to decompose.

Eligibility

ORS 468.155 The **principal purpose** of this **new equipment** is to prevent, or reduce a
(1)(a) substantial quantity of air pollution.

0AR-016-025 Equipment, facilities, and land for gathering, densifying, processing,
(2)(f)(A) 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>	4/26/00
<i>Application Substantially Complete</i>	10/9/00
<i>Construction Started</i>	5/8/98
<i>Construction Completed</i>	5/8/98
<i>Facility Placed into Operation</i>	8/98

Facility Cost

Facility Cost	\$14,857
Eligible Facility Cost	\$14,857

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

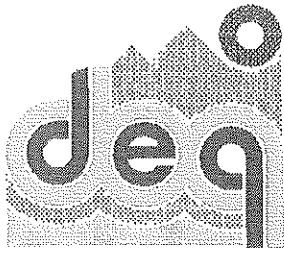
Compliance and Other Tax Credits

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

Other tax credits issued to McKee Farms:

App. #	Description of Facility	Facility Cost	Cert. #	Issue Date
4388	Self-propelled diesel stackwagon	\$26,500	3469	07/07/1995
4596	370 Freeman Baler	\$22,200	3875	05/17/1996
5098	120' x 80' x 20' storage barn for grass seed straw	\$67,005	4077	12/11/1998

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ
Jim Cramer, ODA



Tax Credit Review Report

EQC 0012

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: **manufacturer of wood and
laminated cabinetry**

Taxpayer ID: **93-0581543**

The applicant's address is:

**3025 west 7th Place
Eugene, OR 97402**

Director's
Recommendation: **APPROVE**

Applicant **Lanz Cabinet Shop, Inc.**
Application No. **5413**
Facility Cost **\$154,264**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Installation of a Carothers baghouse.

The applicant is the owner of the facility located
at:

**3025 West 7th Place
Eugene, OR 97402**

Technical Information

The claimed facility is the installation of a baghouse at an existing cabinet plant operation. The claimed facility was added to collect and filter the dust-laden air from the cabinet factory tools. The baghouse system replaces a single dust collection cyclone and controls small source areas that previously exhausted directly the atmosphere. Dust collected at the baghouse is relayed to a truck bin and sold as hog-fuel. It is periodically loaded into trucks and hauled offsite to the end user. The claimed facility consists of:

- a) The baghouse/filter unit, support structure, the main fan assembly, a 200HP-fan motor, and a rotary airlock with 5HP motor.
- b) The interconnecting ductwork from the pick-up points to the baghouse and from the baghouse to the truck bin, and
- c) The bulk storage/truck-loading bin with a hydraulic power unit to operate the unloading gates.

Eligibility

ORS 468.155 The **principal purpose** of this **new baghouse equipment installation** is to
(1)(a) prevent, control or reduce a substantial quantity of **air pollution** in compliance
with regulation or permit conditions imposed by the Lane County Regional Air

Pollution Authority (ACDP #204739, issued 10/26/99).

The **principal purpose** of the **interconnecting piping and the truck loading bin** 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).

<i>Application Received</i>	05/11/00
<i>Application Substantially Complete</i>	09/01/00
<i>Construction Started</i>	12/02/97
<i>Construction Completed</i>	05/15/99
<i>Facility Placed into Operation</i>	05/18/99

Facility Cost

Facility Cost	\$ 200,000
Salvage Value	0
Insignificant Contribution ORS 468.155(2)(d)	
Ductwork and interconnecting piping – as removed by applicant	\$ 15,368
Truck loading bin	\$ 30,368
Eligible Facility Cost	\$154,264

The applicant claimed the salvage value of the claimed equipment would be \$20,000. However, the salvage value is for any pre-existing equipment removed to install the claimed facility. Therefore, the Department did not deduct the salvage value. The above “insignificant contribution” is to the pollution control purpose of the facility.

The claimed facility cost was greater than \$50,000 but less than \$500,000. The reviewers analyzed the facility cost on behalf of the Department. Paid invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost was greater than \$50,000. According to ORS 468.190 (1), the following factors 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	The collected material at the baghouse is sold. Average annual income is estimated at \$1,080/year.

ORS 468.190(1)(b) Return on Investment

The applicant provided a complete cash flow worksheet detailing operating income and expenses associated with the claimed facility. Operating expenses of the facility far outweigh the minimal income from recovery and sale of the wood dust. Average annual operating expense is estimated at \$22,353/year.

ORS 468.190(1)(c) Alternative Methods

No alternative investigated.

ORS 468.190(1)(d) Savings or Increase in Costs

None identified.

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%**.

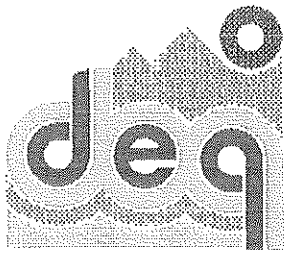
Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified.

ACDP permits issued to facility:

LRAPA ACDP #204739, issued 10/26/999

Reviewers: Maggie Vandehey, DEQ
Allison/HCMA Consulting Group



Tax Credit Review Report

EQC 0012

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: **manufacturer of wood and
laminated cabinetry**

Taxpayer ID: **93-0581543**

The applicant's address is:

**3025 West 7th Place
Eugene, OR 97402**

Director's
Recommendation: **Approve**

Applicant **Lanz Cabinet Shop, Inc.**
Application No. **5414**
Facility Cost **\$3,300**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Installation of a solvent recovery still.

The applicant is the owner of the facility located at:

**3025 West 7th Place
Eugene, OR 97402**

Technical Information

The claimed facility is the installation of a PBR Model AV20xF/H 5.2-gallon recovery still. Used solvents are placed in a small tank and heated until the solvent evaporates. The solvent vapors are condensed and collected for reuse. Approximately 60% of the used solvent is recovered and reused in the applicant's manufacturing operation. The contaminants in the used solvent remain in the recovery tank and are disposed of as solid waste. Prior to the installation of the recovery system, the entire volume of used solvent and solid waste was disposed of as hazardous waste.

Eligibility

ORS 468.155 The **sole purpose** of this **new solvent recovery still** is to prevent, control or (1)(a) reduce a substantial quantity of solid waste.

ORS 468.155 The pollution control is accomplished by the use of a **material recovery (1)(b)(D) process** which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

Timeliness of Application

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

<i>Application Received</i>	<u>05/11/00</u>
<i>Application Substantially Complete</i>	<u>09/07/00</u>
<i>Construction Started</i>	<u>06/29/98</u>
<i>Construction Completed</i>	<u>07/10/98</u>
<i>Facility Placed into Operation</i>	<u>07/10/98</u>

Facility Cost

Facility Cost	<u>\$ 3,300</u>
Eligible Facility Cost	<u>\$ 3,300</u>

The claimed facility cost does not exceed \$50,000; therefore, an independent accounting review was not required. Paid invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility reduces operating costs for the applicants manufacturing operations. However, 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%**.

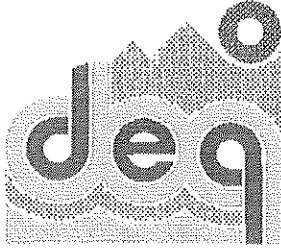
Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified.

ACDP permits issued to facility:

LRAPA ACDP #204739, issued 10/26/99

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ
Bill Bree, DEQ



Tax Credit Review Report

EQC 0012

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: **manufacturer of wood and
laminated cabinetry**

Taxpayer ID: **93-0581543**

The applicant's address is:

**3025 West 7th Place
Eugene, OR 97402**

Director's

Recommendation: **APPROVE**

Applicant **Lanz Cabinet Shop Inc.**

Application No. **5415**

Facility Cost **\$55,000**

Percentage Allocable **85%**

Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**One West Salem Machine High
Torque Shredder, Model 1662HT,
serial number 271297.**

The applicant is the owner of the facility
located at:

**3025 West 7th Place
Eugene, OR 97402**

Technical Information

This shredder is used to process scrap wood generated from manufacturing activities. The wood scrap is shredded down to a size that can be used in the manufacture of fiberboard products by another company.

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 shredder is used solely for processing recyclable material.

ORS 468.155 (1)(b)(D) The use of a **material recovery process** which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005. The recyclable material processed with this shredder is subsequently transported to end use markets where it is remanufactured into new products.

Timeliness of Application

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

<i>Application Received</i>	05/10/2000
<i>Application Substantially Complete</i>	09/22/2000
<i>Construction Started</i>	03/12/1998
<i>Construction Completed</i>	05/15/1998
<i>Facility Placed into Operation</i>	05/18/1998

Facility Cost

Facility Cost	\$55,000
Eligible Facility Cost	\$55,000

The facility cost exceeds \$50,000. The applicant provided an accountant's review of costs associated with the claimed facility. The applicant also provided copies of invoices that substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

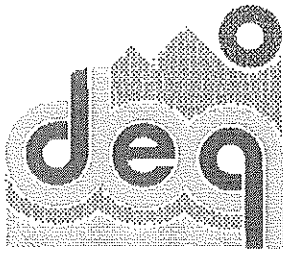
The facility cost exceeds \$50,000. According to ORS 468.190(1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **85%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	This shredder is used to process 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 10 years. The calculated return on investment factor is 9.49 therefore the percentage return on investment is 1%. Therefore the portion of cost allocable to pollution control is 85%.
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.

Reviewer: William R Bree, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Air Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant **Lanz Cabinet Shop, Inc.**
Application No. **5416**
Facility Cost **\$390,000**
Percentage Allocable **91%**
Useful Life **10years**

Applicant Identification

Organized As: **a S corporation**
Business: **manufacturer of wood and
laminated cabinetry**
Taxpayer ID: **93-0581543**

The applicant's address is:

**3025 West 7th Place
Eugene, OR 97402**

Facility Identification

The certificate will identify the facility as:

**Installation of a Cefla flat line
ultraviolet coating line**

The applicant is the owner of the facility located
at:

**3025 West 7th Place
Eugene, OR 97402**

Technical Information

The claimed facility is the installation of equipment that allows the applicant to apply furniture finishes that are cured by ultraviolet light. The ultraviolet (UV) coating machine is used in place of a conventional paint spray booth. The conventional paint booth uses finishing materials that use solvents and lacquers as carriers. The application of these conventional finishes releases volatile organic compounds into the atmosphere in quantities in excess of limits allowed by the Lane County Regional Air Pollution Authority (LRAPA).

The UV coater is a system of conveyors and robotic sprayers to minimize the volume of paint sprayed on to each piece of furniture. It includes a water curtain and counter-current packed tower to remove paint solids from the air discharged from the robotic spray unit. The UV unit in the conveyor line cures the finish. The UV coater also allows the use of a low-VOC "UV Topcoat" to further reduce VOC emissions. This coating can only be used with the UV system. The components that are part of the UV system (s/n 71325) are the reciprocating sprayer (Ecosprayer Easy W), the flash-off/drying oven (FEV E/TT11000), and the UV curing oven (MPS TL 2/45/SPR).

If the UV coater were not used, the applicant would have to operate two (2) conventional paint spray booths. An estimated 113 tons per year of VOC's would be emitted by the use of the conventional paint booths. The UV coater system is predicted to emit about 70 tons per year of VOC's-a reduction of about 38%. The UV coater has been identified as best-achievable-control technology (BACT) for wood finish systems by LRAPA. It is a requirement in the applicant's ACDP #204739.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new ultraviolet coating line installation** is to prevent, control or reduce a substantial quantity of **air pollution** in compliance with regulation or permit conditions imposed by the Lane County Regional Air Pollution Authority (ACDP #204739, issued 10/26/99). Each facility shall have only one primary purpose but it may have other purposes.

ORS 468.155(1)(b)(B) The control is accomplished by the **reduction of air pollution** and the use of a special machine to apply and cure ultraviolet coatings which do not have the volatile organic compound emissions of conventional solvent/laquer based coatings meeting the definition of an air cleaning device per ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	05/17/00
<i>Application substantially complete</i>	09/01/00
<i>Construction Started</i>	01/12/98
<i>Construction Completed</i>	05/28/98
<i>Facility Placed into Operation</i>	05/29/98

Facility Cost

Facility Cost	\$ 447,000
Salvage Value	0
Ineligible Costs OAR 340-016-0070(3)	(\$57,000)
Belt Conveyor Model TN3000/A	
Panel Brushing Machine VS/34-ACT	
Belt Transfer Conveyor TN1900	
Belt Conveyor TN3000/W	
Eligible Facility Cost	\$390,000

The claimed facility cost does not exceed \$500,000; therefore, an independent accounting review was not required. The reviewers analysed the facility cost. The applicant deducted the estimated future salvage value of the claimed facility. The salvage value deduction is for any pre-existing equipment removed to install the claimed facility. Paid invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The eligible 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	The claimed facility does not recover a useable or saleable product.
ORS 468.190(1)(b) Return on Investment	None identified.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated. This system was BACT.
ORS 468.190(1)(d) Savings or Increase in Costs	The system reduced costs by an average of \$22,372/year. Based on a 15-year useful life, this equates to a Facility ROI of less than zero.
ORS 468.190(1)(e) Other Relevant Factors	The applicant stated that it would have taken two conventional spray booths to accommodate the same production levels. The cost of two conventional spray booths would have been \$35,400. The conventional spray booths represent 9% of the Eligible Facility Cost. Therefore, the percentage of the facility cost that is properly allocable to pollution control is 91%.

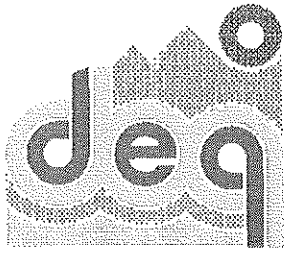
Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified.

DEQ and other Permits issued to facility:

LRAPA ACDP #204739, issued 10/26/99

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Lanz Cabinet Shop, Inc.**
Application No. **5417**
Facility Cost **\$13,000**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Solid Waste

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S corporation**
Business: **manufacturer of wood and
laminated cabinetry**
Taxpayer ID: **93-0581543**

The applicant's address is:

**3025 West 7th Place
Eugene, OR 97402**

Facility Identification

The certificate will identify the facility as:

**Installation of an overspray recovery
system.**

The applicant is the owner of the facility located
at:

**3025 West 7th Place
Eugene, OR 97402**

Technical Information

The claimed facility is the installation of an overspray system on the cabinet finishing spray conveying line. The unit is comprised of robotic spray applicators in lieu of conventional spray booths. The robotic spray system allows recycling 35% of the coating fed to the sprayer. The system also includes a device for removing any overspray from the system conveyor belt for recycling. The recycled overspray reduces the applicant's total purchased coating material, and results in a cost savings to the applicant. The applicant only claiming the cost of the spray system that is used solely for the recovery of excess paint.

Eligibility

ORS 468.155 (1) The applicant claimed the **sole purpose** of this **new** over-spray recovery **installation** is to prevent, control or reduce a substantial quantity of **solid waste**.

ORS 468.155 (1)(b)(D) The **new** installation is a material recovery process that obtains useful material from material that would otherwise be solid waste.

Timeliness of Application

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

<i>Application Received</i>	<u>05/17/00</u>
<i>Application Substantially Complete</i>	<u>09/01/00</u>
<i>Construction Started</i>	<u>01/12/98</u>
<i>Construction Completed</i>	<u>05/28/98</u>
<i>Facility Placed into Operation</i>	<u>05/29/98</u>

Facility Cost

Facility Cost	<u>\$ 13,000</u>
Eligible Facility Cost	<u>\$13,000</u>

The applicant only claimed the cost of the spray system that is used solely for the recovery of excess paint. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required. Invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The equipment significantly reducing operating costs. However, 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.

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.

ACDP permits issued to facility:

LRAPA ACDP #204739, issued 10/26/99

Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Sole Proprietor**
Business: **a grass seed farm**
Taxpayer ID: **542-66-0293**

The applicant's address is:

**27666 Peoria Road
Halsey, OR 97348**

Technical Information

The applicant owns 720 acres and leases another 280. Of these 1000 acres, 640 acres are currently under perennial grass seed production and 360 acres are under annual grass seed production. In the past the applicant open field burned as many acres as the weather and smoke management permitted. In an attempt to replace the open field burning process, some acreage has been baled off with remaining residue propane flamed or vacuumed off. When the residue is vacuumed off, a slurp stack is created. Slurp stacks are usually are about 8 feet wide, 10 feet high and 16 feet long. These stacks are usually deposited at the edge of the field to be burned at a later date.

The applicant purchased this Rears 15-foot PakChopper (serial # F98-282) mower to chop down full straw loads on the grass seed fields. The mower cuts a 15-foot swath of the remaining straw residue into smaller particles to be left on the field to decompose.

Director's
Recommendation: **APPROVE**

Applicant **James Van Leeuwen**
Application No. **5421**
Facility Cost **\$13,772**
Percentage Allocable **100%**
Useful Life **7 years**

Facility Identification

The certificate will identify the facility as:

**A Rears 15' PakChopper
(S/N F98-282)**

The applicant is the owner of the facility
located at:

**27070 Irish Bend Loop
Halsey, OR 97348**

Eligibility

- ORS 468.155 The **principal purpose** of this **new equipment** is to prevent, or reduce a
(1)(a) substantial quantity of air pollution.
- ORAR-016-025 Equipment, facilities, and land for gathering, densifying, processing,
(2)(f)(A) handling, storing, transporting and incorporating grass straw or straw based
products which will result in reduction of open field burning.

Timeliness of Application

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

<i>Application Received</i>	<u>6/9/00</u>
<i>Application Substantially Complete</i>	<u>10/09/00</u>
<i>Construction Started</i>	<u>7/10/98</u>
<i>Construction Completed</i>	<u>7/10/98</u>
<i>Facility Placed into Operation</i>	<u>7/21/98</u>

Facility Cost

Facility Cost	<u>\$13,772</u>
Eligible Facility Cost	<u>\$13,772</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

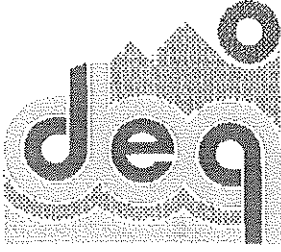
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ
Jim Cramer, ODA



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized As: **Sole Proprietor**

Business: **Retail Gas Station**

Taxpayer ID: **93-1128605**

The applicant's address is:

**2175 Highway 101
Florence OR 97439**

Facility Identification

The certificate will identify the facility as:

**Doublewall flexible plastic piping,
automatic tank gauge system, overfill
alarm, sumps, automatic shutoff valves
and stage II vapor recovery piping.**

The applicant is the owner of **DEQ Facility
ID 8124** located at:

**813 Hwy 101
Florence, OR 97439**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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

Director's
Recommendation: **APPROVE**

Applicant **Robert E. Miles**
Application No. **5422**
Eligible Facility Cost **\$107,437**
Percentage Allocable **99%**
Useful Life **10 years**

Timeliness of Application

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

<i>Application Received</i>	06/12/00
<i>Application Substantially Complete</i>	08/08/00
<i>Construction Started</i>	03/07/98
<i>Construction Completed</i>	06/14/98
<i>Facility Placed into Operation</i>	06/15/98

Facility Cost

	Claimed	\$108,301
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%).		(\$864)
	Eligible	\$107,437

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 piping system cost is \$1,243. Therefore, 1% of the eligible facility cost is not allocable to pollution control leaving the remaining 99% 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.

Reviewer: Barbara J Anderson, DEQ



Director's
Recommendation: **APPROVE**

Applicant **Rejuvenation Inc.**
Application No. **5424**
Facility Cost **\$79,909**
Percentage Allocable **100%**
Useful Life **10 years**

Tax Credit Review Report

EQC 0012

Pollution Control Facility: Water Final Certification

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

Applicant Identification

Organized As: **a S corporation**
Business: **manufacturer of period
reproduction lighting fixtures.**
Taxpayer ID: **93-0803457**

The applicant's address is:

**2550 N.W. Nicolai Atreet
Portland, OR 97210**

Facility Identification

The certificate will identify the facility as:

**Installation of a Beckart
Environmental 1,000 gallon water
treatment system.**

The applicant is the owner of the facility located
at:

**2550 N.W. Nicolai Street
Portland, OR 97210**

Technical Information

The claimed facility is the installation of a Beckworth Environmental 1,000-gallon wastewater treatment system that uses agitation, aeration, and the addition of polymers to precipitate regulated metals out of the wastewater stream. In the case of this facility, these metals include copper, lead and selenium. The system also uses lime for pH neutralization and clarification. The treated water discharges to the City of Portland sewer system. The metals collect as sludge at the filter press with subsequent disposal in an approved solid waste landfill.

The claimed facility consists of a variety of tanks, mixers, process pumps, metering pumps pump, and a filter press. The system mixes the contaminated process water with the treatment chemicals. Prior to the installation of this system, water tests of the wastewater indicated unacceptable levels of copper (16mg/L), lead (0.4mg/L), and selenium (10mg/L). The City of Portland allowable levels for these metals is, respectively, 3.7mg/L, 0.7 mg/L, and 0.6mg/L. Independent tests of the wastewater treated by the claimed system showed the following level of metals: copper (not detected), lead (not detected), and selenium (0.5mg/L). The system brings the wastewater discharge into compliance with City of Portland regulations.

Eligibility

- ORS 468.155(1)(a) The **primary purpose** of this new **Beckworth Environmental water treatment equipment installation** is to prevent, control or reduce a substantial quantity of **water pollution** in compliance with regulation or permit conditions imposed through the City of Portland-Environmental Services.
- ORS468.155(1)(b)(A) The control is accomplished by reducing water pollution with a treatment system that meets the definition of treatment works in ORS 468B.005(6)

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>06/20/00</u>
	<i>Application substantially complete</i>	<u>06/20/00</u>
	<i>Construction Started</i>	<u>02/02/98</u>
	<i>Construction Completed</i>	<u>07/24/98</u>
	<i>Facility Placed into Operation</i>	<u>08/17/98</u>

Facility Cost

Facility Cost	<u>\$ 79,909</u>
Eligible Facility Cost	<u>\$ 79,909</u>

The claimed facility cost was less than \$500,000; therefore, an independent accounting review was not required. The reviewers performed an analysis of the facility cost on behalf of the Department. Paid invoices substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The eligible 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	The claimed facility does not recover a useable or saleable product.
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	No savings or claimed increases in costs
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. No previous tax credits were identified. City of Portland wastewater discharge permit #433.031, issued 03/01/00. ACDP #26-0069 issued 03/20/00.

Reviewers: Allison/HCMA Consulting Group/ Maggie Vandehey, DEQ

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Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **5426**
Facility Cost **\$81,781**
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: **a C corporation**
Business: **power transmission substation**
Taxpayer ID: **93-0256820**

The applicant's address is:

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

Facility Identification

The facility is identified as:

Spill Containment System

The applicant is the owner of the facility located at:

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

Technical Information

The claimed facility is a lined containment system that drains to a vault and is installed in the transformer area of the substation. The substation has oil filled electrical equipment containing approximately 5,100 gallons of transformer oil. The site was graded such that all rainfall or spilled transformer oil in the containment area will run to an 18-inch perforated concrete pipe located above the liner and approximately 8-inches below grade. The pipe drains into a vault that has the capacity to contain all of the oil spilled from the largest transformer unit.

Without the system, should an oil spill occur, the oil would flow into the ground or storm water drainage system, which flows to the Willamette River.

Eligibility

- ORS 468.155 (1)(a)(A) The **sole purpose** of this **new containment system installation** is to **prevent** a substantial quantity of water pollution.
- ORS 468.155 (1)(b) 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.
- OAR-016-0025 (2)(g) The installation of this facility will prevent oil spills or unauthorized releases on land or waters of the state.

Timeliness of Application

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

<i>Application Received</i>	<u>6/28/2000</u>
<i>Application Substantially Complete</i>	<u>10/20/2000</u>
<i>Construction Started</i>	<u>9/20/1996</u>
<i>Construction Completed</i>	<u>6/30/1998</u>
<i>Facility Placed into Operation</i>	<u>6/30/1998</u>

Facility Cost

Claimed Facility Cost

\$81,781

Eligible Facility Cost

\$81,781

The facility cost is greater than \$50,000 but less than \$500,000. Therefore, Price Waterhouse Coopers provided an independent accounting statement in accordance with Department guidelines on behalf of the applicant.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

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 44 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternatives were considered
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. There are no permits issued to the facility.

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



Tax Credit Review Report

EQC 0012

Director's Recommendation: **APPROVE**
Applicant: **Fujimi America Inc.**
Application No.: **5431**
Facility Cost: **\$61,356**
Percent 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: **C corporation**
Business: **liquid polishes for use in
manufacture of wafers and disk
products.**
Taxpayer ID: **93-0982049**

The applicant's address is:

**11200 SW Leveton Drive
Tualatin, OR 97062**

Facility Identification

The certificate will identify the facility as:

Hydrokinetic HCN Scrubber

The applicant is the owner of the facility of the facility located at:

**11200 SW Levetin Drive
Tualatin, OR 97062**

Technical Information

The claimed facility consists of a new HCN scrubber system used to remove hydrogen cyanide from tank vent gas. This is accomplished by using sodium hypochlorate as a reagent while maintaining the pH by adding sodium hydroxide. The system is sized to reduce emissions to the atmosphere from 0.99 lb/yr to 0.184 lb/yr. The claimed facility included wastewater piping that discharges wastewater into the public sanitary sewer.

The installation of the HCN scrubber was part of a production improvement project. Without the facility, approximately 2.7 ppm of hydrogen cyanide would be emitted to the atmosphere at a rate of approximately 500-cfm per tank for two tanks.

Eligibility

- ORS 468.155 The **principal purpose** of this **new equipment** is to **not** comply with DEQ (1)(a)(A) requirements to prevent, control, or reduce air pollution.
- ORS 468.155 The **sole purpose** of this **new scrubber installation** is to **control** a substantial (1)(a)(B) quantity of air pollution.
- ORS 468.155 The **control** is accomplished by the elimination of air contaminants and the use (1)(b)(B) of an air cleaning devices as defined in ORS 468A.005.

ORS 468.155 The **sole purpose** of this **wastewater discharge piping** is **not** to prevent, (1)(a)(B) control, or reduce a substantial quantity of air pollution. It's purpose is to convey wastewater.

Timeliness of Application

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

<i>Application Received</i>	7/11/2000
<i>Application Substantially Complete</i>	5/25/2000
<i>Construction Started</i>	4/15/1998
<i>Construction Completed</i>	7/14/1998
<i>Facility Placed into Operation</i>	7/17/1998

Facility Cost

Claimed Facility Cost	\$ 63,556
Ineligible Costs:	
Wastewater Piping - The wastewater piping makes an insignificant contribution to air pollution control. Removing wastewater would have been required with or without the pollution control.	- 2,200
Eligible Facility Cost	\$ 61,356

The claimed facility cost was greater than \$50,000 but less than \$50,000. Therefore, Merina, McCoy & Co., PC performed an independent accounting review according to Department guidelines on behalf of the applicant. The reviewers analysed the facility cost on behalf of the Department. Copies of invoices substantiated the claimed 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	The facility is not used to recover and convert waste products into a salable or usable 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	Alternative methods, equipment and costs were considered to achieve the same objective, however the Hydrokinetic scrubber was the most cost effective.
ORS 468.190(1)(d) Savings or Increase in Costs	There was an increase in operating costs but no savings were associated with installing

ORS 468.190(1)(e) Other Relevant Factors

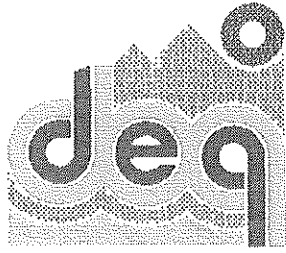
this facility.
No other relevant factors.

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 facility: Stormwater permit 1200-Z and Unified Sewerage Agency Industrial Wastewater discharge permit 111-191-2.

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 0012

Director's
Recommendation: **APPROVE – Replacement**

Applicant: **Times Litho, Inc.**
Application No.: **5432**
Original Facility Cost: **\$284,119**
Original Percent Allocable: **100%**
Original 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: **a C corporation**
Business: **web offset printer that
provides pre-press, press, and
bindery services.**

Taxpayer ID: **93-0236340**

The applicant's address is:

**1829 Pacific Avenue
Forest Grove, OR 97116**

Facility Identification

The certificate will identify the facility as:

Regenerative Thermal Oxidizer

The applicant is the owner of the facility located
at:

**1829 Pacific Avenue
Forest Grove, OR 97116**

Technical Information

The claimed facility consists of an Applied Websystems RTO-10 Regenerative Thermal Oxidizer. It is used to incinerate Volatile Organic Compounds (VOCs) associated with heatset web operations. The system is guaranteed to completely combust 98% of the VOCs entering the system.

Prior to installation of the facility, a TEC Phoenix 700 Turbomix Oxidizer was being used; however, it developed cracks that allowed VOCs to bypass the combustion chamber and had to be replaced. Without replacement, about 3 tons of VOCs per year would bypass the combustion chamber with the potential for up to 13 tons per year.

Thermal oxidizers are very effective in controlling VOC emissions from heatset printing provided the combustion temperatures are maintained at 1300°F or higher.

Eligibility

- ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment** is to comply with DEQ requirements to **prevent** air pollution. The requirement is imposed by the applicants Air Contaminant Discharge Permit No. 34-2744. The permit requires a minimum destruction efficiency (DE) of 95% for the thermal oxidizer during all normal and maximum loading conditions and requires the temperature be monitored. If the temperature drops below 1350°F for more than ten minutes when the presses are in operation, an alarm is activated. The VOC plant site emissions limit (PSEL) is 13 tons per year and the baseline emission rate is 3.3 tons per year.
- ORS 468.155 (1)(b)(B) The **prevention** is accomplished by the elimination of air pollution and the use of an air cleaning device as defined in ORS 468A.005.
- ORS 468.155 (2)(e)(B) The claimed facility **replaced** a previously certified pollution control facility before the end of its useful life. Therefore, the facility is eligible for the remainder of the tax credit certified to the original facility. Tax credit application number 2614 was certified for \$284,119 on 12/13/1991. Only the remaining value of the original tax credit is available to the applicant.

Timeliness of Application

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

<i>Application Received</i>	<u>7/11/00</u>
<i>Application Substantially Complete</i>	<u>10/20/00</u>
<i>Construction Started</i>	<u>12/4/98</u>
<i>Construction Completed</i>	<u>12/22/98</u>
<i>Facility Placed into Operation</i>	<u>1/5/99</u>

Facility

Cost	Claimed Facility Cost	<u>\$ 311,967</u>
	Eligible Facility Cost	<u>\$ 311,967</u>

The facility cost is greater than \$50,000 but less than \$500,000. Invoices substantiated the replacement facility cost. A new facility was installed to replace a previously certified facility before the end of its useful life.

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 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	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. Annual revenues and expenditures did not affect the return on investment consideration.
ORS 468.190(1)(c) Alternative Methods	Other types of incinerators were evaluated but the one selected was the most cost effective.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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:

Air Contaminant Discharge Permit No. 34-2744 issued 2/18/99
Hazardous Waste Small Quantity Generator

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

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: TIMES LITHO, INC. P.O. Box 7 Forest Grove, OR 97116	Location of Pollution Control Facility: 1829 Pacific Avenue Forest Grove, OR 97116
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: One TEC Phoenix Thermal 7000 Turbomix oxidizer (afterburner).	
Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Facility was Completed: 10-18-90 Placed into Operation: 10-18-90	
Actual Cost of Pollution Control Facility: \$284,119.00	
Percent of Actual Cost Properly Allocable to Pollution Control: 100%	

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed: William W. Wessinger
Title: William W. Wessinger, Chairman

Approved by the Environmental Quality Commission
on the 13th day of December, 1991.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT
POLLUTION PREVENTION PILOT PROGRAM

1. Applicant

Thomas Joseph, Inc.
10808 SE Oak St.
Milwaukie, OR 97222

The applicant owns and operates a clothes cleaning shop located in the Milwaukie Marketplace, 10808 SE Oak St., Milwaukie, Oregon.

Application was made for tax credit for an air pollution prevention facility.

2. Description of Facility

The claimed facility is a new multiprocess wet cleaning system, which was installed as a replacement for part of the cleaning capacity of the existing perc dry-cleaning machine. The wet cleaning system reduces the emissions of perc by over 30% by cleaning the clothes with water and detergents instead of dry-cleaning solvent.

Claimed Facility Cost: \$ 7,867

3. Procedural Requirements

The facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The pollution prevention facility met all regulatory deadlines in that:

Installation of the facility was substantially completed on October 12, 1999. The application for final certification was received by the Department on July 13, 2000. The application was found to be complete when processed on October 24, 2000.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because a multiprocess wet cleaning system is a recognized alternative to perc dry-cleaning and it was installed as a replacement for part of the capacity of an existing perc machine. Also, the new process is not subject to 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 entire facility qualifies as a small area source since perc use is less than 140 gallons per year

The pollution prevention 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 facility installed a multiprocess wet cleaning system as a replacement for part of the capacity of the existing perc dry-cleaning machine.
- (3) The facility is registered with the EPA under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants.

5. Summation

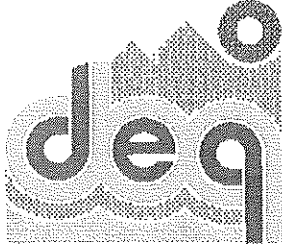
- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that it meets the definition of a pollution prevention facility for this pilot program.
- c. The applicant indicated that the tax credit program was not a determining factor in installing this equipment.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Prevention Facility Certificate bearing the cost of \$ 7,867 be issued for the facility claimed in Tax Credit Application No. 5433.

DPK

10/24/00 01:16 PM



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-0671144**

The applicant's address is:

**P O Box 6869
Bend, OR 97701**

Director's
Recommendation: **APPROVE**

Applicant **Traugher Oil Company**
Application No. **5436**
Eligible Facility Cost **\$75,465**
Percentage Allocable **79%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Two singlewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, sumps, monitoring wells and automatic shutoff valves.

The applicant is the owner of **DEQ Facility ID 11780** located at:

**College Way Chevron
1400 NW College Way
Bend, OR 97701**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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>07/20/00</u>
<i>Application Substantially Complete</i>	<u>09/19/00</u>
<i>Construction Started</i>	<u>02/01/97</u>
<i>Construction Completed</i>	<u>09/01/98</u>
<i>Facility Placed into Operation</i>	<u>09/01/98</u>

Facility Cost

Facility Cost	<u>\$75,465</u>
Eligible Facility Cost	<u>\$75,465</u>

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 \$15,888. Therefore, **21%** of the eligible facility cost is not allocable to pollution control leaving the remaining **79%** 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.

Reviewer: Barbara J Anderson, DEQ

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Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S Corporation**

Business: **a retail gas station
and carwash**

Taxpayer ID: **93-1121769**

The applicant's address is:

**P O Box 2092
Lake Oswego OR 97035**

Director's
Recommendation: **APPROVE**

Applicant **R.J. & M.C. Barman.**

Application No. **5438**

Eligible Facility Cost **\$493,653**

Percentage Allocable **94%**

Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Three doublewall fiberglass underground storage tanks (one has two compartments), doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, turbine leak detectors, overfill alarm, sumps, oil/water separator, automatic shutoff valves and stage II vapor recovery.

The applicant is the owner of **DEQ Facility ID 11912** located at:

**Cornelius Fast Serv
990 N. Adair
Cornelius, OR 97113**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

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,
(2)(g) 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>07/25/00</u>
<i>Application Substantially Complete</i>	<u>09/25/00</u>
<i>Construction Started</i>	<u>01/01/99</u>
<i>Construction Completed</i>	<u>10/05/99</u>
<i>Facility Placed into Operation</i>	<u>10/06/99</u>

Facility Cost

Facility Cost	\$494,763
Less Ineligible Costs – Portion of tank gauge system not used for pollution control (10%).	(\$1110)
Eligible Facility Cost	<u>\$493,653</u>

The reviewer performed an analysis of the facility cost on behalf of the Department. Invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

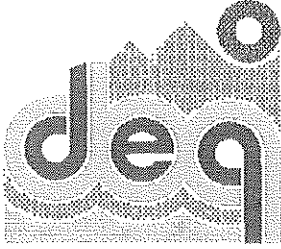
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$27,956. Therefore, 6% of the eligible facility cost is not allocable to pollution control leaving the remaining 94% 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Denton Plastics Inc.**
Application No. **5442**
Facility Cost **\$12,600**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **93-0852298**

The applicant's address is:

**4427 NE 158th
Portland, OR 97230**

Facility Identification

The certificate will identify the facility as:

**Six 48' van trailers, serial numbers
45560056, 661864, 5305337,
4454617, 4566178, and 484606**

The applicant is the owner of the facility
located at:

**4427 NE 158th
Portland, OR 97230**

Technical Information

These trailers are used 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>	10/26/1999
<i>Preliminary approval granted</i>	10/27/1999
<i>Date of investment</i>	10/29/1999
<i>Final application received</i>	07/28/2000
<i>Application substantially complete</i>	08/25/2000

Facility Cost

Claimed Facility Cost	\$12,600
Eligible Facility Cost	\$12,600

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

Facility Cost Allocable to Pollution Control

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.

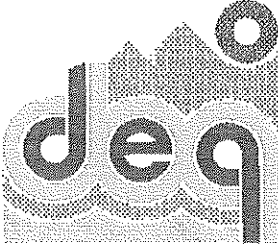
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, 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.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Limited Liability Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-1083912**

The applicant's address is:

P O Box 607

Wilsonville OR 97070

Facility Identification

The certificate will identify the facility as:

Four doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system with alarm, turbine leak detectors, sumps, monitoring wells, oil/water separator, automatic shutoff valves and Stage I vapor recovery.

The applicant is the owner of **DEQ Facility ID 6440** located at:

585 Wallace Rd. NW

Salem, OR 97304

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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>07/28/00</u>
<i>Application Substantially Complete</i>	<u>09/26/00</u>
<i>Construction Started</i>	<u>06/15/99</u>
<i>Construction Completed</i>	<u>08/30/99</u>
<i>Facility Placed into Operation</i>	<u>09/15/99</u>

Facility Cost

Claimed Facility Cost	\$338,037
Less Ineligible Costs - Previously claimed pollution control equipment:	
Certificate No. 2328 - tank gauge system with alarm	(\$12,029)
Certificate No. 2149 - spill containment basins	<u>(\$1,517)</u>
Eligible Facility Cost	\$324,491

The reviewer performed an analysis of the facility cost on behalf of the Department. Invoices and canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

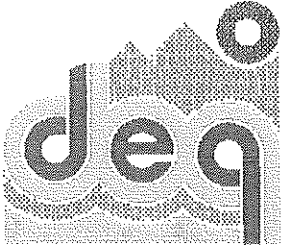
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$21,305. Therefore, 7% of the eligible facility cost is not allocable to pollution control leaving the remaining 93% 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Limited Liability Corporation**

Business: **a cardlock fueling station**

Taxpayer ID: **93-1083912**

The applicant's address is:

P O Box 607

Wilsonville OR 97070

Facility Identification

The certificate will identify the facility as:

Four doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, turbine leak detectors, overfill alarm, sumps, monitoring wells, oil/water separator, automatic shutoff valves and stage I & II vapor recovery.

The applicant is the owner of **DEQ Facility ID 11863** located at:

28855 SW Boones Ferry Rd.

Wilsonville, OR 97070

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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

Director's

Recommendation: **APPROVE**

Applicant

Truax Harris Energy LLC

Application No.

5444

Eligible Facility Cost

\$275,020

Percentage Allocable

93%

Useful Life

10 years

Timeliness of Application

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

<i>Application Received</i>	<u>08/03/00</u>
<i>Application Substantially Complete</i>	<u>09/27/00</u>
<i>Construction Started</i>	<u>11/01/98</u>
<i>Construction Completed</i>	<u>02/15/99</u>
<i>Facility Placed into Operation</i>	<u>03/03/99</u>

Facility Cost

Claimed Facility Cost	\$276,180
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%)	(\$1,160)
Eligible Facility Cost	<u>\$275,020</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

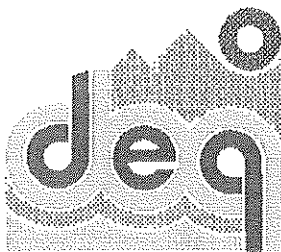
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$19,169. Therefore, 7% of the eligible facility cost is not allocable to pollution control leaving the remaining 93% 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Limited Liability Corporation**

Business: **a retail gasoline station**

Taxpayer ID: **93-1083912**

The applicant's address is:

P O Box 607

Wilsonville, OR 97070

Director's

Recommendation: **APPROVE**

Applicant

Truax Harris Energy LLC

Application No.

5445

Eligible Facility Cost

\$324,162

Percentage Allocable

93%

Useful Life

10 years

Facility Identification

The certificate will identify the facility as:

Five doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, line/turbine leak detectors, overfill alarm, sumps, monitoring wells, oil/water separator, automatic shutoff valves and stage I & II vapor recovery.

The applicant is the owner of **DEQ Facility ID 11864** located at:

3031 NW St. Helens Road

Portland, OR 97210

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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>08/03/00</u>
<i>Application Substantially Complete</i>	<u>09/27/00</u>
<i>Construction Started</i>	<u>09/01/98</u>
<i>Construction Completed</i>	<u>01/07/99</u>
<i>Facility Placed into Operation</i>	<u>02/01/99</u>

Facility Cost

Claimed Facility Cost	\$325,640
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%)	(\$1,478)
Eligible Facility Cost	<u>\$324,162</u>

Invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

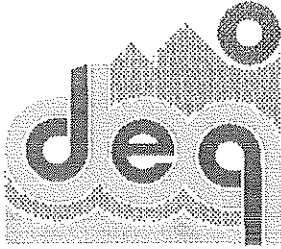
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$23,799. Therefore, 7% of the eligible facility cost is not allocable to pollution control leaving the remaining 93% 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Limited Liability Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-1083912**

The applicant's address is:

P O Box 607

Wilsonville OR 97070

Director's

Recommendation: **APPROVE**

Applicant

Truax Harris Energy LLC

Application No.

5446

Eligible Facility Cost

\$304,129

Percentage Allocable

96%

Useful Life

10 years

Facility Identification

The certificate will identify the facility as:

Two doublewall fiberglass underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, turbine leak detectors, overfill alarm, sumps, monitoring wells, oil/water separator, automatic shutoff valves and Stage I & II vapor recovery.

The applicant is the owner of **DEQ Facility ID 6630** located at:

**5829 NE Martin Luther King Jr. Blvd
Portland, OR 97211**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.
- 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>08/03/00</u>
	<i>Application Substantially Complete</i>	<u>09/26/00</u>
	<i>Construction Started</i>	<u>04/01/99</u>
	<i>Construction Completed</i>	<u>06/30/99</u>
	<i>Facility Placed into Operation</i>	<u>07/15/99</u>

Facility Cost

Claimed Facility Cost	\$311,419
Less Ineligible Costs:	(\$7,290)
Portion (10%) of tank gauge system not used for pollution control	(\$729)
Previously claimed pollution control equipment:	
Certificate No. 2189 - Spill containment basins	(\$867)
Certificate No. 3398 - Stage II vapor recovery	(\$5,694)
Eligible Facility Cost	<u>\$304,129</u>

Invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

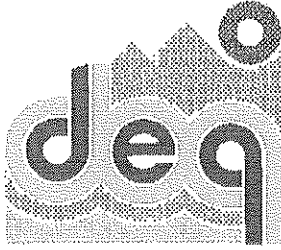
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$12,205. Therefore, 4% of the eligible facility cost is not allocable to pollution control leaving the remaining 96% 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant: **Newberg Garbage Services, Inc.**
Application No.: **5449**
Facility Cost: **\$1,000**
Percentage Allocable: **100%**
Useful Life: **10 years**

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

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 thumb attachment for a
backhoe type loader**

The applicant is the owner of the facility
located at:

**2904 Wynooski Road
Newberg, Oregon 97132**

Technical Information

The thumb attachment is a modification to a backhoe type loader so that it can hold, crush, and load bulky appliances prior to shipment for recycling. The recyclable materials are subsequently sent to a recycling mill 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 process and load source separated recyclable material.

OAR 340-16-025(g)(B) **Replacement:** This equipment is used to provide a new and expanded service. The new equipment did **not** replace any previously certified equipment.

ORS 468.155 (1)(b)(D) The thumb attachment is used to process and load 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>08/09/2000</u>
<i>Application Substantially Complete</i>	<u>08/25/2000</u>
<i>Construction Started</i>	<u>04/01/2000</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>\$1,000</u>
Eligible Facility Cost	<u>\$1,000</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, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-0570950**

The applicant's address is:

**19805 McLoughlin Blvd.
Gladstone, OR 97027**

Director's

Recommendation: **APPROVE**

Applicant

Stein Oil Co., Inc.

Application No.

5451

Eligible Facility Cost

\$7,758

Percentage Allocable

100%

Useful Life

10 years

Facility Identification

The certificate will identify the facility as:

**Automatic tank gauge system with
sump sensor.**

The applicant is the owner of **DEQ Facility
ID 7963** located at:

**262 SE 1st Avenue
Canby, OR 97013**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

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>08/11/00</u>
<i>Application Substantially Complete</i>	<u>10/04/00</u>
<i>Construction Started</i>	<u>05/01/99</u>
<i>Construction Completed</i>	<u>05/31/99</u>
<i>Facility Placed into Operation</i>	<u>05/31/99</u>

Facility Cost

Claimed Facility Cost	<u>\$7,758</u>
Eligible Facility Cost	<u>\$7,758</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

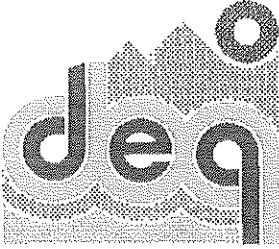
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190(3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders. Especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewer: Barbara J. Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-0570950**

The applicant's address is:

**19805 McLoughlin Blvd.
Gladstone, OR 97027**

Director's
Recommendation: **APPROVE**

Applicant **Stein Oil Co., Inc.**
Application No. **5452**
Eligible Facility Cost **\$36,037**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**One doublewall two-compartment
fiberglass underground storage tank,
doublewall flexible plastic piping, spill
containment basin, automatic tank gauge
system, overfill alarm and automatic
shutoff valve.**

The applicant is the owner of **DEQ Facility ID
7985** located at:

**1780 Washington St.
Oregon City, OR 97027**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 The **principal purpose** of this **installation** is to prevent, control or reduce
(1)(a) a substantial quantity of air and water pollution.

OAR-016-0025 Installation or construction of facilities which will be used to detect, deter,
(2)(g) 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>	08/11/00
<i>Application Substantially Complete</i>	10/03/00
<i>Construction Started</i>	08/01/99
<i>Construction Completed</i>	12/31/99
<i>Facility Placed into Operation</i>	12/31/99

Facility Cost

Claimed Facility Cost	\$36,037
Eligible Facility Cost	\$36,037

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

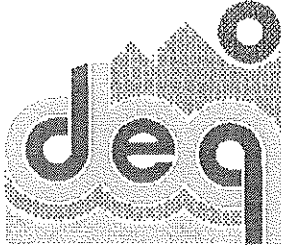
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190(3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders, especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S Corporation**

Business: **Cardlock added to a retail
gas station**

Taxpayer ID: **93-0763424**

The applicant's address is:

**P O Box 337
Junction City, OR 97448**

Director's

Recommendation: **APPROVE**

Applicant

The Jerry Brown Company

Application No. **5454**

Eligible Facility Cost **\$153,195**

Percentage Allocable **92%**

Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

One doublewall fiberglass underground storage tank (with two compartments), doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, line leak detectors, sumps, monitoring wells and II vapor recovery piping.

The applicant is the owner of **DEQ Facility ID 7127** located at:

**93244 Hwy 99 South
Junction City, OR 97448**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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>	08/11/00
<i>Application Substantially Complete</i>	09/27/00
<i>Construction Started</i>	07/01/99
<i>Construction Completed</i>	11/30/99
<i>Facility Placed into Operation</i>	11/30/99

Facility Cost

Claimed Facility Cost	\$153,536
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%).	(\$341)
Eligible Facility Cost	\$153,195

Invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

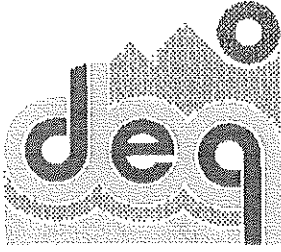
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for non-corrosion protected portion of tank and/or piping system costs is \$11,549. 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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: AIR:CFC

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a Sole Proprietor**

Business: **Retail automotive repair shop**

Taxpayer ID: **93-1200136**

The applicant's address is:

**220 E Baseline
Hillsboro, OR 97123**

Director's
Recommendation: **APPROVE**

Applicant **Dailey's Tire & Auto**
Application No. **5455**
Eligible Facility Cost **\$1,800**
Percentage Allocable **100%**
Useful Life **3 years**

Facility Identification

The certificate will identify the facility as:

**A Viper R-134A Recovery and
Recycling Machine, Model VR-8000**

The applicant is the owner and operator of the
facility located at:

**220 E Baseline
Hillsboro, OR 97123**

Technical Information

The applicant purchased the Viper VR-8000 to recover and recycle R-134A, an automotive refrigerant. The equipment has recharge capabilities.

Eligibility

ORS 468.155 The **principal purpose** of this **new equipment** is to control a substantial
(1)(a) quantity of air pollution. The requirement is imposed by the EPA.

ORS 468.155 The machinery ensures the disposal of contamination sources and the use of
(1)(b)(B) air cleaning devices as defined in ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	08/15/2000
<i>Application Substantially Complete</i>	10/09/2000
<i>Construction Started</i>	05/18/2000
<i>Construction Completed</i>	05/18/2000
<i>Facility Placed into Operation</i>	05/18/2000

Facility Cost

Facility Cost		\$2,500
Ineligible Cost	Recharge Capabilities	(\$700)
Eligible Facility Cost		\$1,800

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, an invoice substantiated the cost of the facility.

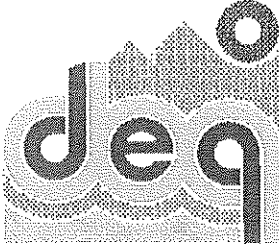
Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

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

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-0570950**

The applicant's address is:

**19805 McLoughlin Blvd.
Gladstone, OR 97027**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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

Director's
Recommendation: **APPROVE**

Applicant **Stein Oil Co., Inc.**
Application No. **5457**
Eligible Facility Cost **\$6,605**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Automatic tank gauge system

The applicant is the owner of **DEQ Facility ID 8565** located at:

**1590 Willamette Falls Drive
West Linn, OR 97068**

Timeliness of Application

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

<i>Application Received</i>	08/15/00
<i>Application Substantially Complete</i>	10/04/00
<i>Construction Started</i>	10/01/98
<i>Construction Completed</i>	10/31/98
<i>Facility Placed into Operation</i>	10/31/98

Facility Cost

Claimed Facility Cost
Eligible Facility Cost

\$6,605**\$6,605**

The facility cost does not exceed \$50,000. An independent accounting review was not required. However, invoices or canceled checks substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190(3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance and Other Tax Credits

The facility is in compliance with Department rules and statutes and with EQC orders, especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewer: Barbara J. Anderson, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant: **Riverview Abbey Funeral Home**
Application No.: **5461**
Facility Cost: **\$16,263**
Percent 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: **an S corporation**
Business: **Mausoleum / Funeral home**
Taxpayer ID: **93-0500659**

The applicant's address is:

**0319 SW Taylors Ferry Road
Portland, OR 97219**

Facility Identification

The certificate will identify the facility as:

**Secondary chamber - Millennium II
Cremator Unit**

The applicant is the owner of the facility located at:

**0319 SW Taylors Ferry Road
Portland, OR 97219**

Technical Information

The facility consists of a Millennium II Cremator unit designed to cremate 100 lb/hr using two gas-fired burners at a rate of 1.7 million BTU per 1 hour of natural gas. The main chamber used to combust the human remains uses 0.6 million BTU. The remaining 1.1 million BTU is used in the secondary chamber for pollution control. The secondary burner operates at 1800° F to combust pollutants. These pollutants include particulate matter, hydrogen chloride, nitrogen oxides, carbon monoxide, sulfur dioxide, and volatile organic compounds (VOCs).

Eligibility

ORS 468.155 The **principal purpose** of this **new equipment** is to comply with DEQ (1)(a)(A) requirements to **prevent** air pollution. The requirement is imposed by the applicant's Minimal Air Contaminant Discharge Permit No. 26-2545.

ORS 468.155 The **prevention** is accomplished by the elimination of air pollution and the use (1)(b)(B) of an air cleaning device as defined in ORS 468A.005.

Timeliness of Application

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

<i>Application Received</i>	<u>8/25/00</u>
<i>Application Substantially Complete</i>	<u>10/26/00</u>
<i>Construction Started</i>	<u>12/15/98</u>
<i>Construction Completed</i>	<u>12/31/98</u>
<i>Facility Placed into Operation</i>	<u>12/31/99</u>

Facility Cost

Claimed cost	\$48,788
Non-allowable cost	<u>(\$32,525)</u>
Allowable cost	<u>\$16,263</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. Invoices substantiated the cost of the facility.

The owner/engineer of Crematory Manufacturing & Service, Inc., supplier of the Millennium II unit, states the second chamber comprises approximately 1/3 of the total crematory unit. The second chamber is the portion of the crematory unit that performs pollution control. Therefore, the Department considers 33% of the claimed facility cost is allowable.

Facility Cost Allocable to Pollution Control

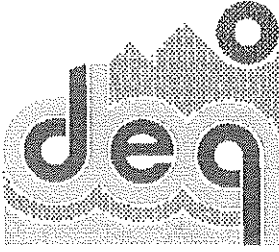
The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to facility:

Minimal Air Contaminant Discharge Permit No. 26-2545, expires October 1, 2001.

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Ernst Manufacturing Inc.**
Application No. **5464**
Facility Cost **\$45,000**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **93-0808508**

The applicant's address is:

**37570 Rubin Lane, Suite B
Sandy, OR 97055**

Facility Identification

The certificate will identify the facility as:

**Two injection molds for
manufacture of plastic wrench
organizers**

The applicant is the owner of the facility
located at:

**37570 Rubin Lane, Suite B
Sandy, OR 97055**

Technical Information

These molds are used to manufacture a product from reclaimed plastic.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	12/06/1999
<i>Preliminary approval granted</i>	12/07/1999
<i>Date of investment</i>	12/15/1999
<i>Final application received</i>	08/23/2000
<i>Application substantially complete</i>	09/15/2000

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Facility Cost

Claimed Facility Cost	\$45,000
Eligible Facility Cost	\$45,000

Pursuant to OAR 340-017-0030 (1)(a), invoices substantiated the cost of the facility. In addition Greg E. Meltebeke CPA certified the documentation of the cost.

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.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Forrest Paint Co.**
Application No. **5466**
Facility Cost **\$35,840**
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: **manufacturer of paint,
coatings, and related products**
Taxpayer ID: **93-0612986**

The applicant's address is:

**1011 McKinley St
Eugene, OR 97402**

Facility Identification

The certificate will identify the facility as:

**Installation of a Carother's & Son
5,500 ACFM Baghouse—ID # CD-
8 (Jet-Pulse 4)**

The applicant is the owner of the facility
located at:

**1011 McKinley St
Eugene, OR 97402**

Technical Information

The claimed facility consists of a jet-pulse baghouse, identified as CD-8/JP-4. It is installed to filter and control particulate emissions created in the latex paint manufacturing process. The baghouse is sized for 5,500 acfm and has a rated efficiency of 99.9%.

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation** is to prevent, control or
(1)(a) reduce a substantial quantity of air pollution. This requirement is imposed
by Lane Regional Air Pollution Authority under permit 202805 Rules 32-
010, and 32-015.
- ORS 468.155 The baghouse project eliminates air contamination sources by the use of air
(1)(b)(B) cleaning devices as defined in ORS 468A.005

OAR 340-16-025(g)(B) **Replacement:** This facility is a replacement of a system that was no longer able to pass recent source testing. The applicant did not request a tax credit for the previous system.

Timeliness of Application

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

<i>Application Received</i>	<u>9/01/00</u>
<i>Application Substantially Complete</i>	<u>10/11/00</u>
<i>Construction Started</i>	<u>6/13/00</u>
<i>Construction Completed</i>	<u>8/16/00</u>
<i>Facility Placed into Operation</i>	<u>8/16/00</u>

Facility Cost

Facility Cost	<u>\$35,840</u>
Eligible Facility Cost	<u>\$35,840</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. Copies of invoices were provided which substantiated 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 and Other Tax Credits

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to this facility:

NPDES 1200-Z #100648, issued 8/5/97

NPDES 100-J #100684, issued 8/28/96

LRAPA permits issued to facility:

Title V Operating Permit #202805, issued 1/14/00.

Other tax credits issued to Forrest Paint Co.:

App. #	Description of Facility	Facility Cost	Cert. #	Issue Date
2191	Groundwater monitoring wells	\$41,672	2067	07/21/1989
5279	CD-7/JP-3 Baghouse—filters particulate in powder coating manufacturing process	\$34,357	4278	02/10/2000
5280	CD-6/JP-2 Baghouse—filters particulate in air classifying grinder process	\$19,604	4304	05/17/2000

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

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: **an organic products processing
and composting facility**

Taxpayer ID: **93-0925466**

The applicant's address is:

**750 Chambers St.
Eugene, Oregon 97402**

Director's
Recommendation: **APPROVE**

Applicant: **Rexius Forest By-Products, Inc.**
Application No.: **5469**
Facility Cost: **\$49,765**
Percentage Allocable: **100%**
Useful Life: **7 years**

Facility Identification

The certificate will identify the facility as:

**One electric blower fan,
perforated pipe, air circulation
system, and biofilter**

The applicant is the owner of the facility
located at:

**1300 Bailey Hill Rd.
Eugene, Oregon 97402**

Technical Information

The claimed facility is a system of perforated pipes and an air fan to draw air through windrow piles of compost and a biofilter. This aeration system allows for faster composting by controlling the airflow, moisture, and temperature in the compost piles. The system is used to compost organic material generated in Eugene and Lane County. These organic wastes are processed 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**. The equipment is used for processing compostable material.

OAR 340-16-025(g)(B) **Replacement:** This equipment is used to provide a new and expanded service. The new equipment did **not** replace any previously certified equipment.

ORS 468.155 (1)(b)(D) The aeration system is used to process source separated compostable 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>	09/18/2000
<i>Application Substantially Complete</i>	09/22/2000
<i>Construction Started</i>	01/01/2000
<i>Construction Completed</i>	08/01/2000
<i>Facility Placed into Operation</i>	09/01/2000

Facility Cost

Facility Cost	\$49,765
Eligible Facility Cost	\$49,765

The facility cost does not exceed \$50,000. The applicant provided an accountant's review of the invoices for the claimed equipment. Staff reviewed the actual invoices that documented the claimed facility cost.

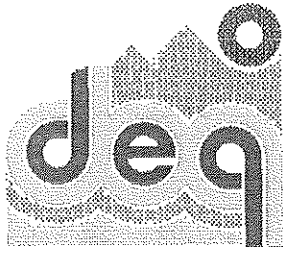
Facility Cost Allocable to Pollution Control

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. The claimed equipment is part of a larger facility covered under Department permit # C2-001.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Water Final Certification

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

Applicant Identification

Organized as: **a partnership**
Business: **a farm**
Taxpayer ID: **93-1098338**

The applicant's address is:

**6460 Thompson Ln
Dayton, OR 97114**

Technical Information

The claimed facility consists of an earthen storage pond that was installed to contain 14.65 acre-ft of animal waste produced at the farm. The pond is sized for a herd of 664 animals and holds wastewater during the rainy season to prevent runoff.

The purpose of the pond is to provide long term manure storage to prevent degradation of surface and groundwater sources and provide flexibility in application of manure to pasture and cropland fields for utilization of nutrients.

Eligibility

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 October 8, 1990 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.

Director's
Recommendation: **APPROVE**

Applicant	Art and Ann Hop
Application No.	5470
Eligible Facility Cost	\$38,481
Percentage Allocable	100%
Useful Life	10 years

Facility Identification

The certificate will identify the facility as:

Animal Wastewater Storage Pond

The applicant is the owner of the facility located at:

**6460 Thompson Ln
Dayton, OR 97114**

Timeliness of Application

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

<i>Application Received</i>	<u>09/26/2000</u>
<i>Application Substantially Complete</i>	<u>10/24/2000</u>
<i>Construction Started</i>	<u>08/1999</u>
<i>Construction Completed</i>	<u>08/2000</u>
<i>Facility Placed into Operation</i>	<u>08/2000</u>

Facility Cost

Claimed cost	<u>\$ 38,481</u>
Allowable cost	<u>\$ 38,481</u>

The eligible facility cost does not exceed \$50,000. An independent accounting review was not required. Invoices substantiated the cost of the facility.

The total cost of the facility was \$81,164. The applicant received a federal grant of \$42,683. The applicant claimed the remainder of the facility cost, \$38,481.

Facility Cost Allocable to Pollution Control

The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used in determining the percentage allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

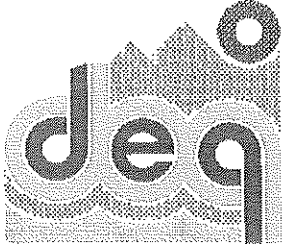
Compliance and Other Tax Credits

The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility:

CAFO Permit # 0800/063729-99, ID # 105534, expiration date: June 30, 2001.

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ

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Director's
Recommendation: **APPROVE**

Applicant: **Western Bank**
Application No.: **5471**
Facility Cost: **\$821,356**
Percentage Allocable: **100%**
Useful Life: **5 years**

Tax Credit Review Report

EQC 0012

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: **Leasing company**
Taxpayer ID: **91-1660453**

The applicant's address is:

**6400 SW Corbett Ave.
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

**6 White Peterbuilt trucks with
Amrep and McNeilus bodies:**

2000	1NPZLAOX8YD711685
2001	1NPZLTOX81D711686
2000	1NPZLAOX3YD712162
2001	1NPLZOOx1YD712414
2001	1NPZLTOXX1D711687
2000	JMANB43HOYGE55220

The applicant is the owner of the facility
located at:

**1184 SW Berg Parkway
Canby, OR 97031**

Technical Information

These trucks are used solely to collect co-mingled source separated recyclable, source separate recyclable glass, and yard debris from both residential and commercial on-route collection service customers in the city of West Linn. 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 The **sole purpose** of this **new equipment** is to prevent, control, or reduce a
(1)(a) substantial quantity of **solid waste**. These trucks are used solely for
collecting source separated recyclable material.

OAR 340-16- **Replacement:** These trucks are used for a new service. The trucks did not

- 025(g)(B) replace previously certified equipment.
 ORS 468.155 These trucks are used to collect source separated recyclable material and is
 (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>	<u>09/25/2000</u>
	<i>Application Substantially Complete</i>	<u>09/18/2000</u>
	<i>Construction Started</i>	<u>03/22/2000</u>
	<i>Construction Completed</i>	<u>09/18/2000</u>
	<i>Facility Placed into Operation</i>	<u>09/18/2000</u>

Facility Cost

Facility Cost	<u>\$821,365</u>
Eligible Facility Cost	<u>\$821,365</u>

The facility cost exceeds \$500,000. The reviewers analysed the facility cost on behalf of the department. Paid invoices substantiated the purchase of the trucks and containers.

Facility Cost Allocable to Pollution Control

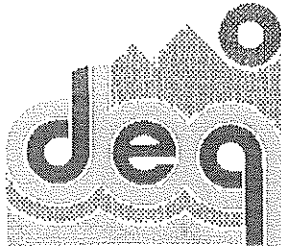
The facility cost exceeds \$50,000. According to ORS 468.190(1), the factors listed below were considered in determining the percentage of the facility cost allocable to pollution control. The percentage of the facility cost allocable to pollution control is **100%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	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 5 years. The calculated average annual cash flow associated with this lease is negative; therefore, the percentage return on investment is 0%. 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/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 this facility.

Reviewers: William R Bree, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Director's Recommendation: **APPROVE**

Applicant **Bowco Industries, Inc.**
Application No. **5472**
Facility Cost **\$6,025**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic manufacturing company**

Taxpayer ID: **93-1033851**

The applicant's address is:

**5486 SE International Way
Milwaukie, OR 97222**

Facility Identification

The certificate will identify the facility as:

Mold to make duct terminator seal.

The applicant is the owner of the facility located at:

**5486 SE international Way
Milwaukie, OR 97222**

Technical Information

The facility is a new mold for the manufacture of a terminator duct seal ring from reclaimed plastic.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	05/31/2000
<i>Preliminary approval granted</i>	05/31/2000
<i>Date of investment</i>	06/20/2000
<i>Final application received</i>	09/25/2000
<i>Application substantially complete</i>	09/27/2000

Facility Cost

Claimed Facility Cost

\$6,025

Eligible Facility Cost

\$6,025

Pursuant to OAR 340-017-0030(1)(a), invoices substantiated the cost of the facility.

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.

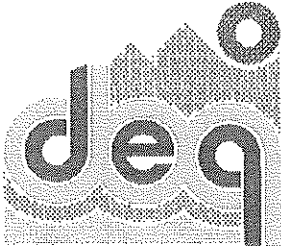
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, 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.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Bowco Industries, Inc.**
Application No. **5473**
Facility Cost **\$140,075**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic manufacturer**

Taxpayer ID: **93-1033851**

The applicant's address is:

**5486 SE International Way
Milwaukie, OR 97222**

Facility Identification

The certificate will identify the facility as:

**Molds and accessories needed to
make manhole steps from reclaimed
plastic on a 300 ton molding press.**

The applicant is the owner of the facility
located at:

**5486 SE International Way
Milwaukie, OR 97222**

Technical Information

The facility includes two mold bases, three full sets of end piece molds, four half sets of end piece molds, mold operation hydraulics and electronics, custom operating software and mold change out gantry crane.

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.**

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Timeliness of Application

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

<i>Preliminary application received</i>	10/15/1999
<i>Preliminary approval granted</i>	10/15/1999
<i>Date of investment</i>	12/15/1999
<i>Final application received</i>	09/25/2000
<i>Application substantially complete</i>	09/27/2000

Facility Cost

Claimed Facility Cost	\$140,075
Eligible Facility Cost	\$140,075

Invoices substantiated the cost of the facility. The reviewers performed a facility cost analysis on behalf of the department. Preisting, Probst & Waldram CPAs certified the documentation of the cost.

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.

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

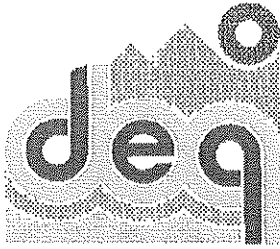
Considering these factors, the percentage allocable to pollution control is **100%**.

Compliance

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

Reviewers: William R Bree, DEQ
Maggie Vandehey, DEQ

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Tax Credit Review Report

EQC 0012

**Pollution Control Facility: Water
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Applicant Identification

Organized as: **a C Corporation**
Business: **distribution substation for
electric power**
Taxpayer ID: **93-0256820**

The applicant's address is:

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

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **5474**
Facility Cost **\$49,984**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

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

The applicant is the owner of the facility
located at:

**Dunn's Corner Substation
12914 SE Bluff Rd
Sandy, OR 97055**

Technical Information

The claimed facility is an oil spill containment system for the transformer substation consisting of a geotextile liner, oil/water separator and associated drainage piping system. The site is graded such that the oil/water separator vault will collect drainage. The system allows passage of water while stopping the flow of oil in the event of oil spill. The drainage discharges to a nearby ditch and eventually to the Sandy River. The containment system allows enough time for a crew to be dispatched to the site and perform cleanup of the spill.

Eligibility

- ORS 468.155 The **sole purpose** of this **installation** is to prevent a substantial quantity of
(1)(a) water pollution.
- ORS 468.155 The prevention is accomplished with the use of treatment works for
(1)(b)(A) industrial waste as defined in ORS 468B.005
- OAR-016-0025 Installation or construction of facilities which will be used to detect, deter,
(2)(g) or prevent spills or unauthorized releases.

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Timeliness of Application

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

<i>Application Received</i>	<u>09/28/2000</u>
<i>Application Substantially Complete</i>	<u>10/17/2000</u>
<i>Construction Started</i>	<u>03/12/1998</u>
<i>Construction Completed</i>	<u>09/28/1998</u>
<i>Facility Placed into Operation</i>	<u>09/28/1998</u>

Facility Cost

Facility Cost	<u>\$49,984</u>
Eligible Facility Cost	<u>\$49,984</u>

The facility cost does not exceed \$50,000. An independent accounting review was not required. The applicant provided invoices that substantiated the cost of the facility.

Facility Cost Allocable to Pollution Control

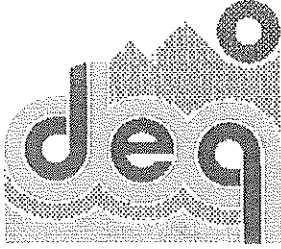
The facility cost does not exceed \$50,000. According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage time the facility is used for pollution control. Therefore, the percentage of the facility cost allocable to pollution control is **100%**.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes.

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ

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Tax Credit Review Report

EQC 0012

Director's
Recommendation: **APPROVE**

Applicant **Neils Jensen Farms, Inc.**
Application No. **5475**
Facility Cost **\$278,369**
Percentage Allocable **83%**
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: **a grass seed farm**
Taxpayer ID: **93-1045135**

The applicant's address is:

**1786 Talbot Road S.
Jefferson, OR 97352**

Facility Identification

The certificate will identify the facility as:

**A 148' x 220' x 22' straw storage
building**

The applicant is the owner of the facility
located at:

**1786 Talbot Road S.
Jefferson, OR 97352**

Technical Information

The applicant has 1500 acres under perennial grass seed production. At one time this applicant open field burned as many acres as the weather and smoke management program permitted. The applicant now bales off the grass seed straw, and uses this new 148' x 220' x 22' building to store 3300 – 3500 tons of 3-tie baled straw.

The applicant states that as a result of using equipment already owned to bale the straw, along with this storage shed to provide protection from inclement weather, **all 1500 acres now owned have been removed from being open field burned.**

Eligibility

ORS 468.155 The **sole purpose** of this **new excavation and building** is to prevent a
(1)(a) substantial quantity of **air pollution.**

OAR-016-025 Equipment, facilities, and land for gathering, densifying, processing,
(2)(f)(A) handling, storing, transporting and incorporating grass straw or straw based
products which will result in reduction of open field burning.

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Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6). The reviewer verified the dates in that the applicant began storing straw in the building in November of 1998 and the last door was installed on the building in August of 2000.

Both dates are within the filing requirements.

<i>Application Received</i>	<u>09/29/00</u>
<i>Application Substantially Complete</i>	<u>10/10/00</u>
<i>Construction Started</i>	<u>4/98</u>
<i>Construction Completed</i>	<u>8/00</u>
<i>Facility Placed into Operation</i>	<u>11/98</u>

Facility Cost

Facility Cost

\$278,369

Eligible Facility Cost

\$278,369

The facility cost was greater than \$50,000 but less than \$500,000. Therefore, Earl A. Doman, P.C., performed an accounting review according to Department guidelines on behalf of the Applicant. The reviewers performed a facility cost analysis on behalf of the Department.

Facility Cost Allocable to Pollution Control

The facility cost was greater than \$50,000. According to ORS 468.190 (1), the following factors were considered in determining the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	The baled straw is a salable commodity. However, the applicant provides the storage building to a custom baler who markets the product. Any income is derived from renting the space on a per ton basis.
ORS 468.190(1)(b) Return on Investment (ROI)	The useful life of the facility used for the ROI consideration is 20 years. Calculated according to rule, the percentage of the facility cost properly allocable to pollution control is 83%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	The projected average annual cash flow is \$15,044. No other savings or increase in costs were identified.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Compliance and Other Tax Credits

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

Other tax credits issued to Neils Jensen Farms:

App. #	Description of Facility	Facility Cost	Cert. #	Issue Date
3432	Plow	\$13,500		06/14/1991
4234	Mower, Tractor, Disc	\$111,000		07/22/1994

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Identification

Organized as: **a C Corporation**
Business: **a brewery**
Taxpayer ID: **93-0882948**

The applicant's address is:

**506 Columbia St
Hood River, OR 97031**

Director's
Recommendation: **APPROVE**

Applicant **Full Sail Brewing Company**
Application No. **5476**
Facility Cost **\$211,243**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**A Waste Neutralization System—
consisting of pre-treatment of effluent
water containing high levels of organic
matter**

The applicant is the owner of the facility located
at:

**506 Columbia St
Hood River, OR 97031**

Technical Information

The facility provides aerobic industrial pretreatment of wastewater high in organic matter. All wash down water is pumped into a 30,000-gallon treatment tank receiving full aeration. The wastewater then gravity flows into a second 30,000-gallon tank for settling and sludge collection. Final clarification is achieved in a 1,000-gallon tank before the supernate discharges to the city wastewater treatment plant. The removed sludge is land applied as a soil conditioner.

The system consists of:

1. Two Paco 7.5 hp pumps series NSC (model 51-48011) and controls
2. Two vertical treatment tanks (30,000 gallon Wheatland Model 1425E)
3. Two 15 hp re-circulation pumps (Veriflo Model #1326) and plumbing
4. Eight Mazzei air injectors (Model #4091)
5. One final clarifier (AAA custom design)

The pH is maintained between the 6.0 to 9.0 range, as specified by the city.

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Eligibility

ORS 468.155

(1)(a)(A) The **principal purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of water pollution.

ORS 468.155

(1)(b)(A) The disposal or elimination of or redesign to eliminate the use of treatment works for industrial waste as defined in ORS 468B.005 and is installed to comply with EPA, DEQ, and the City of Hood River for effluent discharges into the Publicly Owned Treatment Works (POTW).

Timeliness of Application

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

<i>Application Received</i>	10/03/2000
<i>Additional Information Requested</i>	10/09/2000
<i>Construction Started</i>	02/1998
<i>Construction Completed</i>	06/30/2000
<i>Facility Placed into Operation</i>	04/19/1999

Facility Cost

Facility Cost	\$ 213,474
Insignificant contribution	
Repairs	(127)
Demolition	(420)
Catwalks & Ladders	(1684)
Allowable Facility Cost	\$ 211,243

The applicant requested a waiver of the independent accountant's statement. Copies of invoices and canceled checks substantiated the cost of the total project (\$213,473.59). The applicant provided an itemized cost breakdown. 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.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	An organic sludge is produced as a byproduct, which is used as a soil amendment.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. Operating costs increase since there was no previous system. They are estimated to be \$83,700 per year.

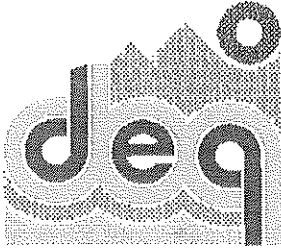
ORS 468.190(1)(c) Alternative Methods	An anaerobic wastewater treatment system was considered but the cost was too high.
ORS 468.190(1)(d) Savings or Increase in Costs	There were no savings related to system development charges or hookup fees associated with discharging to the City of Hood River.
ORS 468.190(1)(e) Other Relevant Factors	No other

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. City of Hood River issued Industrial Waste Discharge Permit No 100197001 on 10/01/97.

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a sole proprietor**

Business: **a scrap tire processing facility**

Taxpayer ID: **93-1056225**

The applicant's address is:

**30775 Baggett Lane
Hermiston, Oregon 97838**

Director's
Recommendation: **APPROVE**

Applicant: **Bert's Auto Salvage**

Application No.: **5477**

Facility Cost: **\$24,798**

Percentage Allocable: **100%**

Useful Life: **10 years**

Facility Identification

The certificate will identify the facility as:

**One truck scales, one wheel
crusher, and one truck tire cutter**

The applicant is the owner of the facility
located at:

**30775 Baggett Lane
Hermiston, Oregon 97838**

Technical Information

The following three pieces of equipment are claimed in this application:

- 1) scales used to weigh incoming loads of tires, to comply with record keeping requirements set in the applicant's Waste Tire Storage Permit, #WST1190;
- 2) hydraulic wheel crusher used to crush metal wheels and allow removal of the tire from the wheel; and
- 3) hydraulic tire cutter used to cut truck tires down to a size that can be incorporated into the concrete/tire bales produced at the site.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of the crusher and cutter and the **principal purpose** of the scales are to prevent, control or reduce a substantial quantity of **solid waste**. This equipment is used for processing waste tires.

OAR 340-16-025(g)(B) **Replacement:** This equipment is used to provide a new and expanded service. The new equipment did **not** replace any previously certified equipment.

ORS 468.155 The equipment is used to process tires and is part of a **material recovery**
 (1)(b)(D) **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>10/03/2000</u>
<i>Application Substantially Complete</i>	<u>10/11/2000</u>
<i>Construction Started</i>	<u>07/20/1998</u>
<i>Construction Completed</i>	<u>04/01/2000</u>
<i>Facility Placed into Operation</i>	<u>07/01/2000</u>

Facility Cost

Facility Cost	<u>\$24,798</u>
Eligible Facility Cost	<u>\$24,798</u>

The facility cost does not exceed \$50,000. The applicant provided invoices and canceled checks to document the cost for the claimed equipment.

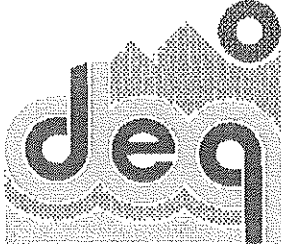
Facility Cost Allocable to Pollution Control

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. The claimed equipment is part of a larger facility covered under Department permit # WTS1190

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **an S Corporation**

Business: **Commercial Cardlock
station**

Taxpayer ID: **93-0740244**

The applicant's address is:

P O Box 23722

Eugene, OR 97402

Facility Identification

The certificate will identify the facility as:

**Epoxy tank lining and impressed current
cathodic protection for four underground
storage tanks, spill containment basins,
automatic tank gauge system, overfill alarm
and line leak detectors.**

The applicant is the owner of **DEQ Facility ID 3444**
located at:

**285 West 6th Avenue
Eugene, OR 97401**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **installation** is to prevent, control or reduce a substantial quantity of air and water pollution.

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>10/11/00</u>
<i>Application Substantially Complete</i>	<u>10/11/00</u>
<i>Construction Started</i>	<u>02/12/98</u>
<i>Construction Completed</i>	<u>02/22/99</u>
<i>Facility Placed into Operation</i>	<u>02/22/99</u>

Facility Cost

Claimed Facility Cost	\$59,001
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%).	(\$1,189)
Eligible Facility Cost	<u>\$57,907</u>

Invoices or canceled checks substantiated the cost of the facility.

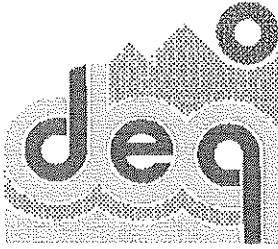
Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. No factors applied concerning ORS 468.190(1); therefore **100%** of the eligible facility cost is allocable to pollution control.

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.

Reviewer: Barbara J Anderson, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C Corporation**
Business: **a franchised dealer for
Caterpillar products**
Taxpayer ID: **93-0454453**

The applicant's address is:

**4421 NE Columbia Blvd
Portland, OR 97218**

Director's
Recommendation: **APPROVE**

Applicant **The Halton Company**
Application No. **5480**
Facility Cost **\$89,633**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

**Stormwater management
system—Two stormwater
containment ponds connected to
an Oldcastle oil-water separator
vaults**

The applicant is the owner of the facility
located at:

**4421 NE Columbia Blvd
Portland, OR 97218**

Technical Information

The claimed facility is located on approximately 30 acres that adjoin the Columbia Slough at the Whitaker Branch. Storm and sanitary sewers do not service the site. Large construction equipment and parts are stored in the open where rain can mix with hydrocarbon pollutants from leaking or damaged equipment and parts. The facility consists of two containment ponds (swales) with an oil/water separator vault connected to the outlet of each pond. Grading directs all surface flow and all piped drainage to either of the two ponds. The retention ponds collect storm-water. In the ponds, the solids settle out and the water meters to the oil/water separators. As a result of the facility installation all storm water for the approximately 30-acre site is now controlled prior to its discharge to the Columbia Slough.

Eligibility

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

ORS 468.155 The prevention is accomplished with the use of treatment works for
(1)(b)(A) 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>10/12/2000</u>
<i>Application Substantially Complete</i>	<u>10/17/2000</u>
<i>Construction Started</i>	<u>10/16/1996</u>
<i>Construction Completed</i>	<u>11/30/1998</u>
<i>Facility Placed into Operation</i>	<u>12/01/1998</u>

Facility Cost

Facility Cost	<u>\$89,633</u>
Eligible Facility Cost	<u>\$89,633</u>

The facility cost was greater than \$50,000 but less than \$500,000. Therefore, Symonds, Evans & Larson, P.C. performed an accounting review according to Department guidelines on behalf of the Applicant. The reviewers performed a facility cost review on behalf of the Department.

Facility Cost Allocable to Pollution Control

The facility cost was greater than \$50,000. According to ORS 468.190 (1), the following factors were considered in determining the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The average annual cash flow was negative; therefore, the percent allocable to pollution control is 100%. The useful life of the facility is 10 years.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

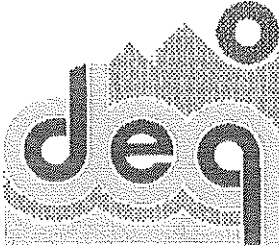
Compliance

The facility is in compliance with Department rules and statutes.

Current DEQ permits:

NPDES #100798, issued 7/2/91 (pending renewal)

Reviewers: Dannelle Aleshire, DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Pollution Control Facility: USTs

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

Organized as: **a C Corporation**

Business: **a retail gas station**

Taxpayer ID: **93-0736730**

The applicant's address is:

**860 S. Roosevelt
Seaside, OR 97138**

Director's

Recommendation: **APPROVE**

Applicant **Seaside Stop & Go**

Application No. **5481**

Eligible Facility Cost **\$79,338**

Percentage Allocable **100%**

Useful Life **10 years**

Facility Identification

The certificate will identify the facility as:

Epoxy lining in three underground storage tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, turbine leak detectors, sumps, oil/water separator, automatic shutoff valves and Stage II vapor recovery piping.

The applicant is the owner of **DEQ Facility ID 4132** located at:

**860 S. Roosevelt
Seaside, OR 97138**

Technical Information

The applicant installed pollution control equipment to meet EPA requirements for underground storage tanks.

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, (2)(g) 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>	10/03/00
<i>Application Substantially Complete</i>	10/03/00
<i>Construction Started</i>	11/01/98
<i>Construction Completed</i>	06/01/00
<i>Facility Placed into Operation</i>	06/01/00

Facility Cost

Claimed Facility Cost	\$80,914
Less Ineligible Costs - Portion of tank gauge system not used for pollution control (10%).	(\$1,576)
Eligible Facility Cost	\$79,338

Invoices or canceled checks substantiated the cost of the facility. The reviewers performed an analysis of the facility cost on behalf of the Department.

Facility Cost Allocable to Pollution Control

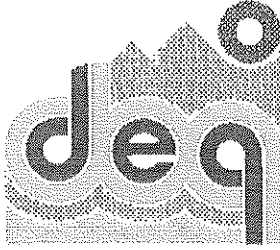
The facility cost exceeds \$50,000. According to ORS 468.190(1), the following factor was considered in determining the percentage of the facility cost allocable to pollution control.

The cost for the non-corrosion protected portion of tank and/or piping system costs is \$246. Therefore, **0%** (.003 rounded to nearest %) of eligible facility cost is not allocable to pollution control leaving the remaining **100%** 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, DEQ
Margaret C Vandehey, DEQ



Tax Credit Review Report

EQC 0012

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a Corporation**

Business: **processing reclaimed plastic**

Taxpayer ID: **91-1816316**

The applicant's address is:

**201 Dixon Ave.
Molalla, OR 97038**

Director's
Recommendation: **APPROVE**

Applicant **NPI Inc.**
Application No. **5482**
Facility Cost **\$78,217**
Percentage Allocable **100%**
Useful Life **5 years**

Facility Identification

The certificate will identify the facility as:

**A scrap plastic granulation and
sorting system, built in-place**

The applicant is the owner of the facility
located at:

**201 Dixon Ave.
Molalla, OR 97038**

Technical Information

This system is used to grind, screen, clean, decontaminate, and package scrap plastic. The system was built in place from component parts. Scrap plastic from manufacturing processes is fed into the grinder where it is reduced to chips. The chips are carried by pneumatic and mechanic conveyors past magnets and sorting systems until a pure stream of clean single polymer chips is produced. The clean chips are sold to companies that manufacture reclaimed plastic products.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	<u>02/14/2000</u>
<i>Preliminary approval granted</i>	<u>02/15/2000</u>
<i>Date of investment</i>	<u>04/27/2000</u>
<i>Final application received</i>	<u>10/11/2000</u>
<i>Application substantially complete</i>	<u>10/17/2000</u>

Facility Cost

Claimed Facility Cost	<u>\$78,217</u>
Eligible Facility Cost	<u>\$78,217</u>

The facility cost exceeded \$50,000. The applicant requested a waiver of the independent accountant's review and, in accordance with OAR 340-017-0030, provide the invoices and checks to document the cost for this investment.

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.

Reviewer: William R Bree, DEQ

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT
POLLUTION PREVENTION PILOT PROGRAM

1. Applicant

Kim's Cleaners
106 NE 5th Ave.
Milton-Freewater, Oregon 97862

The applicant owns and operates a dry-cleaning shop located at 106 NE 5th Ave. Milton-Freewater, Oregon.

Application was made for tax credit for an air pollution prevention facility.

2. Description of Facility

The claimed facility is a new dry-cleaning machine using Exxon DF 2000 solvent, which was installed as a replacement for a dry-cleaning machine which used petroleum based solvent and in lieu of a machine which uses perchloroethylene solvent. The new machine does not emit perc to the atmosphere.

Claimed Facility Cost: \$ 35,000

3. Procedural Requirements

The pollution prevention facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The pollution prevention facility met all regulatory deadlines in that:

Installation of the pollution prevention facility was substantially completed on October 26, 1999. The application for final certification was received by the Department on October 19, 2000. The application was found to be complete on October 24, 2000 when processing began. Application was submitted to the Department within one year of installation of the pollution prevention facility.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because it meets the requirement of avoiding the requirements of the National Emission Standard for Hazardous Air Pollutants (NESHAP), specifically 40 CFR 63.320 to 63.325 national perchloroethylene air emissions standard for dry cleaning facilities.

The 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 does not use perchloroethylene in lieu of equipment which would have used perchloroethylene. The facility continues to not be subject to the NESHAP.
- (3) The dry cleaning facility has is not required to register under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants because it does not use perc.

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 \$ 35,000 be issued for the facility claimed in Tax Credit Application No. 5483.

DPK

10/24/00 01:25 PM

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT
POLLUTION PREVENTION PILOT PROGRAM

1. Applicant

Thomas Joseph, Inc.
16060 SE 82nd Dr.
Clackamas, OR 97015

The applicant owns and operates a clothes cleaning shop located in the Greenhouse Square, 16060 SE 82nd Dr., Clackamas, Oregon.

Application was made for tax credit for an air pollution prevention facility.

2. Description of Facility

The claimed facility is a new multiprocess wet cleaning system which was installed as a replacement for part of the cleaning capacity of the existing perc dry-cleaning machine.

The wet cleaning system reduces the emissions of perc by over 30% by cleaning the clothes with water and detergents instead of dry-cleaning solvent.

Claimed Facility Cost: \$ 40,976

3. Procedural Requirements

The facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The pollution prevention facility met all regulatory deadlines in that:

Installation of the facility was substantially completed on October 12, 1999. The application for final certification was received by the Department on July 13, 2000. The application was found to be complete when processed on October 24, 2000.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because a multiprocess wet cleaning system is a recognized alternative to perc dry-cleaning and it was installed as a replacement for part of the capacity of an existing perc machine. Also, the new process is not subject to 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 entire facility qualifies as a small area source since perc use is less than 140 gallons per year

The pollution prevention 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 facility installed a multiprocess wet cleaning system as a replacement for part of the capacity of the existing perc dry-cleaning machine.
- (3) The facility is registered with the EPA under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that it meets the definition of a pollution prevention facility for this pilot program.
- c. The applicant indicated that the tax credit program was not a determining factor in installing this equipment.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Prevention Facility Certificate bearing the cost of \$ 40,976 be issued for the facility claimed in Tax Credit Application No. 5484.

DPK
10/24/00 01:12 PM



Tax Credit Review Report

EQC 0012

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **95-4543096**

The applicant's address is:

**948 McNary Estates Dr. N.
Keizer, OR 97303**

Technical Information

This claimed equipment is used to process nursery containers into clean flakes which are sold to other companies that use them to manufacture reclaimed plastic products.

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>	09/21/1999
<i>Preliminary approval granted</i>	09/23/1999
<i>Date of investment</i>	09/02/2000
<i>Final application received</i>	10/06/2000
<i>Application substantially complete</i>	10/20/2000

Director's
Recommendation: **APPROVE**

Applicant **Agri-Plas Inc.**
Application No. **5485**
Facility Cost **\$73,438**
Percentage Allocable **100%**
Useful Life **5 years**

Facility Identification

The certificate will identify the facility as:

**One 4090 FAP grinder with
screens, one lower and cyclone; one
Sep-7 Aspirator; and one recycling
barrel saw.**

The applicant is the owner of the facility located at:

**3615 Chemawa Rd. NE
Salem, OR 97303**

Facility Cost

Claimed Facility Cost

\$73,438

Eligible Facility Cost

\$73,438

Pursuant to OAR 340-017-0030 (1)(a), invoices substantiated the cost of the facility. The facility cost exceeded \$50,000 and the applicant requested a waiver of the independent accountant's review

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.

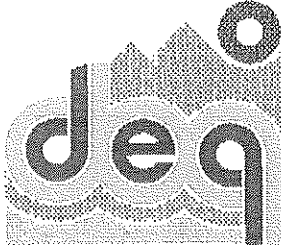
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, 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.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

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: **95-4543096**

The applicant's address is:

**948 McNary Estates Dr. N.
Keizer, OR 97303**

Director's

Recommendation: **APPROVE**

Applicant **Agri-plas, Inc.**

Application No. **5486**

Facility Cost **\$85,446**

Percentage Allocable **100%**

Useful Life **5 years**

Facility Identification

The certificate will identify the facility as:

**Two Freightliner model FL70-
26000 trucks, serial numbers
1F3HJCAC5XHB11263 and
1F3HJCAC5XHB11264**

The applicant is the owner of the facility
located at:

**3615 Chemawa Rd. NE
Salem, OR 97303**

Technical Information

These trucks are used to recycling collection service to agricultural facilities in the Willamette Valley that generate scrap plastic.

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**. These trucks are used solely for
collecting recyclable material.

ORS 468.155 The use of a **material recovery process** which obtains useful material
(1)(b)(D) 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 markets where it is remanufactured into new
products.

OAR 340-16-025(g)(B) **Replacement:** These new trucks are used for a new service and did not replace an existing vehicle or containers. These trucks do not replace any equipment which has previously received tax credit.

Timeliness of Application

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

<i>Application Received</i>	10/06/2000
<i>Application Substantially Complete</i>	10/20/2000
<i>Construction Started</i>	01/08/1999
<i>Construction Completed</i>	01/08/1999
<i>Facility Placed into Operation</i>	01/08/1999

Facility Cost

Facility Cost	\$ 85,446
Eligible Facility Cost	\$ 85,446

The facility cost exceeds \$50,000. The applicant requested a waiver of the independent accountant's certification. The applicant provided copies of the invoices and leases for the 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%**.

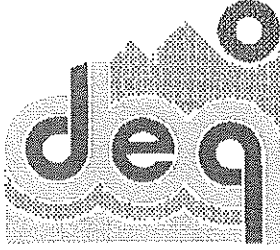
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	These trucks are used to collect recyclable material that is subsequently processed into a salable and useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. The calculated return on investment factor is negative. Therefore the percentage return on investment is 0%. Therefore 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.

Reviewer: William R Bree, DEQ

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Tax Credit Review Report

EQC 0012

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **93-0852298**

The applicant's address is:

**4427 NE 158th
Portland, OR 97230**

Technical Information

This trailer is used to transport and store scrap plastic prior to it being reclaimed into plastic pellets.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	08/09/2000
<i>Preliminary approval granted</i>	08/09/2000
<i>Date of investment</i>	08/28/2000
<i>Final application received</i>	10/17/2000
<i>Application substantially complete</i>	10/17/2000

Director's Recommendation: **APPROVE**

Applicant	Denton Plastics, Inc.
Application No.	5487
Facility Cost	\$4,500
Percentage Allocable	100%
Useful Life	5 years

Facility Identification

The certificate will identify the facility as:

One 1984 Fruehauf 48' transport and storage trailer, serial # 1H4V0482XEJ022221

The applicant is the owner of the facility located at:

**4427 NE 158th
Portland, OR 97230**

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Facility Cost

Claimed Facility Cost	\$4,500
Eligible Facility Cost	\$4,500

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.

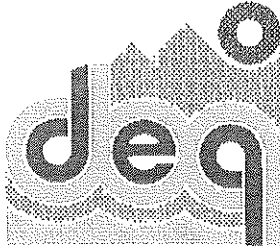
Considering these factors, the percentage allocable to pollution control is **100%**.

Compliance

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

Reviewer: William R Bree, DEQ

MW



Tax Credit Review Report

EQC 0012

Reclaimed Plastic Products

Final Certification

ORS 468.451 -- 468.491

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

Applicant Identification

Organized as: **a corporation**

Business: **a plastic recycling company**

Taxpayer ID: **93-0852298**

The applicant's address is:

**4427 NE 158th
Portland, OR 97230**

Technical Information

This equipment is used to handle reclaimed plastic pellets during the process of blending and packaging.

Eligibility

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

Timeliness of Application

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

<i>Preliminary application received</i>	08/25/2000
<i>Preliminary approval granted</i>	08/25/2000
<i>Date of investment</i>	09/19/2000
<i>Final application received</i>	10/17/2000
<i>Application substantially complete</i>	10/17/2000

Director's
Recommendation: **APPROVE**

Applicant **Denton Plastics, Inc.**
Application No. **5488**
Facility Cost **\$4,975**
Percentage Allocable **100%**
Useful Life **5 years**

Facility Identification

The certificate will identify the facility as:

One model 20-5033-000 Hydra-Dump

The applicant is the owner of the facility located at:

**4427 NE 158th
Portland, OR 97230**

Facility Cost

Claimed Facility Cost	\$4,975
Eligible Facility Cost	\$4,975

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.

Reviewer: William R Bree, DEQ



Tax Credit Review Report

EQC 0012

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: **Leasing company**

Taxpayer ID: **91-1660453**

The applicant's address is:

**6400 SW Corbett Ave.
Portland, OR 97201**

Director's
Recommendation: **APPROVE**

Applicant: **Western Bank**
Application No.: **5491**
Facility Cost: **\$666,347**
Percentage Allocable: **100%**
Useful Life: **7 years**

Facility Identification

The certificate will identify the facility as:

**14,860, 35 to 95 gallon, recycling
collection containers; 7,000, 14
gallon, recycling collections bins,
bins; and, 70, 2 to 5 cubic yard
recycling collection containers,
including assembly.**

The applicant is the owner of the facility
located at:

**1184 SW Berg Parkway
Canby, OR 97031**

Technical Information

These collection containers are used solely to collect co-mingled source separated recyclable, source separate recyclable glass, and yard debris from both residential and commercial on-route collection service customers in the city of West Linn. 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 containers are used solely for collecting source separated recyclable material.

OAR 340-16-025(g)(B) **Replacement:** These containers are used for a new service. These containers do not replace previously certified containers

ORS 468.155 These containers are used to collect source separated recyclable material
 (1)(b)(D) 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>	09/25/2000
<i>Application Substantially Complete</i>	09/18/2000
<i>Construction Started</i>	03/22/2000
<i>Construction Completed</i>	09/18/2000
<i>Facility Placed into Operation</i>	09/18/2000

Facility Cost

Facility Cost	\$666,347
Eligible Facility Cost	\$666,347

The facility cost exceeds \$500,000. The reviewers analysed the facility cost on behalf of the Department. Invoices substantiated the 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 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 recyclable material 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 associated with this lease is negative therefore the percentage return on investment is 0%. 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

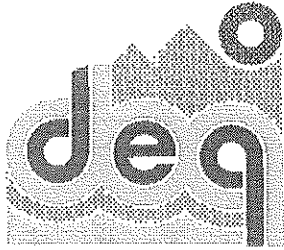
The facility is in compliance with Department rules and statutes and with EQC orders. There were no DEQ permits issued to this facility.

Reviewer: William R Bree, DEQ/ Maggie Vandehey, DEQ

Attachment C

Denials

1/15/11



Tax Credit Review Report

EQC 0012

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: **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**

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

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 documentation 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 views 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 of 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

Willamette Industries, Inc.
INTER-OFFICE MEMORANDUM

Date: November 10, 1999
To: Maureen Main
From: Jon Lund
Re: Dallas Division - Pelican Three-Wheel Sweeper Tax Credit

The sweeper's principal purpose is to prevent the release of particulate matter into the air from paved traffic areas. This sweeper was purchased in 1998 to comply with Conditions 4 and 4a of the Title V permit, No. 27-0177. These ODEQ permit conditions came from the Clean Air Act initially in the form of OAR 340-021-0060 (2), then to the ACDP Condition 10 (a), and now in the Title V permit as a means to minimize fugitive particulate emissions from the Dallas plant site.

Counter to Department staff opinion, the primary purpose of the Pelican sweeper is air emission prevention. The secondary purpose of the Pelican sweeper is to fulfill the best management practices required in Dallas Division's storm water permit. I did not recommend, nor would I have recommended, the purchase of a sweeper to provide a clean work environment for the mill employees. Worker exposure is not my expertise. Note: less than 10% of the employees on any given shift work outside. My recommendation to the mill manager was for environmental permit compliance only.

The definition of "air pollutant" includes particulate matter because it is an air contaminant as defined in OAR 340-028-0110 (7). Conditions 4 and 4a are based on the premise that particulate matter in sufficient quantities on Dallas' paved traffic areas, it has the necessary characteristics to be a nuisance, and accumulates at a frequency that requires corrective action. It is my opinion that "nuisance" as defined in OAR 340-021-0050¹ is captured in the definition of "air pollution"...to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby."

Paved traffic areas at the Dallas plant site are a source of fugitive particulate matter emissions. The amount of particulate matter on the paved traffic areas is in sufficient quantities throughout the production day to become airborne and interfere unreasonably with the enjoyment of life and property. Fortunately, the Pelican sweeper provides timely and effective removal of this particulate matter to comply with the Condition 4 and 4a of Dallas' Title V permit.

One final point. The state and federal rules rarely, if ever, prescribe the type of control equipment to achieve a certain level of control. It is no surprise to find that OAR 340-021-0060 (2)(g) does not specify how material that does or may become airborne is to be promptly removed from paved traffic areas. Note: the subcondition (2)(g) is prefaced with the statement, "Such reasonable precautions shall include, but not be limited to the following:...." Thus, it is up to the plant manager to find a reasonable solution. That solution is the Pelican three-wheel sweeper.

Enclosure: OAR 340-021-0050 TO 0060

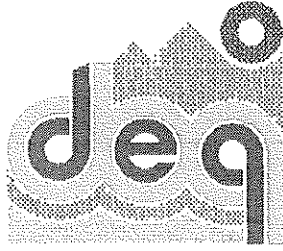
¹ "Nuisance conditions" means unusual or annoying amounts of fugitive emissions traceable directly to one or more specific sources."

WILLAMETTE INDUSTRIES, INC.
Interoffice Communications

DATE: November 10, 1999
TO: Maureen Maine
FROM: Bob Sloan
SUBJECT: Sweeper

As we discussed on the telephone, the sweeper that was purchased for the Dallas Complex is operated on a daily basis. By operating the sweeper on a staggered basis, one day at the plywood plant and one day at the lumber plant, all paved surfaces are swept about every other day. The purpose of the sweeper is two fold. 1) It removes dry dirt and particulate that can become air borne during dry conditions and minimizes air borne dust as required in the Title V air permit. 2) During wet weather the sweeper removes the same particulate that will now become trapped in the storm water, serving as a good control for potential BOD in the storm water. This is a condition of the "Storm Water Permit", and is considered an essential pollutant control measure.

Please let me know if I can be of further assistance.



Tax Credit Review Report

EQC 0012

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

Organized as: **a C Corporation**
Business: **a zirconium, hafnium, tantalum, titanium, and niobium production plant**
Taxpayer ID: **95-23-16679-WA**

The applicant's 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 a 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 permafex 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.

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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>01/06/2000</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

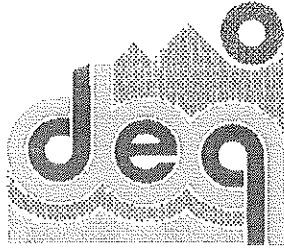
The facility is not eligible; therefore the percentage allocable to pollution control is 0%.

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 0012

Director's Recommendation: **DENY-- Ineligible Facility**

Applicant	Teledyne Industries, Inc.
Application No.	5286
Claimed Facility Cost	\$22,500
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: **a C Corporation**
Business: **a zirconium, hafnium, tantalum, titanium, and niobium production plant**
Taxpayer ID: **95-23-16679-WA**

The applicant's address is:

**1600 N.E. Old Salem Road
Albany, Oregon 97321-0460**

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>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	<u>(\$ 22,500)</u>
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

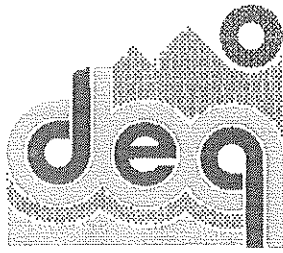
According to ORS 468.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

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 0012

Director's Recommendation: **DENY—Ineligible Facility**

Applicant	Willamette Industries, Inc.
Application No.	5299
Claimed Facility Cost	\$30,817
Claimed % Allocable	100%
Useful Life	7 years

Pollution Control Facility: Water Final Certification

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

Applicant Identification

Organized as: **a C Corporation**
Business: **a wood products manufacturing plant**
Taxpayer ID: **93-0312940**

The applicant's address is:

**1300 SW Fifth Avenue, Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

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.

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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 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 control.

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	<u>(\$ 30,817)</u>
Eligible Facility Cost	\$ 0

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

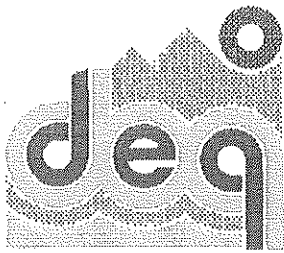
The applicant states the facility is in compliance with Department rules and statutes and with EQC orders. The following DEQ permits have been issued to facility: NPDES Storm Water Discharge #1200-Z, issued 7/22/97

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 0012

Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190

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

Director's
Recommendation: **DENY – Zero %**

Applicant	Leupold and Stevens, Inc.
Application No.	5423
Claimed Facility Cost	\$42,360
Percentage Allocable	0 (“zero”) %
Useful Life	10years

Applicant Identification

Organized As: **a S corporation**

Business: **manufacturer of period
reproduction lighting fixtures.**

Taxpayer ID: **93-0372974**

The applicant's address is:

**14400 N.W. Greenbrier Parkway
Beaverton, OR 97006-5790**

Facility Identification

The certificate will identify the facility as:

**Installation of a Beckhart
Environmental 250 gallon batch water
treatment system with filter press.**

The applicant is the owner of the facility located
at:

**14400 N.W. Greenbrier Parkway
Beaverton, OR 97006-5790**

Technical Information

The claimed facility is the installation of a Beckworth Environmental wastewater treatment system that removes regulated metals from a wastewater stream generated by the applicant's parts cleaning operations. The Beckhart Environmental "Water Wash" treatment system uses agitation, aeration, and the addition of flocculation polymers to precipitate regulated metals out of the waste stream. These metals include cadmium, chromium, copper, lead, nickel, silver, and zinc. The treatment system also uses hydrated lime for pH neutralization and clarification. The claimed facility comprised of:

- An equalization tank to receive the raw wastewater.
- A reaction and mix tank where the waste water and the injected treatment chemicals are mixed
- An automatic treatment chemical pumping and metering system.
- A clarifier section to remove suspended solids from the waste stream.
- A filter press and filtrate tank system to remove the floc from the wastewater stream before being discharged to the sewer.

M3

Prior to the installation of the claimed facility, the applicant had to dispose of about 500 gallons/week of contaminated wash water. The claimed facility reduced the discharge of regulate metals well below the levels required by the applicant's Industrial Wastewater Discharge Permit (IWDP). The comparison of pre-treatment and post-treatment results to the IWDP allowed daily maximum levels is as follows:

	<u>Pre-treatment</u> (mg/L)	<u>Post-treatment</u> (mg/L)	<u>Allowed by IWDP</u> (mg/L)
Cadmium	not detected (ND)	ND	0.11
Chromium	0.50	ND	2.77
Copper	1.26	0.40	3.38
Lead	4.77	0.51	0.69
Nickel	ND	ND	2.00
Silver	ND	ND	0.43
Zinc	3.32	0.20	2.61

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this **new wastewater treatment system installation** is to prevent, control or reduce a substantial quantity of **water pollution** in compliance with regulations imposed by the Unified Sewer District (Permit #133-032-1, issued 10/29/99).

ORS468155(1)(b)(A) The control is accomplished by reducing water pollution with a treatment system that meets the definition of treatment works in ORS 468B.005(6).

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	06/20/00
	<i>Application substantially complete</i>	06/20/00
	<i>Construction Started</i>	07/16/98
	<i>Construction Completed</i>	08/31/98
	<i>Facility Placed into Operation</i>	09/02/98

Facility Cost

Facility Cost	\$ 42,460
Eligible Facility Cost	\$42,360

The claimed facility cost was less than \$500,000; therefore, an independent accounting review was not required. Per OAR 340-016-0070(4)(a), paid invoices supplied by the applicant substantiated the cost of the facility.

MW

Facility Cost Allocable to Pollution Control

The eligible 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 “zero” %.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The claimed facility does not recover a useable or saleable product.
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	Responding to the request for additional information, the applicant provided a cash flow worksheet detailing operating income and expenses associated with the claimed facility. The claimed facility reduces the applicant’s wastewater disposal costs and generates a positive annual cash flow of \$13,150.95/year. This resulted in a Return-on-Investment Factor of 3.23. Based on a 10-year life, the Facility ROI is 28.5% (Table 1). This is greater than the National ROI of 6.3%. Therefore, the portion of facility cost allocable to pollution control is “zero”.
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 and other Permits issued to facility:

ACDP #AQGP-004 issued 08/09/99

1200-Z Stormwater Discharge Permit #10067 issued 10/28/97

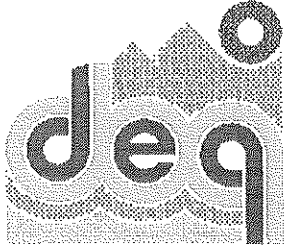
Reviewers: Allison/HCMA Consulting Group
Maggie Vandehey, DEQ

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Attachment D

Rejections

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Tax Credit Review Report

EQC 0012

Director's Recommendation: **REJECT: Filing Deadline**

Applicant	Mitsubishi Silicon America
Application No.	5049
Facility Cost	\$278,399
% 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: **supplier of electronic grade silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**1351 Tandem Ave. N.E.
Salem, OR 97303**

Facility Identification

The certificate will identify the facility as:

An EPI B2 OTE Scrubber System

The applicant is the owner of the facility located at:

**1351 Tandem Ave. NE
Salem, OR 97303**

Technical Information

The claimed facility consists of an OTE venturi wet scrubber used for treating hydrogen chloride from the silicon epitaxial process (EPI). Other dopant gases produced include phosphine, diborane, trichlorosilane, and hydrochloric acid.

The OTE scrubber system effectively removes 99% of the HCL gases associated with the EPI process.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new equipment installation** is to **control** a substantial quantity of air pollution as required by the applicants air permit.

ORS 468.155 (1)(b)(B) The control is accomplished by the **elimination of air contaminants** and the use of an air cleaning device as defined in ORS 468A.005.

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Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	07/27/1998
<i>Additional Information Requested</i>	01/04/1999
<i>Additional Information Received</i>	03/17/1999
<i>Additional Information Received</i>	11/12/1999
<i>Application Substantially Complete</i>	12/06/1999
<i>Construction Started</i>	04/29/1996
<i>Construction Completed</i>	07/19/1996
<i>Facility Placed into Operation</i>	08/01/1996

Facility Cost

Claimed Facility Cost	\$ 278,399
Eligible Facility Cost	278,399

A copy of the project cost ledger from the contractor was provided which substantiated \$278,399. The facility cost was greater than \$50,000 but less than \$500,000; therefore, Symonds, Evans & Larson, P.C., C.P.A., provided an accounting report on behalf of the applicant according to Department guidelines.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000; therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering these factors, the percentage allocable to pollution control is **100%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity. The resulting hydrochloric acid from the scrubbers is discharged to the acid waste neutralization system.
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 alternatives were investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

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: Storm Water 12001L issued March 1993; Air Contaminant Discharge Permit #D-24-4437 issued May 1996

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers, Inc.
Gordon Chun, SJO Consulting Engineers, Inc.
Maggie Vandehey, DEQ

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MITSUBISHI SILICON AMERICA

An ISO 14001 Registered Corporation

Ms. Maggie Vandehey
Tax Credit Prgm. Mngr.
Oregon DEQ
811 SW 6th Ave.
Portland, OR 97204-
1390

17-Oct-00

Re: Pollution Control Tax Credits in Jeopardy

Dear Maggie:

Mitsubishi Silicon America (MSA) has several pollution control tax credit applications in jeopardy of being denied due to a possible error in the interpretation of the "placed into operation" date.

Within the DEQ, pollution control tax credit application, there are three dates that need to be entered; "started" date, "completed" date and "placed into operation" date. The started date would be the date initial construction of the pollution control facility commenced or whenever a purchase order was placed for pollution control equipment for a particular pollution control facility. Whenever the majority of the project was completed, i.e., the scrubber was placed, electricity provided and chemical/drain lines functional, this was then considered the completed date. After the equipment was in place and utilities were provided, the equipment was then tested, calibrated and adjusted for the process conditions that would be experienced (design criteria). Sometimes the completed date and the placed into operation date were the same; however, the placed into operation date usually followed, by a month or more, depending on the quality, quantity and complexity of incoming waste streams. MSA (in agreement with their pollution control tax credit filer, Symonds, Evans and Larson) viewed the date of significant completion as the date when product was first produced by a particular process that was dependent upon the operation of the applicants pollution control facility. This latter date, placed into operation, was consistently used for all of MSA's pollution control tax credit applications as the date for tolling of the two-year window requirement. We viewed the placed into operation date as synonymous with the date of significant completion.

A list of the tax credit applications in question follows:

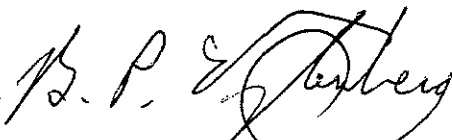
MITSUBISHI SILICON AMERICA

An ISO 14001 Registered Corporation

Application No.	Description	Facility Cost \$
5049	North Campus, Epi, B2 OTE Scrubber	278,399
5100	South Campus, AWN and Solids Removal System	1,599,606
5101	South Campus, 3B Torit Dust Collector	37,358
5102	South Campus, CUB Acid Exhaust Scrubber	95,170
5103	South Campus, 3B Ammonia Exhaust Scrubber	145,824
5104	South Campus, 3B NOx Exhaust Scrubber	146,236
5105	South Campus, 3B Acid Exhaust Scrubber	128,179
	Total	\$2,430,772

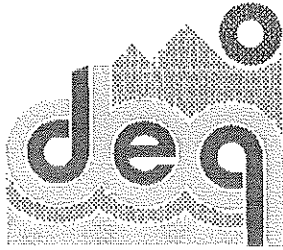
Should you have any questions, please feel free to contact me at 503-315-6140.

Respectfully,



B.P. Krytenberg, CHMM
Environmental Engineer
Mitsubishi Silicon America

cc: B. Nanke



Tax Credit Review Report

EQC 0012

Director's Recommendation: **REJECT – Filing Deadline**

Applicant	Mitsubishi Silicon America
Application No.	5100
Facility Cost	\$1,599,606
% 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: **a C Corporation**
Business: **supplier of electronic grade silicon wafers**
Taxpayer ID: **94-1687933**

Facility Identification

The claimed facility is:

Acid Waste Neutralization (AWN) and Solids Removal System

The applicant's address is:

**1351 Tandem Ave. NE
Salem, OR 97303**

The applicant is the owner of the facility located at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed facility consists of an **acid waste neutralization system** in the central utilities building and a **solids removal system**, which consists of a clarifier and solids processing equipment. All acidic waste water (hydrofluoric, nitric, and acetic acids) and slurry wastes from the Mod 3A, 3B, and 5 buildings and silicon slurry wastes generated within the 3A and 3B operating areas are routed to the solids removal system. The solids removal system removes solids from the wastewater, which is then treated in the AWN system in accordance with their permit prior to being discharged. Both systems are highly effective in reducing water pollution.

In the absence of this facility, unacceptable acidic wastewater would be discharged to the city of Salem's wastewater conveyance and treatment system.

Eligibility

ORS 468.155 The **principal purpose** of this **new installation of equipment** is to **control** a **(1)(a)(A)** substantial quantity of water pollution. The requirement is imposed by the applicants wastewater permit #3674-3, issued 12/31/97.

ORS 468.155 The control is accomplished by the **elimination of industrial waste** and the use of **(1)(b)(A)** treatment works for industrial waste as defined in ORS 468B.005.

Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	10/20/98
<i>Additional Information Requested</i>	3/15/99
<i>Additional Information Received</i>	4/1/99
<i>Additional Information Received</i>	11/12/99
<i>Application Substantially Complete</i>	12/6/99
<i>Construction Started</i>	7/20/95
<i>Construction Completed</i>	3/8/96
<i>Facility Placed into Operation</i>	10/20/96

Facility Cost

Claimed Facility Cost	\$ 1,599,606
Eligible Facility Cost	\$ 1,599,606

A copy of the project cost ledger from the contractor was provided that substantiated \$1,599,606. In addition, Symonds, Evans, & Larson provided the certified public accountant's statement on behalf of the applicant. The facility cost exceeds \$500,000 therefore, Maggie Vandehey performed an accounting review on behalf of the department.

Facility Cost Allocable to Pollution Control

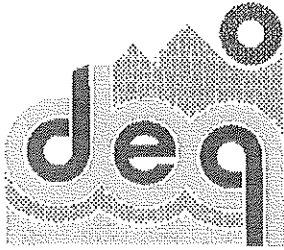
According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering these factors, the percentage allocable to pollution control is **100%**.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	There is no salable or usable commodity resulting from 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 are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No other alternatives were considered.
ORS 468.190(1)(d) Savings or Increase in Costs	The cost of operations, materials, and maintenance result in an increase in cost.
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. DEQ permits issued to facility: Waste water #3674-3, issued 12/31/97, Storm Water 1200L, issued 7/22/97.

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



Tax Credit Review Report

EQC 0012

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: **supplier of electronic grade silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**1351 Tandem Ave. NE
Salem, OR 97303**

Director's Recommendation: **REJECT – Filing Deadline**

Applicant **Mitsubishi Silicon America**
Application No. **5101**
Facility Cost **\$37,358**
% Allocable **100%**
Useful Life **10 years**

Facility Identification

The claimed facility is:

MOD 3B Torit dust collector

The applicant is the owner of the facility located at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed facility consists of a Torit dust collector, model DFT3-36. The dust collector is rated for 20,000 cfm and is used to capture dry particulate from the slicing/polishing processes within the polished wafer building. The captured particulate is collected in a barrel and later transferred to a landfill.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation of equipment** is to **control** a substantial quantity of air pollution. The requirement is imposed by their ACDP 24-0001, issued 2/5/97.
- ORS 468.155 (1)(b)(B) The control is accomplished by the **elimination of air contaminants** and the use of an air cleaning device as defined in ORS 468A.005.

Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>10/20/98</u>
<i>Additional Information Requested</i>	<u>02/09/99</u>
<i>Additional Information Received</i>	<u>04/08/99</u>
<i>Additional Information Received</i>	<u>11/12/99</u>
<i>Application Substantially Complete</i>	<u>12/6/99</u>
<i>Construction Started</i>	<u>10/10/95</u>
<i>Construction Completed</i>	<u>06/11/96</u>
<i>Facility Placed into Operation</i>	<u>10/20/96</u>

Facility Cost

Claimed Facility Cost	<u>\$ 37,358</u>
Eligible Facility Cost	<u>\$ 37,358</u>

The facility cost does not exceed \$50,000. However, Symonds, Evans, & Larson provided a certified public accountant's statement on behalf of Mitsubishi Silicon America. The reviewers analyzed the project cost ledger from the contractor was provided to substantiated the cost of the claimed facility.

Facility Cost Allocable to Pollution Control

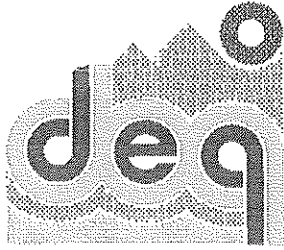
According to ORS.190 (3), the facility cost does not exceed \$50,000, therefore the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore the percentage allocable to pollution control, is **100%**.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility:

Air Contaminant Discharge Permit 24-0001 issued 2/5/97.

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



Tax Credit Review Report

EQC 0012

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: **supplier of electronic grade
silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**1351 Tandem Ave. NE
Salem, OR 97303**

Director's
Recommendation: **REJECT – Filing Deadline**

Applicant **Mitsubishi Silicon America**
Application No. **5102**
Facility Cost **\$95,170**
Percentage Allocable **100%**
Useful Life **10 years**

Facility Identification

The applicant claimed the following facility:

CUB Acid Exhaust Scrubber

The applicant is the owner of the facility located at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed air pollution control facility consists of an acid exhaust scrubber, model PSH-102-5. The facility is used to capture and treat all fugitive fumes from the central utilities building (CUB) chemical storage tank vents. Corrosive fumes from the acid storage tanks are vented to the acid scrubber for treatment prior to discharge to the environment. This is a new operating plant. Without the scrubber, untreated acid fumes would be discharged to the atmosphere.

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation of equipment** is to prevent, control (1)(a) or reduce a substantial quantity of air pollution as imposed by the applicants air permit. The requirement is imposed by the Air Contaminante Discharge Permit Number 24-0001
- ORS 468.155 The control is accomplished by the **elimination of air contaminants** and the use of (1)(b)(B) an air cleaning device as defined in ORS 468A.005.

Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>10/20/98</u>
<i>Additional Information Requested</i>	<u>2/17/99</u>
<i>Additional Information Received</i>	<u>4/8/99</u>
<i>Application Substantially Complete</i>	<u>12/6/99</u>
<i>Construction Started</i>	<u>7/20/95</u>
<i>Construction Completed</i>	<u>3/8/96</u>
<i>Facility Placed into Operation</i>	<u>10/20/96</u>

Facility Cost

Claimed Facility Cost

\$ 95,170

Eligible Facility Cost

\$ 95,170

The facility cost is greater than \$50,000 but less than \$500,000, therefore Symonds, Evans, & Larson provided the certified public accountant's statement. The reviewers analysed the facility cost documents on behalf of the department.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering these factors, the percentage allocable to pollution control is **100%**.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	The facility is not used to recover and convert waste products into a salable or usable 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	Alternative methods, equipment and costs were not considered to achieve the same objective.
ORS 468.190(1)(d) Savings or Increase in Costs	There is an increase in operating costs as a result of installing this facility.
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. DEQ permits issued to facility:

Air Contaminant Discharge Permit 24-0001 issued 2/5/97.

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



Tax Credit Review Report

EQC 0012

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: **supplier of electronic grade
silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**1351 Tandem Ave. NE
Salem, OR 97303**

Director's
Recommendation: **REJECT – Filing Deadline**

Applicant **Mitsubishi Silicon America**
Application No. **5103**
Facility Cost **\$145,824**
% Allocable **100%**
Useful Life **10 years**

Facility Identification

The claimed facility is:

MOD 3B Ammonia Scrubber

The applicant is the owner of the facility located at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed air pollution control facility consists of a Harrington ammonia exhaust scrubber, model ECH 4 4-5 LB. The facility is used to treat all ammonia process fumes from the polished wafer building. Corrosive ammonia fumes from various process exhaust lines are routed to the ammonia scrubber for treatment prior to discharge to the environment. This is a new operating plant. Without the scrubber, untreated ammonia fumes would be discharged to the atmosphere.

Eligibility

ORS 468.155 (1)(a)(A) The **principal purpose** of this **new installation of equipment** is to **control** a substantial quantity of air pollution. The requirement is imposed by their ACDP 24-0001, issued 2/5/97.

ORS 468.155 (1)(b)(B) The control is accomplished by the **elimination of air contaminants** and the use of an air cleaning device as defined in ORS 468A.005.

Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	10/20/98
<i>Additional Information Requested</i>	2/17/99
<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

Facility Cost

Claimed Facility Cost	\$ 145,824
Eligible Facility Cost	\$ 145,824

The facility cost is greater than \$50,000 but less than \$500,000, therefore Symonds, Evans, & Larson provided the certified public accountant's statement on behalf of Mitsubishi Silicon America. The reviewers analysed the facility cost documentation in accordance with Department guidelines. A copy of the project cost ledger from the contractor substantiated the claimed 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. Considering these factors, the percentage allocable to pollution control is **100%**.

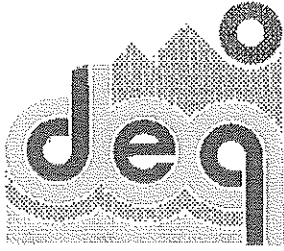
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility is not used to recover and convert waste products into a salable or usable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Alternative methods, equipment and costs were not considered to achieve the same objective.
ORS 468.190(1)(d) Savings or Increase in Costs	There is an increase in operating costs as a result of installing this facility.
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. DEQ permits issued to facility:

Air Contaminant Discharge Permit 24-0001 issued 2/5/97.

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



Tax Credit Review Report

EQC 0012

Director's Recommendation: **REJECT – Filing Deadline**

Applicant	Mitsubishi Silicon America
Application No.	5104
Facility Cost	\$146,236
% 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: **supplier of electronic grade silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**Mitsubishi Silicon America
1351 Tandem Ave. NE
Salem, OR 97303**

Facility Identification

The certificate will identify the facility as:

MOD 3B NOX Scrubber

The facility is located at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed air pollution control facility consists of a Harrington MOD 3B NOX scrubber, model ECH 3 3-8 LB and ECH 3 3-9 LB, serial number S-081995-1. The facility is used to treat nitric acid process fumes. Corrosive fumes from various process exhaust lines are routed to the MOD 3B NOX scrubber for treatment prior to discharge to the environment. This is a new operating plant. Without the scrubber, untreated nitric acid fumes would be discharged to the atmosphere and would result in visible emissions.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation of equipment** is to **control** a substantial quantity of air pollution. The requirement is imposed by their ACDP 24-0001, issued 2/5/97.
- ORS 468.155 (1)(b)(B) The control is accomplished by the **elimination of air contaminants** and the use of an air cleaning devices as defined in ORS 468A.005.

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Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	10/20/98
<i>Additional Information Requested</i>	2/16/99
<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

Facility Cost

Claimed Facility Cost	\$ 146,236
Eligible Facility Cost	\$ 146,236

The facility cost does not exceed \$50,000 however, Symonds, Evans, & Larson provided a certified public accountant's statement on behalf of Mitsubishi Silicon America. The reviewers analysed the project cost ledger from the contractor was provided to substantiated the cost of the claimed facility.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility is not used to recover and convert waste products into a salable or usable 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	Alternative methods, equipment and costs were not considered to achieve the same objective.
ORS 468.190(1)(d) Savings or Increase in Costs	There is an increase in operating costs as a result of installing this facility.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

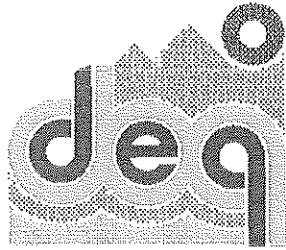
Considering these factors, the percentage allocable to pollution control is **100%**.

Compliance

The applicant states that the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: Air Contaminant Discharge Permit 24-0001 issued 2/5/97.

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

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Tax Credit Review Report

EQC 0012

Director's
Recommendation: **REJECT – Filing Deadline**

Applicant	Mitsubishi Silicon America
Application No.	5105
Facility Cost	\$128,179
% 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: **supplier of electronic grade
silicon wafers**
Taxpayer ID: **94-1687933**

The applicant's address is:

**1351 Tandem Ave. NE
Salem, OR 97303**

Facility Identification

The claimed facility is:

Two MOD 3B Acid Exhaust Scrubbers

The applicant is the owner of the facility located
at:

**3950 Fairview Industrial Drive SE
Salem, OR 97302**

Technical Information

The claimed facility consists of two Harrington MOD 3B acid exhaust scrubbers, both model ECH 8 5-5 LB and serial numbers S-081895-1 and -2, and their associated Harrington HPCA 3300 fans. The facility is used to treat acid process fumes from the polished wafer building. Corrosive fumes from various process exhaust lines are routed to the two MOD 3B Acid Exhaust scrubbers prior to discharge to the environment. This is a new operating plant. Without the scrubber, untreated acid fumes would be discharged to the atmosphere.

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation of equipment** is to **control a**
(1)(a) **substantial quantity of air pollution.** The requirement is imposed by their ACDP
24-0001, issued 2/5/97.
- ORS 468.155 The control is accomplished by the **elimination of air contaminants** and the use of
(1)(b)(B) **an air cleaning device as defined in ORS 468A.005.**

Timeliness of Application

The department determined that the application was not submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	10/20/98
<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

Facility Cost

Claimed Facility Cost	\$ 128,179
Eligible Facility Cost	\$ 128,179

The facility cost does not exceed \$50,000 however, Symonds, Evans, & Larson provided a certified public accountant's statement on behalf of Mitsubishi Silicon America. The reviewers analyzed the project cost ledger from the contractor that was provided to substantiated the cost of the claimed facility.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control. Considering these factors, the percentage allocable to pollution control is **100%**.

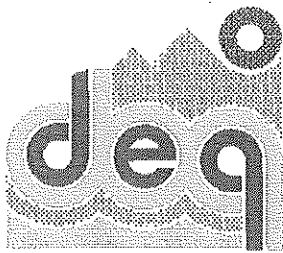
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The facility is not used to recover and convert waste products into a salable or usable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Alternative methods, equipment and costs were not considered to achieve the same objective.
ORS 468.190(1)(d) Savings or Increase in Costs	There is an increase in operating costs as a result of installing this facility.
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. DEQ permits issued to facility: Air Contaminant Discharge Permit 24-0001 issued 2/5/97.

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

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Tax Credit Review Report

EQC 0012

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 steel plates and coils**
Taxpayer ID: **94-0506370**

The applicant's address is:

**1000 S.W. Broadway, Suite 2200
Portland, OR 97205-3003**

Technical Information

The applicant's plant on Rivergate Boulevard manufactures steel plates and coils from scrap steel. One of the manufacturing activities involves melting raw steel for further processing. An existing cooling tower normally cools and re-circulates non-contact service water between the processes and the cooling tower. In the event of a power failure an automatic valve allows City of Portland water to flow directly to the melt shop processes to prevent a melt-down of the manufacturing equipment. The rate of flow during this emergency period is about 3,500 gallons-per-minute. This is not enough water to operate the manufacturing process, but because of the power failure the water overflows the now non-functioning cooling tower. The water overflows to an existing on-site wastewater treatment pond. The treatment pond has limited capacity and at the emergency water flow rates it overflows directly into the Willamette River. This allows any oil and suspended dirt in the pond to flow into the river as well. These contaminants exceed the pollution standards for the river.

The claimed facility is the installation of an overflow weir and associated underground piping to divert the City of Portland water, which is non-contact water, directly to the Willamette River. The installation also includes meters, analyzers, sensors and other instruments to monitor the potential water flow through the claimed facility.

Director's Recommendation: **REJECT – Untimely Submittal**

Applicant	Oregon Steel Mills
Application No.	5357
Claimed Facility Cost	\$174,175
Claimed Percentage Allocable	100%
Useful Life	10 years

Facility Identification

The certificate will identify the facility as:

Installation of a cooling water overflow diversion system

The applicant is the owner of the facility located at:

**14400 N. Rivergate Blvd.
Portland, OR 97203**

2/15

The claimed facility also eliminates the need to discharge non-contact process water from the cooling tower into the existing wastewater treatment pond during normal manufacturing operations. This reduces the amount of water ultimately discharged into the river from the water treatment system.

The non-contact discharges directly into the river and is a permitted discharge. The claimed facility is currently awaiting final approval and permitting by the DEQ before it is placed into operation.

Eligibility

ORS 468.155 (1)(a) The applicant claimed the **sole purpose** of this **cooling water overflow diversion system installation** is to prevent, control or reduce a substantial quantity of **water pollution**.

ORS 468.155(1)(b)(A) The applicant claimed the control is accomplished by the redesign of the cooling tower and the addition of underground piping to form a sewage system as defined by ORS 468B.005(5)

Timeliness of Application

The application was **not** submitted within the timing requirements of ORS 468.165 (6). Invoices submitted by the applicant in support of the application indicate that construction of the claimed facility was substantially complete and capable of operating as specified prior to 12/31/97. The applicant's paid invoices indicate that the entire system was capable of operation more than two years before the Department received the application.

<i>Application Received</i>	01/03/00
<i>Application Substantially Complete</i>	08/11/00
<i>Construction Started</i>	07/13/97
<i>Construction Completed</i>	12/31/97
<i>Facility Placed into Operation</i>	

Facility Cost

Facility Cost	\$ 174,175
Ineligible costs due to timeliness	\$ (174,175)
Eligible Facility Cost	\$ 0.00

The cost of the claimed facility was less than \$500,000; therefore, an independent accounting review was not required. Paid invoices supplied by the applicant substantiated the cost of the facility.

200

Facility Cost Allocable to Pollution Control

The facility cost exceeds \$50,000. According to ORS 468.190 (1), the five factors below are used to determine 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	The claimed facility does not recover a useable or saleable product.
ORS 468.190(1)(b) Return on Investment	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 claimed increases 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 is a NPDES permit issued to the total facility-permit identification number is unknown.

Reviewers:

Allison/HCMA Consulting Group
Maggie Vandehey, DEQ

Attachment E

Transfers

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No: **4067**
Date of Issue: 12/11/1998
Application No: 5085

POLLUTION CONTROL FACILITY CERTIFICATE

ISSUED TO: **David L. Towry, Sr.**

530 Center Street, Ste 675
Salem, OR 97301

LOCATION OF POLLUTION CONTROL FACILITY:

522 Main Street
Aumsville, OR 97325

ATTENTION: David Towry, Principal

Operating as the owner of the facility. A C corporation.

DESCRIPTION OF POLLUTION CONTROL FACILITY: **Epoxy lining in three steel underground tanks, flexible plastic piping, spill containment basins, automatic tank gauge system, overflow alarm, turbine leak detectors, sumps, oil/water separator and automatic shutoff valves.**

TYPE OF POLLUTION CONTROL FACILITY: USTs

DATE FACILITY COMPLETED: PLACED INTO OPERATION:

ACTUAL COST OF POLLUTION CONTROL FACILITY: **\$95,300.00**

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL **99%**

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 12/11/1998.

Lebold Business Development Incorporated

525 Jay St.
Silverton, Or 97381

Phone 551-8529
Fax 503-874-1702
Home Phone 503-873-4297
Email glebold@aol.com

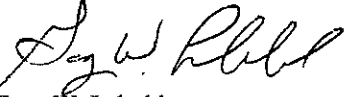
September 24, 2000

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

Dear Maggie,

Enclosed you will find the information you requested for the transfer of the pollution control facility certificate for 522 Main Street, Aumsville, OR 97325. If you need anything else, please do not hesitate to call me. Thank-you for your assistance in this matter.

Sincerely,



Gary W. Lebold
Lebold Business Development Incorporated
Tax I.D. #93-1299162

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No: **4063**
Date of Issue: 12/11/1998
Application No: 5078

POLLUTION CONTROL FACILITY CERTIFICATE

ISSUED TO: **Miller's Sanitary Service, Inc.**

5150 SW Alger Avenue
Beaverton, OR 97005

ATTENTION: Thomas Miller, President

LOCATION OF POLLUTION CONTROL FACILITY:

5150 SW Alger Avenue
Beaverton, OR 97005

Operating as the owner of the facility. A C corporation.

DESCRIPTION OF POLLUTION CONTROL FACILITY: **One doublewall fiberglass lined steel aboveground tank (with two compartments) with overfill prevention and interstitial leak detection equipment.**

TYPE OF POLLUTION CONTROL FACILITY: USTs

DATE FACILITY COMPLETED: 10/06/1997 PLACED INTO OPERATION: 09/30/1997

ACTUAL COST OF POLLUTION CONTROL FACILITY: **\$42,742.00**

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: 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 12/11/1998.



WASTE MANAGEMENT

Northwest Region Office
7227 NE 55th Ave.
Portland, OR 97218
(503) 331-2221
(503) 493-7883 Fax

October 30, 2000

BY HAND DELIVERY

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

**Re: Transfer of Miller's Sanitary Service, Inc. Pollution Control Facility
Certificate, No. 4063**

Dear Ms. Vandehey:


This letter is a request to transfer Pollution Control Facility Certificate No. 4063 from Miller's Sanitary Service, Inc. to USA Waste of Oregon, Inc. The new owner is USA Waste of Oregon, Inc., 7227 NE 55th Avenue, Portland, OR 97218, (503) 249-8078, Taxpayer Identification No: 930612655.

In addition, USA Waste of Oregon, Inc. changed its name to Waste Management of Oregon, Inc. this summer. No ownership change was involved.

I have enclosed a copy of the Pollution Control Facility Certificate for Miller's Sanitary Service, Inc. A copy of the Articles of Merger and the first and last pages of the Plan of Merger is also attached. I was an officer in the former Miller's Sanitary Service, Inc. The transfer of ownership was effective March 24, 2000 and filed with the Secretary of State on March 31.

If you need any additional information, please let me know. We would like this transfer to be reflected this year. Please send a copy of the transferred certificate to me when it is completed. Thank you very much.

Very truly yours,


Jonathan M. Angin
Vice President

7/20

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item H
12/1/00 Meeting

Title:

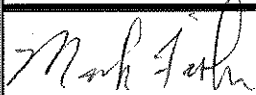
Acid Rain and New Source Performance Standards

Summary:

The proposed rules would adopt federal revisions by reference. Both the federal Acid Rain and New Source Performance Standards were previously adopted by the Commission. This action would update those rules to incorporate recent revisions to the federal rules. Most of the revisions are clarifications to improve implementation and reduce the burden of monitoring, recordkeeping, and reporting. Revisions to Subparts Da and Db of the new Source Performance Standards would require more stringent limits for nitrogen oxides emissions from large industrial boilers that have been modified or constructed after 1997. There are no boilers in Oregon that are subject to the new standards at this time.

Department Recommendation:

The Department recommends that the Commission adopt the rules as proposed.



Mark Fisher

Report Author



Andy Ginsburg

Division Administrator



Lydia Taylor

Acting Director

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 7, 2000
To: Environmental Quality Commission
From: Lydia Taylor *Lydia Taylor*
Subject: Agenda Item H, Acid Rain and New Source Performance Standards, EQC Meeting December 1, 2000

Background

On August 14, 2000, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would adopt revisions to the federal Acid Rain and New Source Performance Standards by reference.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on September 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 August 15, 2000.

A Public Hearing was held September 15, 2000 with Mark Fisher serving as Presiding Officer. Written comment was received through September 18, 2000. One person attended the hearing but did not present testimony and there were no written comments received during the comment period.

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.

Key Words and Acronyms

Acid Rain: federal air pollution requirements for large electric generating sources of sulfur and nitrogen oxides emissions.
Title V: Title V of the Clean Air Act - requires permits for air pollution sources to operate.
NSPS: New Source Performance Standards - federal air pollution control standards.

Issue this Proposed Rulemaking Action is Intended to Address

The EPA has promulgated revisions to the federal Acid Rain and New Source Performance Standards. The Oregon Administrative Rules must be updated to incorporate the federal revisions so that the Department may continue to administer the Acid Rain and Title V Operating Permit programs. Both of these actions ensure that Oregon rules are consistent with federal rules.

Relationship to Federal and Adjacent State Rules

The proposed rule adopts federal rules by reference. For this rulemaking, state rules are no more or less stringent than the federal requirements.

Authority to Address the Issue

The Commission has the statutory authority to address this issue under ORS 468.020, ORS 468A.025, and ORS 468A.310.

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

An advisory committee was not convened for these proposed rules because the proposed adoptions are federal requirements and policy decisions were not necessary.

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

The proposed rules would adopt federal revisions by reference. Both the federal Acid Rain and New Source Performance Standards were previously adopted by the Commission. This action would update those rules to incorporate recent revisions to the federal rules. Most of the revisions are clarifications to improve implementation and reduce the burden of monitoring, recordkeeping, and reporting. Revisions to Subparts Da and Db of the New Source Performance Standards would require more stringent limits for nitrogen oxides emissions from large industrial boilers that have been modified or constructed after 1997. There are no boilers in Oregon that are subject to the new standards at this time.

Summary of Significant Public Comment and Changes Proposed in Response

The Department did not receive any comments in response to this proposed rulemaking.

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

These rules are implemented through the existing Air Contaminant Discharge Permit and Oregon Title V Operating Permit programs. A Rule Implementation Plan is included as Attachment D.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the federal Acid Rain and New Source Performance Standards as presented in Attachment A.

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. Rule Implementation Plan
- E. Summary tables of changes to federal rules being adopted by reference.

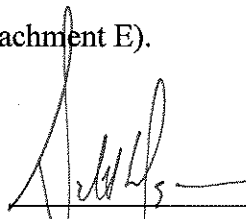
Reference Documents (available upon request)

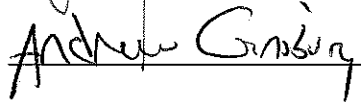
Federal Register citations (summarized in Attachment E).

Approved:

Section:

Division:





Report Prepared By: Mark Fisher

Phone: (541) 388-6146 x275

Date Prepared: October 19, 2000

Attachment A

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Acid Rain and New Source Performance Standards

Proposed Rule Changes

DIVISION 228

REQUIREMENTS FOR FUEL BURNING EQUIPMENT AND FUEL SULFUR CONTENT

Federal Acid Rain Program

340-228-0300

Federal Regulations Adopted by Reference

- (1) **40 CFR Parts 72, 75, and 76 (July 1, 1999~~2000~~)** are by this reference adopted and incorporated herein, for purposes of implementing an acid rain program that meets the requirements of title IV of the Clean Air Act. The term "permitting authority" ~~shall~~ mean the Oregon Department of Environmental Quality and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.
- (2) If the provisions or requirements of **40 CFR Part 72** conflict with or are not included in OAR 340 Divisions 218 or 220, the **Part 72** provisions and requirements shall apply and take precedence.

Stat. Auth.: ORS 468.020 & ORS 468.310(2)

Stats. Implemented: ORS 468A.025

Hist.: DEQ 32-1994, f. & cert. ef. 12-22-94; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0075

DIVISION 238

NEW SOURCE PERFORMANCE STANDARDS

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

- (1) "Administrator" means the Administrator of the EPA or authorized representative.
- (2) "Alternative method" means any method of sampling and analyzing for an air pollutant ~~which that~~ is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance.
- (3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility ~~which that~~ exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in ~~the latest edition of~~ Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

- (4) "CFR" means Code of Federal Regulations revised as of July 1, 19992000.
- (5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under **40 CFR 60.7(a)(4)**. Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of **40 CFR 258.60**.
- (6) "Commenced"~~means~~, with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.
- (7) "Construction" means fabrication, erection, or installation of a facility.
- (8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Pollution Authority.
- (9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
- (10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.
- (11) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
- (12) "Existing facility"~~means~~, with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in **40 CFR Part 60**, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus which could be altered in such a way as to be of that type.
- (13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.
- (14) "Fixed capital cost" means the capital needed to provide all the depreciable components.
- (15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.
- (16) "Modification:"
 - (a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;
 - (b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.
- (17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).
- (18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.
- (19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.
- (20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

- (a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and
- (b) It is technologically and economically feasible to meet the applicable standards set forth in **40 CFR Part 60**.

- (21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60** (July 1, 1999).
- (22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.
- (23) "Standard" means a standard of performance proposed or promulgated under **40 CFR Part 60**.
- (24) "State Plan" means a plan developed for the control of a designated pollutant provided under **40 CFR Part 60**.
- (25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.
- (26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510

340-238-0050

General Provisions

- (1) Except as provided in section (2) of this rule, **40 CFR Part 60, Subpart A** (July 1, ~~1999~~2000) is by this reference adopted and incorporated herein.
- (2) Where "Administrator" or "EPA" appears in **40 CFR Part 60, Subpart A**, "Department" ~~shall be~~is substituted, except in any section of **40 CFR Part 60** for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0530

340-238-0060

Federal Regulations Adopted by Reference

- (1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts D through XX and BBB through NNN and PPP through WWW** (July 1, ~~1999~~2000) are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** (July 1, ~~1999~~2000) is by this reference adopted and incorporated herein for major sources only.
- (2) Where "Administrator" or "EPA" appears in **40 CFR Part 60**, "Department" ~~shall be~~is substituted, except in any section of **40 CFR Part 60** for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.
- (3) **40 CFR Part 60** Subparts adopted by this rule are titled as follows:
 - (a) Subpart D - Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;
 - (b) Subpart Da - Electric utility steam generating units for which construction is commenced after September 18, 1978;
 - (c) Subpart Db - Industrial-commercial-institutional steam generating units;
 - (d) Subpart Dc - Small industrial-commercial-institutional steam generating units;
 - (e) Subpart E - Incinerators;

- (f) Subpart Ea - Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;
- (g) Subpart Eb - Municipal waste combustors for which construction is commenced after September 20, 1994;
- (h) Subpart Ec - Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;
- ~~(i) Subpart G - Nitric acid plants;~~
- (ji) Subpart F - Portland cement plants;(i) Subpart G - Nitric acid plants;
- (j) Subpart G - Nitric acid plants;
- (k) Subpart H - Sulfuric acid plants;
- (l) Subpart I - Hot mix asphalt facilities;
- (m) Subpart J - Petroleum refineries;
- (n) Subpart K - Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978;
- (o) Subpart Ka - Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984;
- (p) Subpart Kb - Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;
- (q) Subpart L - Secondary lead smelters;
- (r) Subpart M - Secondary brass and bronze production plants;
- (s) Subpart N - Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;
- (t) Subpart Na - Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;
- (u) Subpart O - Sewage treatment plants;
- (v) Subpart P - Primary copper smelters;
- (w) Subpart Q - Primary Zinc smelters;
- (x) Subpart R - Primary lead smelters;
- (y) Subpart S - Primary aluminum reduction plants;
- (z) Subpart T - Phosphate fertilizer industry: wet-process phosphoric acid plants;
- (aa) Subpart U - Phosphate fertilizer industry: superphosphoric acid plants;
- (bb) Subpart V - Phosphate fertilizer industry: diammonium phosphate plants;
- (cc) Subpart W - Phosphate fertilizer industry: triple superphosphate plants;
- (dd) Subpart X - Phosphate fertilizer industry: granular triple superphosphate storage facilities;
- (ee) Subpart Y - Coal preparation plants;
- (ff) Subpart Z - Ferroalloy production facilities;
- (gg) Subpart AA - Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;
- (hh) Subpart AAa - Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;
- (ii) Subpart BB - Kraft pulp mills;
- (jj) Subpart CC - Glass manufacturing plants;
- (kk) Subpart DD - Grain elevators.
- (ll) Subpart EE - Surface coating of metal furniture;
- (mm) Subpart GG - Stationary gas turbines;
- (nn) Subpart HH - Lime manufacturing plants;
- (oo) Subpart KK - Lead-acid battery manufacturing plants;
- (pp) Subpart LL - Metallic mineral processing plants;
- (qq) Subpart MM - Automobile and light-duty truck surface coating operations;

- (rr) Subpart NN - Phosphate rock plants;
- (ss) Subpart PP - Ammonium sulfate manufacture;
- (tt) Subpart QQ - Graphic arts industry: publication rotogravure printing;
- (uu) Subpart RR - pressure sensitive tape and label surface coating operations;
- (vv) Subpart SS - Industrial surface coating: large appliances;
- (ww) Subpart TT - Metal coil surface coating;
- (xx) Subpart UU - Asphalt processing and asphalt roofing manufacture;
- (yy) Subpart VV - Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;
- (zz) Subpart WW - Beverage can surface coating industry;
- (aaa) Subpart XX - Bulk gasoline terminals;
- (bbb) Subpart BBB - Rubber tire manufacturing industry;
- (ccc) Subpart DDD - Volatile organic compound (VOC) emissions for the polymer manufacture industry;
- (ddd) Subpart FFF - Flexible vinyl and urethane coating and printing;
- (eee) Subpart GGG - equipment leaks of VOC in petroleum refineries;
- (fff) Subpart HHH - Synthetic fiber production facilities;
- (ggg) Subpart III - Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;
- (hhh) Subpart JJJ - Petroleum dry cleaners;
- (iii) Subpart KKK - Equipment leaks of VOC from onshore natural gas processing plants;
- (jjj) Subpart LLL - Onshore natural gas processing; SO₂ emissions;
- (kkk) Subpart NNN - Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;
- (lll) Subpart OOO - Nonmetallic mineral processing plants (adopted by reference for major sources only);
- (mmm) Subpart PPP - Wool fiberglass insulation manufacturing plants;
- (nnn) Subpart QQQ - VOC emissions from petroleum refinery wastewater systems;
- (ooo) Subpart RRR - Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;
- (ppp) Subpart SSS - Magnetic tape coating facilities;
- (qqq) Subpart TTT - Industrial surface coating: surface coating of plastic parts for business machines;
- (rrr) Subpart UUU - Calciners and dryers in mineral industries;
- (sss) Subpart VVV - Polymeric coating of supporting substrates facilities;
- (ttt) Subpart WWW - Municipal solid waste landfills, as clarified by OAR 340-238-0100.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535

Attachment B-1

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

DEQ - Air Quality Division
Agency and Division

Chapter 340 Divisions 228 and 238
Administrative Rules Chapter Number

Susan M. Greco
Rules Coordinator

(503) 229-5213
Telephone

811 S.W. 6th Avenue, Portland, OR 97213

Address

<u>September 15, 2000</u>	<u>3:00 PM</u>	<u>811 SW Sixth Ave Rm 3A, Portland</u>	<u>Mark Fisher</u>
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?

Yes

RULEMAKING ACTION

AMEND:

OAR 340-228-0300; OAR 340-238-0040; OAR 340-238-0050; OAR 340-238-0060

Stat. Auth.: ORS 468.020, 468A.025, and 468A.310.

Stats. Implemented: ORS 468.020, 468A.025, and 468A.310

RULE SUMMARY

The Department of Environmental Quality is proposing to amend its rules regarding federal Acid Rain and New Source Performance Standards. This proposal would update Oregon rules to be consistent with the federal Acid Rain rules and New Source Performance Standards that apply to industrial point sources in Oregon.

September 18, 2000
Last Day for Public Comment


Authorized Signer and Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Acid Rain and New Source Performance Standards

Fiscal and Economic Impact Statement

Introduction

The Department proposes to adopt revisions to the federal Acid Rain and New Source Performance Standards by reference. Since the rules are already in place at the federal level, affected industrial sources must currently comply with the requirements. This proposed rulemaking is administrative, and will not add any additional cost to those affected by the regulations in Oregon. Sources will save some costs by avoiding duplicative reporting to both EPA and the Department.

General Public

It is unlikely that adopting the Acid Rain and New Source Performance Standards rules by reference will have any cost impact on the general public.

Small Business

It is unlikely that adopting the Acid Rain and New Source Performance Standards rules by reference will have any cost impact on small businesses. Also, the federal rule changes generally affect larger sources. All sources subject to these proposed amendments have been identified through the Department's air quality industrial source permitting process.

Large Business

The federal revisions to the Acid Rain rules are intended to streamline and improve the permitting, monitoring, excess emissions, and appeal procedures in order to reduce the burden on utilities and reduce the cost of implementing the rules. The adoption of the Acid Rain rules includes adoption of the nitrogen oxides regulations of 40 CFR Part 76, which were not previously included in Oregon's rules. However, adoption of Part 76 should not have any immediate fiscal and economic

impact because the one source that is affected by the regulations elected to comply with the Phase I emissions limits and need not comply with the Phase II limit until January 1, 2008.

In general, the revisions to the New Source Performance Standards are also intended to streamline and improve implementation of the regulations. However, the revisions to 40 CFR Subpart Da and Db impose lower emissions limits for nitrogen oxides from steam generating units constructed or modified after July 9, 1997. At this time, there are no units that would be subject to the new standards in Oregon.

Local Governments

It is unlikely that adopting the Acid Rain and New Source Performance Standards rules by reference will have any cost impact on local governments.

State Agencies

- Oregon Department of Environmental Quality, and Lane Regional Air Pollution Authority
 - No additional costs are expected because the revisions will be implemented using existing programs and procedures. The Department does not anticipate any personnel adjustments to implement and administer the proposed rules.

- Other Agencies
 - It is not expected that the proposed rules will add any additional costs to other agencies because they are not affected by the rules.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Acid Rain and New Source Performance Standards

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department is proposing that revisions to the federal Acid Rain and New Source Performance Standards be adopted by reference so that the Department has authority to implement the rules and ensure approval of the Acid Rain and Oregon Title V Permit programs.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes No

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

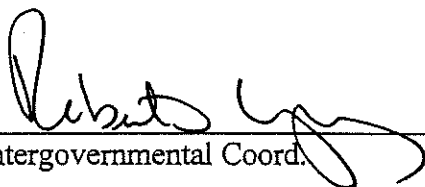
The rules will be implemented through the Air Contaminant Discharge Permit and Oregon Title V Operating Permit programs.

b. If yes, do the existing statewide goal compliance, and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable


Intergovernmental Coord.

Aug 2, 2000
Date

Attachment B-4

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Acid Rain and New Source Performance Standards

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?

The Department proposes to adopt the federal rules by reference. Therefore, the proposed rules do not differ from the federal requirements. The federal rules are contained in 40 CFR Parts 60, 72, 75 and 76.

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

The federal standards are performance standards that reflect the best demonstrated technology at the time of promulgation.

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?

These regulations do address air quality concerns in Oregon, however, the Department did not actively participate in the development of the standards. The affected industries and industry representatives are typically involved in developing the federal rules.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

Attachment B-5

State of Oregon Department of Environmental Quality

Memorandum

Date: August 15, 2000

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements for adopting federal Acid Rain and New Source Performance Standards by reference.

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding the federal Acid Rain and New Source Performance Standards (NSPS). Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would update Oregon rules to be consistent with federal rules as they relate to Acid Rain and New Source Performance Standards that apply to industrial point sources.

The Department has the statutory authority to address this issue and implement these proposed rules under ORS 468.020, ORS 468A.025 and 468A.310.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335).
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D The actual language of the proposed rule amendments.
- Attachment E Summary tables of changes to federal rules being adopted by reference.

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:

Memo To: Interested and Affected Public
Acid Rain/NSPS Proposed Rules
Page 2

Date: September 15, 2000
Time: 3:00 p.m.
Place: Oregon Department of Environmental Quality
Conference Room 3A
811 SW 6th Avenue
Portland, OR 97204

Deadline for submittal of Written Comments: September 18, 2000

Mark Fisher 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: Mark Fisher, 2146 NE. 4th Street, Suite 104, Bend, OR 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What Happens After the Public Comment Period Closes

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is November 30, 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?

The U.S. Environmental Protection Agency (EPA) has promulgated revisions to the federal Acid Rain rules. The Department must adopt the federal revisions in order to administer our State Acid Rain and Title V Operating Permit Programs. The Department also proposes to update Oregon rules to adopt revisions to federal New Source Performance Standards. Both of these actions ensure that Oregon rules are consistent with federal rules.

How was the rule developed?

Since this rulemaking proposes to adopt federal regulations by reference, an advisory committee was not convened. These proposed rules are based on federal rules contained in 40 CFR Parts 60, 72, 75 and 76. A summary of the federal rule revisions is included in Attachment E in this notice.

Please contact Scott Manzano at (503) 229-6480 to review the CFRs used to develop this rulemaking proposal. The CFRs are also directly available at the following web site:
<http://www.epa.gov/docs/epacfr40/chapt-I.info/subch-C/>

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

The Acid Rain rules affect large electric power generating units that burn fossil fuels and could affect other fossil fuel fired steam generating units if they opt in to the program. The New Source Performance Standards affect sources listed in Attachment E. Both the affected NSPS and Acid Rain sources must comply with EPA's rules.

With the exception of the changes to Subparts Da and Db of the New Source Performance Standards, the federal revisions are intended to reduce the burden of implementing the programs by streamlining many of the requirements. The changes to Subparts Da and Db will impose lower nitrogen oxides emissions limits on fossil fuel fired steam generating units constructed or

modified after July 9, 1997.

How will the rule be implemented?

The proposed rules would be effective following adoption by the EQC on November 30, 2000. Notice of the rule revisions will be provided to the Department permit writers and inspectors. Permittees will be informed of any source specific revisions which will be incorporated into permits at renewal following existing procedures.

Are there time constraints?

In order to maintain approval of the Oregon Title V Operating Permit program and issue Acid Rain permits, Oregon is required to adopt the Acid Rain rules and New Source Performance Standards within two years after EPA promulgates federal rules. Some of the federal revisions occurred longer than two years ago so Oregon should adopt the rules as soon as possible.

Contact for More Information

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

Mark Fisher
Eastern Region Air Quality Section
2146 NE 4th Street, Suite 104
Bend, OR 97701
Telephone: (541) 388-6146 x275
Fax: (541) 388-8283

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 9, 2000

To: Environmental Quality Commission

From: Mark Fisher

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: September 15, 2000 at 3:00 p.m.
Hearing Location: Room 3A, DEQ Headquarters Building, 811 S.W. Sixth Ave,
Portland, OR 97204
Title of Proposal: Acid Rain and New Source Performance Standards

The rulemaking hearing on the above titled proposal was convened at 3:15. The hearing was closed at 3:30. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

One person was in attendance but did not sign up to give comments.

Prior to receiving comments, I briefly explained the specific rulemaking proposal and the procedures to be followed during the hearing.

There were no comments received during the hearing or the public comment period.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Acid Rain and New Source Performance Standards

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rules adopt the federal Acid Rain and New Source Performance Standards by reference. This is an update of existing rules to make state rules consistent with federal rules. EPA periodically makes changes to federal rules that must be adopted by state and local permitting authorities to maintain approval of the Oregon Title V Operating Permit and Acid Rain Permit programs.

Proposed Effective Date of the Rule

The proposed rules will be effective following adoption by the Environmental Quality Commission, scheduled November 30, 2000.

Notification of Affected Persons

A public notice was prepared and distributed to interested persons. The Acid Rain rules effect fossil fuel-fired power plants located in eastern Oregon. The New Source Performance Standard rules effect several different types of source categories located throughout the state.

Proposed Implementing Actions

Once the proposed rules are adopted, the revised requirements will be incorporated into air permits upon renewal in accordance with existing procedures.

Proposed Training/Assistance Actions

Air Quality staff have been informed of the context and progress of this rulemaking. It is not anticipated that there will be any special training or changes in permit writing procedures necessary for implementing the proposed rules.

Attachment E

Summary of Federal Revisions

Summary of Acid Rain revisions

Part 72 revisions. On 12/22/94, the Environmental Quality Commission adopted the Federal Acid Rain rules that were promulgated on 1/11/93, included revisions through 7/30/93 (58 FR 40747). Provided below is a list of revisions that have been made to the federal rules since the last time the federal Acid Rain rules were adopted by reference.

Subsequent EPA Revisions to Part 72 Covered By This Rulemaking:

Date	FR Citation	Affected Sections
11/22/94	59 FR 60230	72.41 Phase I substitution plans
11/22/94	59 FR 60230	72.43 Phase I reduced utilization plans
11/22/94	59 FR 60230	72.91 Phase I unit adjusted utilization
4/4/95	60 FR 17111	72.2 Definitions
4/4/95	60 FR 17111	72.4 Federal authority
4/4/95	60 FR 17111	72.9 Standard requirements
4/4/95	60 FR 17111	72.21 Designated representative submissions
4/4/95	60 FR 17111	72.30 Requirement to apply
4/4/95	60 FR 17111	72.40 Compliance plan and compliance option –general
4/4/95	60 FR 17111	72.72 Criteria for state operating permit program
4/4/95	60 FR 17111	72.81 Permit modifications
4/4/95	60 FR 17111	72.83 Administrative permit amendment
4/11/95	60 FR 18468	72.2 Definitions
4/11/95	60 FR 18468	72.33 Identification of dispatch system
4/11/95	60 FR 18468	72.43 Phase I reduced utilization plans
4/11/95	60 FR 18468	72.91 Phase I unit adjusted utilization
4/11/95	60 FR 18468	72.92 Phase I unit allowance surrender
5/17/95	60 FR 26514	72.2 Definitions
5/17/95	60 FR 26514	72.13 Incorporation by reference
10/24/97	62 FR 55475	72.1 Purpose and scope
10/24/97	62 FR 55475	72.2 Definitions
10/24/97	62 FR 55475	72.6 Applicability
10/24/97	62 FR 55475	72.7 New units exemption
10/24/97	62 FR 55475	72.8 Retired units exemption
10/24/97	62 FR 55475	72.9 Standard requirements
10/24/97	62 FR 55475	72.13 Incorporation by reference

Date	FR Citation	Affected Sections
10/24/97	62 FR 55475	72.14 Industrial utility-units exemption
10/24/97	62 FR 55475	72.22 Alternate designated representative
10/24/97	62 FR 55475	72.24 Certificate of representation
10/24/97	62 FR 55475	72.25 Designated representative objections
10/24/97	62 FR 55475	72.30 Requirement to apply
10/24/97	62 FR 55475	72.31 Information requirements for Acid Rain permit applications
10/24/97	62 FR 55475	72.32 Permit application shield and binding effect of permit application
10/24/97	62 FR 55475	72.33 Identification of dispatch system
10/24/97	62 FR 55475	72.40 Compliance plan and compliance option –general
10/24/97	62 FR 55475	72.41 Phase I substitution plans
10/24/97	62 FR 55475	72.43 Phase I reduced utilization plans
10/24/97	62 FR 55475	72.44 Phase II repowering extension
10/24/97	62 FR 55475	72.51 Permit shield
10/24/97	62 FR 55475	72.60 Federal Acid Rain permit issuance procedures - general
10/24/97	62 FR 55475	72.61 Completeness
10/24/97	62 FR 55475	72.65 Public notice of opportunities for public comment
10/24/97	62 FR 55475	72.69 Issuance and effective date of Acid Rain permits
10/24/97	62 FR 55475	72.70 Relationship to title V operating permit program
10/24/97	62 FR 55475	72.71 Acceptance of state Acid Rain programs – general
10/24/97	62 FR 55475	72.72 Criteria for state operating permit program
10/24/97	62 FR 55475	72.73 State issuance of Phase II permits
10/24/97	62 FR 55475	72.74 Federal issuance of Phase II permits
10/24/97	62 FR 55475	72.80 Permit revisions – general
10/24/97	62 FR 55475	72.81 Permit modifications
10/24/97	62 FR 55475	72.82 Fast-track modifications
10/24/97	62 FR 55475	72.83 Administrative permit amendment
10/24/97	62 FR 55475	72.85 Permit reopenings
10/24/97	62 FR 55475	72.91 Phase I unit adjusted utilization
10/24/97	62 FR 55475	72.95 Allowance deduction formula
12/18/97	62 FR 66279	72.8 Retired units exemption
10/27/98	63 FR 57498	72.2 Definitions
12/11/98	64 FR 68404	72.2 Definitions
5/13/99	65 FR 25482	72.2 Definitions
5/13/99	65 FR 25482	72.40 Compliance plan and compliance option –general

Date	FR Citation	Affected Sections
5/26/99	65 FR 28586	72.2 Definitions
5/26/99	65 FR 28586	72.3 Measurements, abbreviations, and acronyms
5/26/99	65 FR 28586	72.6 Applicability
5/26/99	65 FR 28586	72.90 Annual compliance certification report

Summary of EPA Part 72 actions since 1995:

04/4/95, 60 FR 17113

Today's action establishes an additional component to the Acid Rain Program called the Opt-in Program. The Opt-in Program allows sources not required to participate in the Acid Rain Program the opportunity to participate on a voluntary basis. Such sources, known as combustion sources, would include small utility units and industrial boilers. These rules detail how combustion sources participate in the allowance market by "opting in" to the Acid Rain Program, as provided under section 410 of the Act. Congress envisioned the Opt-in Program as a means of generating additional allowances and through which the compliance costs of acid rain control in the utility sector could be reduced, while still meeting overall emissions reductions goals.

04/11/95, 60 FR 18470

Based on a review of the record, the Agency concludes that the January 11, 1993 regulations concerning reduced utilization should be revised. The overall effect of the revisions is to reduce the reporting and recordkeeping burden on utilities. The regulations require that, unless certain requirements are met, the designated representative of a unit in Phase I of the program whose annual utilization of fuel is less than its average annual utilization in 1985-1987 must submit a reduced utilization plan. The regulations also require designated representatives to submit end-of-year compliance reports that estimate the sulfur dioxide emissions resulting from any under utilization of Phase I units and to surrender allowances for the estimated emissions. The Agency is revising the regulations to simplify the criteria for determining if a reduced utilization plan must be submitted: Where the end-of-year reporting and allowance surrender requirements are met, such a plan is not required. Further, the Agency is revising the formulas for estimating emissions resulting from under utilization to correct errors, clarify certain provisions, and take account of and facilitate compliance by Phase I units with multiple owners or whose owners are required by law to purchase electricity from non-utility power production facilities.

05/17/95, 60 FR 26514

This direct final rule would amend the Continuous Emission Monitoring (CEM) provisions and the General Provisions of the Acid Rain Program for the purpose of making the implementation of the program simpler, streamlined, and more efficient for both the EPA and industry. The rule amendment is being issued as a direct final rule because the corrections are technical in nature and address various implementation issues without major changes in policy. Furthermore, the rule amendments are consistent with the April 17, 1995 settlement agreement. Therefore, EPA believes these amendments are noncontroversial and has provided for the amendments to be effective 60 days after publication in the Federal Register.

10/24/97, 62 FR 55475

After considering its experience in applying the Acid Rain Program rules since 1993, the Agency believes that the permitting, excess emissions, and appeal procedures rules (as well as minor aspects of the monitoring rule) can be streamlined and improved in order to reduce the burden on utilities, State and local permitting authorities, and EPA. Today's final rule revisions streamline the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions. In addition, EPA is revising the sulfur dioxide allowances for on unit. Each allowance authorizes the emission of one ton of sulfur dioxide. Under the Acid Rain Program, utility units (i.e., fossil fuel-fired boilers or turbines) are allocated annual allowances and must not emit sulfur dioxide in excess of the amount authorized by the allowances that they hold. Today's final rule revises on unit's allowances pursuant to a settlement agreement.

12/18/97, 62 FR 66279

This action corrects certain inadvertent, drafting errors in the October 24, 1997 document.

10/27/98, 63 FR 57498

Revises definitions for NO_x emissions inventory reporting

12/11/98, 63 FR 68404

This action amends certain provisions in the permitting and allowance trading rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals.

05/13/99, 64 FR 25842

Today's action revises certain provisions in the regulations concerning the deduction of allowances for determining compliance. The revisions will improve the operation of the Allowance Tracking System and the allowance market generally, while still preserving the Act's environmental goals.

05/26/99, 64 FR 28588

On May 21, 1998, the Agency proposed additional revisions to the CEM rule, to make implementation easier and more efficient for both EPA and the facilities affected by the rule, to improve quality assurance requirements, and to create new alternative monitoring options. EPA promulgated final rule revisions addressing some of these additional proposed revisions, based on comments received, when EPA promulgated a Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (NOX SIP call). In this action, EPA is issuing final rule revisions addressing the remaining May 21, 1998 proposed revisions to the CEM rule, with certain changes to the proposal based on the public comments received. Some of these revisions will be relevant for sources that become subject to part 75 requirements in response to the NOX SIP call.

Part 76 revisions. EPA promulgated the Nitrogen Oxides portion of the Acid Rain rules on 4/13/95 and the Department has not adopted those regulations. In addition to the initial rules, the following revisions are also covered by this rulemaking.

Part 76 Revisions covered by this rulemaking:

Date	FR Citation	Affected Sections
4/13/95	60 FR 18761	Initial promulgation
12/19/96	61 R 67162	76.2 Definition
12/19/96	61 R 67162	76.5 NO _x emissions limitations for Group 1 boilers
12/19/96	61 R 67162	76.6 NO _x emissions limitations for Group 2 boilers
12/19/96	61 R 67162	76.7 Revised NO _s emission limitations for Group 1, Phase II boilers
12/19/96	61 R 67162	76.8 Early election for Group 1, Phase II boilers
12/19/96	61 R 67162	76.9 Permit application and compliance plans
1/23/97	62 FR 3464	76.6 NO _x emissions limitations for Group 2 boilers
6/12/97	32040	76.6 NO _x emissions limitations for Group 2 boilers

Summary of EPA Part 76 actions since 1995:

04/13/95, 60 FR 18761

The EPA is today issuing this final rule in response to a remand by a U.S. Court of Appeals. The rule reinstates emission limitations for nitrogen oxides (NOX) from coal-fired utility units under section 407 of the Clean Air Act ("the Act"). The emission limitations for NOX, along with emission limitations for sulfur dioxide from utility plants, will reduce acidic deposition and its serious adverse effects on natural resources, ecosystems, materials, visibility, and public health. On March 22, 1994, EPA promulgated a rule establishing NOX emission limitations.

The rule established emission limits generally achievable using "low NOX burner technology" and established a procedure for obtaining an alternative emission limitation (AEL) if a unit could not achieve the prescribed limit using such technology. On November 29, 1994, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the definition of "low NOX burner technology" in the March 22, 1994 rule exceeded EPA's statutory authority. The Court vacated the rule and remanded it to the Agency for further proceedings. On March 28, 1995, EPA and environmental and utility-industry parties signed an agreement addressing the March 22, 1994 regulations, including issues raised by the Court's remand. Based on the Court's decision and a review of the record, the Agency is now revising the March 22, 1994 regulations. The low- NOX-burner-technology definition is revised to comply with the Court's decision. Other provisions concerning the compliance date for Phase I NOX emission limitations, AELs, and plans for averaging NOX emissions of two or more units are also revised. In general, the revisions reduce compliance requirements, extend the compliance date, and increase compliance flexibility. The rule revisions are issued as a direct final rule because they are consistent with the Court's decision and no adverse comment is expected. The revisions are also consistent with the March 28, 1995 agreement.

12/19/96, 61 FR 67162

This action promulgates standards for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act ("CAA" or "the Act") by establishing nitrogen oxides (NOX) emission limitations for certain coal-fired electric utility units and revising NOX emission limitations for others as specified in section 407(b)(2) of the Act. The emission limitations will reduce the serious adverse effects of NOX emissions on human health, visibility, ecosystems, and materials.

01/23/97, 62 FR 3463

On December 19, 1996, the Environmental Protection Agency (EPA) promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. These emission limitations will reduce the serious adverse effects of NOX emissions on human health, visibility, ecosystems, and materials. This action corrects the effective date and other inadvertent drafting errors.

06/12/97, 62 FR 32040

On December 19, 1996 (61 FR 67112), the Environmental Protection Agency (EPA) promulgated emission limitations for the second phase of the Nitrogen Oxides Reductions Program under Title IV of the Clean Air Act. These emission limitations will reduce the serious adverse effects of NOX emissions on human health, visibility, ecosystems, and materials. This action corrects an inadvertent, drafting error in the December 19, 1996 document.

New Source Performance Standard Revisions

Subpart	Source Category	EPA Promulgated		Last DEQ Adoption			Subsequent EPA Revisions	
				Covered EPA Revisions Through				
		Date	FR Citation	Date	Date	FR Citation	Date	FR Citation
A	General Provisions	12/23/71	36 FR 24877	10/21/98	5/4/98	63 FR 24444	2/12/99	64 FR 7463
D	Fossil-Fuel-Fired Steam Generators	6/14/74	39 FR 20791	10/21/98	9/24/96	61 FR 49976		
Da	Electric Utility Steam Generating Units	6/11/79	44 FR 33613	10/21/98	5/7/90	55 FR 18876	9/16/98	63 FR 49453
							2/12/99	64 FR 7464
Db	Industrial-Commercial-Institutional Steam Generating Units	12/16/87	52 FR 47842	10/21/98	10/18/97	62 FR 52641	9/16/98	63 FR 49454
							2/12/99	64 FR 7464
							3/13/00	65 FR 13243
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	9/12/90	55 FR 37683	10/21/98	5/8/96	61 FR 20736	2/12/99	64 FR 7465
E	Incinerators	12/23/71	36 FR 24877	10/21/98	2/14/90	55 FR 5212		
Ea	Municipal Waste Combustors Constructed After 12/20/89 and on or Before 9/20/94	12/11/1991	56 FR 5507	10/21/98	12/19/95	60 FR 65384	2/12/99	64 FR 7465
Eb	Municipal Waste Combustors Constructed After 9/20/94	12/19/95	60 FR 65419	10/21/98	8/25/97	62 FR 45120		
Ec	Hospital/Medical/Infectious Waste Incinerators Constructed After 6/20/96 or Modified After 3/16/98	9/15/1997	62 FR 48382	10/21/98				
F	Portland Cement Plants	6/14/74	39 FR 20793	10/21/98	2/14/89	54 FR 6666		
G	Nitric Acid Plants	6/14/74	39 FR 20794	10/21/98	2/14/89	54 FR 6666		
H	Sulfuric Acid Plants	12/23/71	36 FR 24877	10/21/98	2/14/89	54 FR 6666		
I	Hot Mix Asphalt Facilities	3/8/74	39 FR 9314	10/21/98	2/14/89	54 FR 6667		
J	Petroleum Refineries	3/8/74	39 FR 9315	10/21/98	2/4/91	56 FR 4176	2/12/99	64 FR 7465

Subpart	Source Category	EPA Promulgated		Last DEQ Adoption			Subsequent EPA Revisions	
				Covered EPA Revisions Through				
		Date	FR Citation	Date	Date	FR Citation	Date	FR Citation
K	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 6/11/73 and Prior to 5/19/78	3/8/74	39 FR 9317	10/21/98	4/8/87	52 FR 11429		
Ka	Storage Vessels for Petroleum Liquids Constructed, Reconstructed, Modified After 5/18/78 and Prior to 7/23/84	4/4/80	45 FR 23379	10/21/98	4/8/87	52 FR 11429		
Kb	Volatile Organic Liquid Storage Vessels Constructed After 7/23/84	4/8/87	52 FR 11429	10/21/98	10/8/97	62 FR 52641		
L	Secondary Lead Smelters	3/8/74	39 FR 9317	10/21/98	2/14/89	54 FR 6667		
M	Secondary Brass and Bronze Production Plants	3/8/74	39 FR 9318	10/21/98	2/14/89	54 FR 6667		
N	Primary Emissions from Basic Oxygen Process Furnaces Constructed After 6/11/73	3/8/74	39 FR 9318	10/21/98	2/14/89	54 FR 6667		
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Furnaces Constructed After 1/20/83	1/2/86	51 FR 161	10/21/98	1/14/89	54 FR 6667		
O	Sewage Treatment Plants	3/8/74	39 FR 9319	10/21/98	2/3/94	59 FR 5108		
P	Primary Copper Smelters	1/15/76	41 FR 2338	10/21/98	2/14/89	54 FR 6668		
Q	Primary Zinc Smelters	1/15/76	41 FR 2340	10/21/98	2/14/89	54 FR 6668		
R	Primary Lead Smelters	1/15/76	41 FR 2340	10/21/98	2/14/89	54 FR 6668		
S	Primary Aluminum Reduction Plants	7/25/77	42 FR 37937	10/21/98	10/7/97	62 FR 52399		
T	Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants	8/6/75	40 FR 33154	10/21/98	2/14/89	54 FR 6669		
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	8/6/75	40 FR 33155	10/21/98	2/14/89	54 FR 6670		
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	8/6/75	40 FR 33155	10/21/98	2/14/89	54 FR 6670		
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	8/6/75	40 FR 33156	10/21/98	5/17/89	54 FR 21344		

Subpart	Source Category	EPA Promulgated		Last DEQ Adoption			Subsequent EPA Revisions	
		Date	FR Citation	Date	Covered EPA Revisions Through		Date	FR Citation
					Date	FR Citation		
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	8/6/75	40 FR 33156	10/21/98	2/14/89	54 FR 6671		
Y	Coal Preparation Plants	1/15/76	41 FR 2234	10/21/98	2/14/89	54 FR 6671		
Z	Ferroalloy Production Facilities	5/4/76	41 FR 18501	10/21/98	2/14/90	55 FR 5212		
AA	Steel Plants: Electric Arc Furnaces Constructed After 10/21/74 and on or Before 8/17/83	9/23/75	40 FR 43852	10/21/98	5/17/89	54 FR 6672	3/2/99	64 FR 10109
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8/7/83	10/31/84	49 FR 43845	10/21/98	5/17/89	54 FR 6673	3/2/99	64 FR 10110
BB	Kraft Pulp Mills	2/23/78	43 FR 7572	10/21/98	2/14/90	55 FR 5212		
CC	Glass Manufacturing Plants	10/7/80	45 FR 66751	10/21/98	5/17/89	54 FR 21344	2/12/99	64 FR 7466
DD	Grain Elevators	8/3/78	43 FR 34347	10/21/98	2/14/89	54 FR 6674		
EE	Surface Coating of Metal Furniture	10/29/82	47 FR 49287	10/21/98	12/13/90	55 FR 51383		
GG	Stationary Gas Turbines	9/10/79	44 FR 52798	10/21/98	6/27/89	54 FR 27016		
HH	Lime Manufacturing Plants	4/26/84	49 FR 18080	10/21/98	2/14/89	54 FR 6675		
KK	Lead-Acid Battery Manufacturing Plants	4/16/82	47 FR 16573	10/21/98	2/14/89	54 FR 6675		
LL	Metallic Mineral Processing Plants	2/21/84	49 FR 6464	10/21/98	2/14/89	54 FR 6676		
MM	Automobile and Light-Duty Truck Surface Coating Operations	12/24/80	45 FR 85415	10/21/98	10/11/94	59 FR 51386		
NN	Phosphate Rock Plants	4/16/82	47 FR 16589	10/21/98	5/17/89	54 FR 21344	2/12/99	64 FR 7466
PP	Ammonium Sulfate Manufacture	11/12/80	45 FR 74850	10/21/98	2/14/89	54 FR 6676		
QQ	Graphic Arts Industry: Publication Rotogravure Printing	11/8/82	47 FR 50649	10/21/98				
RR	Pressure Sensitive Tape and Label Surface Coating Operations	10/18/83	48 FR 48375	10/21/98	12/13/90	55 FR 51383		

Subpart	Source Category	EPA Promulgated		Last DEQ Adoption			Subsequent EPA Revisions	
				Covered EPA Revisions Through				
		Date	FR Citation	Date	Date	FR Citation	Date	FR Citation
SS	Industrial Surface Coating: Large Appliances	10/27/82	47 FR 47785	10/21/98	12/13/90	55 FR 51383		
TT	Metal Coil Surface Coating	11/1/82	47 FR 49612	10/21/98	5/31/91	56 FR 20497		
UU	Asphalt Processing and Asphalt Roofing Manufacture	8/6/82	47 FR 34143	10/21/98	6/27/89	54 FR 34143		
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	10/18/83	48 FR 48335	10/21/98	6/12/96	61 FR 29878		
WW	Beverage Can Surface Coating Industry	8/25/83	48 FR 38737	10/21/98	12/13/90	55 FR 51384		
XX	Bulk Gasoline Terminals	8/18/83	48 FR 37590	10/21/98	2/14/89	54 FR 21344	2/12/99	64 FR 7466
BBB	Rubber Tire Manufacturing Industry	9/15/87	52 FR 34874	10/21/98	9/19/89	54 FR 38635		
DDD	VOC Emissions from the Polymer Manufacture Industry	12/11/90	55 FR 51035	10/21/98	3/22/91	56 FR 12299	3/9/99	64 FR 11541
FFF	Flexible Vinyl and Urethane Coating and Printing	6/29/84	49 FR 26892	10/21/98	8/17/84	49 FR 32848		
GGG	Equipment Leaks of VOC in Petroleum Refineries	5/30/84	49 FR 22606	10/21/98				
HHH	Synthetic Fiber Production Facilities	4/5/84	49 FR 13651	10/21/98	6/23/94	49 FR 18096		
III	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes	6/29/90	55 FR 26922	10/21/98	9/7/90	55 FR 36932		
JJJ	Petroleum Dry Cleaners	9/21/84	49 FR 37331	10/21/98	11/27/85	50 FR 49026		
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	6/24/85	50 FR 26124	10/21/98	1/21/86	51 FR 2702		
LLL	Onshore Natural Gas Processing; SO ₂ Emissions	10/1/85	50 FR 40160	10/21/98	2/14/89	54 FR 6679		
NNN	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	6/29/90	55 FR 26842	10/21/98	11/27/95	60 FR 58237		
OOO	Nonmetallic Mineral Processing Plants	8/1/85	51 FR 31337	10/21/98	6/9/97	62 FR 31359		
PPP	Wool Fiberglass Insulation Manufacturing Plants	2/25/95	50 FR 7699	10/21/98	2/14/89	54 FR 6680		
QQQ	VOC Emissions from Petroleum Refinery Wastewater	11/23/85	53 FR 47623	10/21/98	8/18/95	60 FR 43259		

Subpart	Source Category	EPA Promulgated		Last DEQ Adoption			Subsequent EPA Revisions	
				Covered EPA Revisions Through				
		Date	FR Citation	Date	Date	FR Citation	Date	FR Citation
	Systems							
RRR	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations	8/31/93	58 FR 45962	10/21/98	11/27/95	60 FR 58238		
SSS	Magnetic Tape Coating Facilities	10/3/88	53 FR 38914	10/21/98	12/9/88	53 FR 49822	2/12/99	64 FR 7467
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	1/29/88	53 FR 2676	10/21/98	6/15/89	54 FR 25459		
UUU	Calciners and Dryers in Mineral Industries	9/28/92	57 FR 44503	10/21/98	7/29/93	58 FR 40591		
VVV	Polymetric Coating of Supporting Substrates Facilities	9/11/89	54 FR 37551	10/21/98				
WWW	Municipal Solid Waste Landfills	3/12/96	61 FR 9919	10/21/98	6/16/98	63 FR 32750	2/24/99	64 FR 9262
							4/10/00	65 FR 18908

Summary of EPA changes to New Source Performance Standards

64 FR 7463, 2/12/99

SUMMARY: On September 11, 1996, the EPA proposed changes to reduce unnecessary reporting and recordkeeping burdens due to regulations implementing the Clean Air Act (the Act). This review was part of a Government-wide initiative as directed by the President on March 1, 1995. With today's document, the EPA is finalizing the proposed changes, with minor amendments as discussed below. On the whole, public comments that were received on the proposed changes were overwhelmingly supportive of the Agency's efforts. [Affects subparts A, Da, Db, Dc, Ea, J, CC, NN, XX, and SSS]

63 FR 49453, 9/16/98

SUMMARY: Pursuant to section 407(c) of the Clean Air Act, the EPA has reviewed the emission standards for nitrogen oxides (NO_x) contained in the standards of performance for new electric utility steam generating units and industrial-commercial-institutional steam generating units. The EPA proposed revisions to 40 CFR part 60, subparts Da and Db based on this review on July 9, 1997. The EPA received 70 public comments on the proposed rule changes. These comments were reviewed, and this document reflects the EPA's responses to the issues raised by the commenters. This action promulgates the revised standards of performance. The final revisions change the existing standards for NO_x emissions by reducing the numerical NO_x emission limits for both utility and industrial steam generating units to reflect the performance of best demonstrated technology. The final revisions also change the format of the revised NO_x emission limit for new electric utility steam generating units to an output-based format to promote energy efficiency and pollution prevention. However, in a change from the proposed language, the EPA is revising the standard for existing utility boilers that become subject to subpart Da through modification or reconstruction to be in an equivalent input-based format. As a separate activity, the EPA also reviewed the quarterly sulfur dioxide (SO₂), NO_x, and opacity emission reporting requirements of the utility and industrial steam generating unit regulations contained in subparts Da and Db. The final rules will allow owners or operators of affected facilities to meet the quarterly reporting requirements of both regulations by means of electronic reporting, in lieu of submitting written compliance reports. [Affects subparts Da and Db]

65 FR 13243, 3/13/00

SUMMARY: On February 12, 1999 (64 FR 7458), we promulgated final rule amendments to reduce unnecessary reporting and recordkeeping burdens due to regulations implementing the Clean Air Act (CAA). These final rule corrections relating to standards of performance for industrial-commercial-institutional steam generating units serve to correct an error in the final rule amendments as promulgated on February 12, 1999. [Affects subpart Db]

64 FR 10109, 3/2/99

SUMMARY: This action amends the national standards of performance for new stationary sources (NSPS) for electric arc furnaces (EAF) constructed after October 21, 1974, and on or before August 17, 1983 (40 CFR part 60, subpart AA), and the NSPS for EAF constructed after August 17, 1983 (40 CFR part 60, subpart AAa). Changes to both rules are being made to add alternative requirements for the monitoring of EAF capture systems in response to recommendations made by the Common Sense Initiative (CSI) subcommittee on iron and steel. The CSI was established by the Administrator to bring together affected stakeholders to find cleaner, cheaper, and smarter environmental management solutions. In addition, the EPA is revising two definitions for consistency and making a number of editorial changes. The EPA does not believe that these editorial changes will affect the applicability or requirements of the rule. [Affects subparts AA and AAa]

SUMMARY: The EPA is proposing to amend the national standards of performance for new stationary sources (NSPS) for electric arc furnaces (EAF) constructed after October 21, 1974, and on or before August 17, 1983 (40 CFR part 60, subpart AA), and the NSPS for EAF constructed after August 17, 1983 (40 CFR part 60, subpart AAa). Changes to both rules are being proposed to add alternative requirements for the monitoring of EAF capture systems in response to recommendations made by the Common Sense Initiative (CSI) subcommittee on iron and steel. The CSI was established by the Administrator to bring together affected stakeholders to find cleaner, cheaper, and smarter environmental management solutions. In addition, the EPA is proposing to make a number of editorial changes and to clarify two definitions. In the Final Rules section of this Federal Register, EPA is amending 40 CFR part 60, subpart AA and 40 CFR subpart AAa as a direct final rule without prior proposal because the Agency views these amendments as noncontroversial and anticipates no adverse comments. A detailed rationale for these amendments is set forth in the direct final rule. If no adverse comments are received, no further activity is

contemplated in relation to this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. All adverse public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Parties interested in commenting on the direct final rule should do so at this time.

64 FR 11541, 3/9/99

SUMMARY: On September 5, 1996, the EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906); on September 12, 1996, the EPA issued the Group IV Polymers and Resins NESHAP (61 FR 48208); and on December 11, 1990, the EPA issued the Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (55 FR 51035). This action revises the promulgated rules by adding provisions, correcting errors, and making clarifications in all of the above-mentioned rulemakings, as described in the remainder of this document.

SUMMARY: On September 5, 1996, the EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906); on September 12, 1996, the EPA issued the Group IV Polymers and Resins NESHAP (61 FR 48208); and on December 11, 1990, the EPA issued the Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (55 FR 51035). This action proposes to revise the promulgated rules by adding provisions, correcting errors, and making clarifications in all of the above-mentioned rulemakings.

64 FR 9262, 2/24/99

SUMMARY: The EPA is amending the CFR to correct errors made in the direct final rule, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the Federal Register on June 16, 1998. The direct final rule amended, corrected errors, and clarified regulatory text of the final rule, which was published on March 12, 1996 (63 FR 32743). Today's action further clarifies the regulatory text and corrects errors. Industry sectors likely to be affected include Air and Water Resource and Solid Waste Management, and Refuse Systems--Solid Waste Landfills (North American Industrial Classification System codes 92411 and 562212).

65 FR 18908, 4/10/00

SUMMARY: Under the Clean Air Act (CAA), the EPA issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the Federal Register on March 12, 1996 (61 FR 9905). A subsequent direct final rule, published on June 16, 1998 (63 FR 32743) corrected errors and clarified regulatory text of the final rule. These technical corrections will correct an error in the amendatory instructions and an inconsistency between the reportable exceedances and reporting of monitoring data. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the NSPS/EG rule. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item I
December 1, 2000 Meeting

Title:

LRAPA Title 34, Permit Fees -- SIP Revision

Summary:

LRAPA has amended its Title 34 permitting rules to increase permit fees, update references, and clarify text. The Title 34 rules which LRAPA revised are part of Oregon's State Implementation Plan (SIP). Since LRAPA does not have authority to amend the SIP, the department is requesting the commission to adopt the Title 34 revisions as amendments to Oregon's SIP. This SIP amendment is the procedural step required to bring LRAPA's portion of the SIP up to date and to enable the department to submit the SIP revisions to the Environmental Protection Agency for approval.

Department Recommendation:

Amend OAR 340-200-0040 to adopt LRAPA's Title 34 amendments as SIP revisions, as presented in Attachment A1 of the department Staff Report.

Report Author


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Andrew Ginsburg
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Director

Frederic Taylor

State of Oregon
Department of Environmental Quality Memorandum

Date: November 7, 2000
To: Environmental Quality Commission
From: Lydia Taylor 
Subject: Agenda Item I, LRAPA Title 34, Permit Fees -- SIP Revision, EQC Meeting
December 1, 2000.

Background

On June 13, 2000, the Lane Regional Air Pollution Authority (LRAPA) amended its Title 34 permitting rules to increase permit fees, update references, and clarify text. The Title 34 rules which LRAPA revised are part of Oregon's State Implementation Plan (SIP). The department is submitting the Title 34 revisions to the commission for adoption as amendments to Oregon's SIP.

LRAPA is the only regional air quality control authority in Oregon. Pursuant to ORS 468A.135, the commission delegated to LRAPA the authority to exercise functions related to air pollution control within its jurisdiction. Rules which LRAPA adopts to achieve the national ambient air quality standards are included in Oregon's State Implementation Plan, along with similar statewide rules, as required by the Clean Air Act. The Title 34 rules which LRAPA revised are in Oregon's SIP.

The commission has not delegated authority to amend the SIP to LRAPA. In most instances, the commission must amend the SIP by amending OAR 340-200-0040, the SIP Revision Rule. The limited instances when the department may authorize SIP amendments without commission action, specified in OAR 340-200-0040(3), do not apply in this case (e.g., approval of LRAPA's verbatim adoption of standards adopted by the commission). Thus, in this case, the commission needs to adopt LRAPA's Title 34 revisions as SIP amendments to bring LRAPA's portion of the SIP up to date. The department will then submit the SIP revisions to the Environmental Protection Agency for approval as required by OAR 340-200-0040 and the Clean Air Act.

The commission's adoption of the Title 34 revisions as SIP amendments is primarily procedural. LRAPA's Title 34 revisions are effective locally without commission approval even though they are not part of the SIP. ORS 468A.135(2) requires commission approval of LRAPA's rules only if they include air quality standards, and the Title 34 revisions do not. However, to adopt the revisions as SIP amendments, the commission needs to ensure they satisfy the requirements for SIP rules. ORS 468A.135(2) requires that LRAPA's rules be at least as stringent as those adopted by the commission

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and that they be adopted in accordance with the rulemaking procedures established by the commission. The department has determined that LRAPA satisfied both the stringency and the procedural requirements for these Title 34 revisions.

LRAPA staff have also satisfied the public notice and hearing requirements for the commission's proposed rulemaking to amend the SIP. The department authorized LRAPA staff to act as the commission's Hearing Officer for amending OAR 340-200-0040. LRAPA subsequently provided public notice and a hearing on the amendments to Title 34 and OAR 340-200-0040 concurrently, pursuant to its own process and in accordance with state and federal requirements. LRAPA mailed public notices and informational materials to the persons who had asked to be notified of rulemaking actions pursuant to LRAPA's procedures and to those known to be potentially affected by or interested in the proposed rulemaking. Notice of the hearing was also published in the May 1, 2000 volume of the Secretary of State's Oregon Bulletin, in the May 10, 2000 issues of Eugene's The Register-Guard, The Cottage Grove Sentinel, and the Springfield News, and in the May 11, 2000 issue of Oakridge's Dead Mountain Echo. The public hearing was held on June 13, 2000 in Springfield, Oregon with Brian Jennison of LRAPA serving as the Hearing Officer. Written comments were received through June 13, 2000 and are summarized in LRAPA's June 13, 2000 staff report (Attachment D). No comments were received at the hearing.

Following the adoption of the Title 34 revisions, LRAPA forwarded the rules to the department for commission rulemaking to adopt the revisions as SIP amendments.

The following sections summarize the issue that this proposed rulemaking is intended to address, the authority to address the issue, the process for development of the rulemaking proposal, a summary of the rulemaking proposal presented for public hearing, a summary of public comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for commission action.

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking completes the procedural requirements to bring LRAPA's portion of Oregon's SIP up to date with its rules. It also allows the department to submit the SIP revisions to the Environmental Protection Agency for approval as required by OAR 340-200-0040 and the Clean Air Act.

Relationship to Federal and Adjacent State Rules

The federal Clean Air Act requires that rules which states and local governments rely on to achieve national ambient air quality standards be included in the states' SIP's. EPA relies on SIP's as its primary enforcement mechanism for ensuring that state programs effectively implement the Clean Air Act. A state must submit amendments to its SIP to EPA for review and approval before they

become part of its federally approved SIP. Once approved, the SIP is enforceable by the federal as well as state government.

Authority to Address the Issue

ORS 468A.135 authorizes LRAPA's adoption of the Title 34 amendments. ORS 468.020 and 468A.035 authorize the commission to amend the SIP. OAR 340-200-0040 specifies that revisions to the SIP be made pursuant to the commission's rulemaking procedures. The commission revises the SIP by amending OAR 340-200-0040.

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

LRAPA followed its own rulemaking process, which parallels the department's and complies with the rulemaking procedures and public meetings requirements in ORS Chapters 183 and 192 and the hearing process in ORS 468A.150. LRAPA's process also satisfies the federal notice and hearing requirements for SIP revisions, 40 CFR 51.104. An advisory committee convened by LRAPA reviewed the Title 34 revisions and proposed SIP amendment prior the public hearing in accordance with ORS 468A.130.

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

The revisions to Title 34, "Stationary Source Rules and Permitting Procedures", increase permit fees, update references to reflect amendments to DEQ's rules, and clarify text. LRAPA's permit application processing and compliance determination fees will increase to 90% of the comparable fees charged by DEQ; its application filing fee will increase to equal DEQ's; and its construction fees for certain categories of new sources and sources making major modifications will increase to 85% of DEQ's. The amendments will automatically increase the application processing and compliance fees by four percent each year.

LRAPA is an independent agency with the same authority as the commission to establish its permit fee schedule. See ORS 486A.135 and 486.065. Fees are not considered rules or standards that must be at least as strict as the commission's under ORS 468A.135(2). LRAPA's fee schedule can and usually does differ from DEQ's. DEQ and LRAPA use separate processes for determining and allocating the costs of their various permitting and compliance activities, and use different revenue sources to cover those costs. LRAPA uses a mix of revenue sources, such as dues from participating governments and state general funds, in addition to permit fees to fund its permitting program. LRAPA typically tries to maintain a permit fee schedule roughly parallel to but slightly lower than DEQ's.

LRAPA informed the public that amendments to Title 34 would be incorporated as SIP amendments.

Summary of Significant Public Comment and Changes Proposed in Response

LRAPA did not receive any public comment regarding the commission's adoption of the Title 34 revisions as SIP amendments. The few public comments LRAPA did receive addressed the disparity in fee increases among the various categories of sources. LRAPA explained that it had restructured certain fee categories to reflect more accurately the time required for permitting and compliance activities, and had adjusted the fee schedule to require all sources to pay the same percentage of the corresponding fees DEQ charges comparable sources statewide. As a result, sources currently paying a lower percentage of the corresponding DEQ fee will experience higher fee increases, but the fees for all sources will be more equitable with respect to the fees DEQ charges comparable sources elsewhere in the state.

One commenter questioned why LRAPA charges a permit fee for natural gas boilers when DEQ does not. Most operations with natural gas boilers have oil-fired boilers as back up fuel sources, in part to enable the operators to take advantage of lower, interruptible supply gas rates. Both DEQ and LRAPA require permits and charge permit fees for these oil-fired boilers. LRAPA also permits and charges a fee for gas-fired boilers operating without oil-fired backup, although such sources are rare. DEQ requires gas-fired boilers alone to have permits only if they emit 10 or more tons/year of any air contaminants or 5 or more tons/year PM10 in a PM 10 nonattainment area.

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

If the commission amends the SIP to incorporate LRAPA's Title 34 revisions, as requested, the department will submit the SIP amendments to EPA for review and approval. Upon approval, the revisions will become part of the federally approved SIP for Oregon.

Recommendation for Commission Action

The department recommends that the commission amend OAR 340-200-0040 to adopt LRAPA's Title 34 amendments as SIP revisions, as presented in Attachment A1 of the department Staff Report.

Attachments

- A. Proposed SIP Revision
 - 1. OAR 340-200-0040 (SIP Revision Rule)
 - 2. Draft Certificate and Order for Filing As Permanent Administrative Rules
- B. LRAPA's Title 34 Rule
 - 1. Final Amendments - Strikeout Version
 - 2. Final Amendments

C. Supporting Procedural Documentation

1. Staff Report for LRAPA Board of Directors' June 13, 2000 meeting: Proposed Amendment of LRAPA Title 34, Agenda Item 8. (Includes Rulemaking Justification Questions, Fiscal Impact Statement, Land Use Consistency Statement, and Summary of Public Comments and LRAPA's Responses)
2. Notices to Interested Persons of Proposed Amendments to LRAPA's Title 34 and Oregon's SIP, February 7, 2000 and April 18, 2000
3. Legal Notice of Hearing: Secretary of State's Oregon Bulletin; and Affidavits of Publication in The Register-Guard, Springfield News, The Cottage Grove Sentinel, Dead Mountain Echo

D. Presiding Officer's Report on Public Hearing, June 13, 2000

E. Minutes of LRAPA's Board of Director's Meeting, June 13, 2000, Adopting Title 34 Revisions

F. DEQ Evaluation Letter

Approved:

Section:

Division:

Amelia Kiebe
Andrew Gising

Report Prepared By: Loretta Pickerell

Phone: 503-229-5556

Date Prepared: October 19, 2000

Lp:lp

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9/20/00

NOTE: The commission's amendment of OAR 340-200-0040 does not change the text of the rule. The Certificate and Order for Filing Permanent Administrative Rules, which the department will file with the Secretary of State, summarizes the amendments to the SIP. (See draft Certificate and Order for Filing in Attachment A2.) The Secretary of State will add an Administrative Order Number and the filing and certified effective date for the amendment in the Note at the end of the rule.

340-200-0040

State of Oregon Clean Air Act Implementation Plan

- (1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act**, Public Law 88-206 as last amended by Public Law 101-549.
- (2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rulemaking procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.
- (3) Notwithstanding any other requirement contained in the SIP, the Department is authorized:
 - (a) To submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of **40 CFR 51.102 (July 1, 1992)**; and
 - (b) To approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00.

DRAFT
Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on December 1, 2000 by the Environmental Quality Commission to become effective upon filing. Rulemaking Notice was published in the May 2000 Oregon Bulletin.
(month and year) (upon filing or later)

Susan M. Greco	811 S.W. 6th Avenue, Portland, Oregon, 97204	(503) 229-5213
Rules Coordinator	Address	Telephone

RULEMAKING ACTION

ADOPT:

AMEND: OAR 340-200-0040

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Stat. Auth.: ORS 468.020

Other Authority:

Stats. Implemented: ORS 468A.035

RULE SUMMARY

On June 13, 2000, the Lane County Regional Air Pollution Authority (LRAPA) amended its Title 34 permitting rules to increase permit fees, update references, and clarify text. The Title 34 rules which LRAPA amended are part of Oregon's State Implementation Plan (SIP). The Environmental Quality Commission adopted the Title 34 revisions as amendments to Oregon's SIP.

Authorized Signer

Date

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 34

Stationary Source Rules and Permitting Procedures

Section 34-001 General Policy and Rule Organization

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the county, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, LRAPA has set forth in this title the air pollution control rules and permitting procedures which apply to all stationary sources regulated by the Authority in Lane County.

This title is organized as follows:

34-010 Rules applicable to all stationary sources, including:

- 34-015 Request for Information
- 34-020 Information Exempt from Disclosure
- 34-025 Highest and Best Practicable Treatment and Control (HBPT)
- 34-030 Source Registration
- 34-035 Requirements for Construction
- 34-040 Compliance Schedules

34-050 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP) or ~~[Federal Operating Permits (FOP)]~~ Title V Operating Permits, including:

- 34-060 Plant Site Emission Limits (PSEL) Rules
- 34-070 Sampling, Testing, Monitoring and Reporting
- 34-080 Excess Emissions

34-090 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP), including:

- 34-100 Permit Categories
- 34-110 Requirements to Obtain Permit
- 34-120 Synthetic Minor Permitting Procedures
- 34-130 General Procedures for ACD Permits
- 34-140 Permit Duration
- 34-150 ACDP Fees
- 34-160 New Source Review

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34-170 Rules applicable to sources required to have [~~Federal Operating Permits (FOP)~~] ~~Title V Operating Permits~~, as specified by OAR 340[~~-28-2100 through 2740 and OAR 340-32~~] ~~Divisions 218, 220 and 244~~ in [its] their entirety, including:

- 34-180 Authority to Implement
- 34-190 Definitions
- 34-200 [~~Federal~~] ~~Title V~~ Operating Permitting Program Requirements and Procedures

~~34-210 Rules Applicable to Sources Desiring Green Permits~~

~~34-220 Authority to Implement~~

~~34-230 Green Permits Permitting Program Requirements and Procedures~~

Section 34-005 Definitions

All relevant definitions for this title can be found with the general definitions listed in Title 12, with the following exceptions:

1. Plant Site Emission Limit (PSEL) definitions, which may be found in Section 34-060; and
2. Definitions pertaining to [~~Federal Operating Permits (FOP's)~~] ~~Title V Operating Permits~~, which may be found in OAR 340-[~~28-110~~]~~200-0020~~.

RULES APPLICABLE TO ALL STATIONARY SOURCES

Section 34-010 Applicability

Unless specified elsewhere, 34-015 through 34-040 shall apply to all stationary sources in Lane County.

Section 34-015 Request for Information

All sources subject to Title 34 shall provide in a reasonably timely manner any and all information that the Authority may reasonably require for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

1. issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
2. ascertain applicability of any requirement;
3. ascertain compliance or noncompliance with any applicable requirement; and
4. incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

Compliance with this section may require the installation and maintenance of continuous monitors and electronic data handling systems.

Section 34-020 Information Exempt from Disclosure

1. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to the Authority under Title 34 shall be presumed to be subject to inspection upon request by any person unless such information is determined to be exempt from disclosure pursuant to subsections 2 or 3 of this section.
2. If an owner or operator claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the owner or operator shall comply with the following procedures:
 - A. The writing shall be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page shall be so marked.
 - B. The owner or operator shall state the specific statutory provision under which it claims exemption from disclosure and explain why the writing meets the requirements of that provision.
 - C. For writings that contain both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.
3. For a writing to be considered exempt from disclosure as a "trade secret," it shall meet all of the following criteria:
 - A. the information shall not be patented;
 - B. it shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;
 - C. it shall be information which derives actual or potential economic value from not being disclosed to other persons; and
 - D. it shall give its users the chance to obtain a business advantage over competitors not having the information.

Section 34-025 Highest and Best Practicable Treatment and Control Requirements

See Title 32, Section 32-005-1 through 9 (11/10/94).

Section 34-030 Source Registration

Any air contaminant source which is not subject to the ACDP rules (34-090 through 34-160) or the [Federal] ~~Title V~~ Operating Permit program rules (34-170 through 34-200) shall register with the Authority upon request pursuant to 34-030-1 through 4.

1. Registration shall be completed within thirty (30) days following the mailing date of the request by the Authority.
2. Registration shall be made on forms furnished by the Authority and completed by the owner, lessee of the source, or agent.
3. The following information shall be reported by registrants:
 - A. name, address, and nature of business;
 - B. name of local person responsible for compliance with these rules;
 - C. name of person authorized to receive requests for data and information;
 - D. a description of the production processes and a related flow chart;
 - E. a plot plan showing the location and height of all air contaminant sources (the plot plan shall also indicate the nearest residential or commercial property);
 - F. type and quantity of fuels used;
 - G. amount, nature, and duration of air contaminant emissions;
 - H. estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and
 - I. any other information requested by the Authority.
4. Once a year, upon the annual date of registration, a person responsible for an air contaminant source shall reaffirm in writing the correctness and current status of the information furnished to the Authority. Any changes in any of the factual data reported under subsection 3 of this section shall be reported to the Authority, at which time re-registration may be required on forms furnished by the Authority.

Oregon SIP Rule. Section 34-030 Amended 09/09/97

Section 34-035 Requirements for Construction (or Non-Major Modification) (Major Modification Requirements are Contained in Title 38)

1. [Application]: ~~Notification~~ No person shall commence construction ~~of a new source~~ or modification of an ~~existing~~ air contaminant source without first [obtaining an] ~~notifying the~~

~~Authority [to Construct from the Authority] on a form supplied by the Authority, and obtaining an Authority to Construct if required under (2) below. Section 34-035 shall not apply to Oregon Title V Operating Permit Program sources. Sections 34-035(1) and (2) do not apply to construction or modification projects subject to the provisions of Section 34-110.~~

2. ~~[The owner or operator of an air contaminant discharge source] Authority to Construct. Any person planning [a] construction of a new source; [project] [(for [non-major] a modification)] project which would [change] result in an increase of emissions above permit limits and/or which would trigger new applicable requirements shall submit to the Director a construction review fee and a Notice of Construction which includes all information necessary to perform any analysis or make any determination required by these rules. Such information shall include the following:~~

- A. name, address, and nature of business;
- B. name of local person responsible for compliance with these rules;
- C. name of person authorized to receive requests for data and information;
- D. a description of the production processes and a related flow chart;
- E. a plot plan showing the location and height of all air contaminant sources and indicating the nearest residential or commercial property;
- F. type and quantity of fuels used;
- G. Amount, nature and duration of air contaminant emissions;
- H. Plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
- I. estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
- J. any information on pollution prevention measures and cross-media impacts desired to be considered in determining applicable control requirements and evaluating compliance methods;
- K. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under subsections 32-007-1 and 2 ;
- L. amount and method of refuse disposal; and

M. corrections and revisions to the plans and specifications to ensure compliance with applicable rules, orders and statutes.

3. Construction review by the Authority is subject to applicable fees listed in Table A Part I of this title. Construction review fees are assessed based on the review levels defined below:

A. Level I review applies to construction projects which meet all of the following criteria:

- (1) do not result in an increase in emissions or production ~~over permitted limits;~~
- (2) do not require ACDP modification prior to the ACDP renewal date;
- (3) add a single piece of air pollution control equipment or replace an existing emission or process unit with a device of equivalent capacity; and
- (4) require minimal review by the Authority.

B. Level II review applies to construction projects which:

- (1) ~~trigger an applicable requirement but~~ do not result in an increase in emissions ~~over permitted limits;~~ or
- (2) result in changes in emissions or throughputs to multiple emission points from those identified in the ACDP permit application; and
- (3) require a moderate amount of review by the Authority.

C. Level III review applies to construction projects which:

- (1) result in ~~net~~ emission increases which are less than the Significant Emission Rate (SER) as defined in LRAPA Title 38 (New Source Review), subsection 005-12; and
- (2) require a substantial amount of review and analysis by the Authority.

D. Level IV review applies to construction projects which:

- (1) result in a ~~net~~ emission increase which is greater than or equal to the SER and are therefore subject to New Source Review/Prevention of Significant Deterioration review; or
- (2) require extensive review and analysis by the Authority.

E. For construction projects which do not clearly fit any of the levels described in subsections A through D of this section, the Authority shall assign a review level based on an estimate of the review time required and the level which most closely fits the construction project. The Authority may waive construction fees for sources with minimal or letter permits as defined in 34-100-5 and 6.

4. Within sixty (60) days of receipt of all required information, the Authority shall make a determination as to whether the proposed construction or non-major modification is in accordance with the provisions of these rules. Modifications which increase emissions above baseline emission rates shall require a 30-day public notice period.

- A. If the proposed construction is found to be in accordance with the provisions of these rules, the Authority shall issue a "Notice of Authority to Construct." This issuance shall not relieve the owner or operator of the obligation of complying with all other titles of these rules.
 - B. If the proposed construction is found not to be in accordance with the provisions of these rules, the Director may issue an order prohibiting construction. Failure to issue the order within the sixty (60) day period shall be considered a determination that the construction may proceed in accordance with the information provided in the application.
 - C. Any person against whom an order prohibiting construction is issued may, within twenty (20) days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for a hearing, and shall be submitted to the Director. Any hearing shall be conducted as a contested case pursuant to Title 14.
 - D. Deviation from approved plans or specifications, without the written permission of the Director, shall constitute a violation of these rules.
 - E. The Authority may require any order or other notice to be displayed on the premises designated. No person shall mutilate, alter, or remove such order or notice unless authorized to do so by the Authority.
5. Notice shall be provided in writing to the Authority of the completion of construction and the date when operation will commence. Such notice will be provided within thirty (30) days of completion of the construction project on forms provided by the Authority. The Authority, following receipt of the notice of completion, shall inspect the premises.

Section 34-035 Amended 09/09/97

Section 34-040 Compliance Schedules for Existing Sources Affected by New Rules

1. No existing source of air contaminant emissions will be allowed to operate out of compliance with the provisions of new rules, unless the owner or operator of that source first obtains a Board-approved compliance schedule which lists the steps being taken to achieve compliance and the final date when compliance will be achieved. Approval of a reasonable time to achieve compliance shall be at the discretion of the Board.
2. The owner or operator of any existing air contaminant source found by the Director to be in non-compliance with the provisions of new rules shall submit to the Board for approval a proposed schedule of compliance to meet those provisions. This schedule shall be in accordance with timetables contained in the new rules or in accordance with an administrative order by the Director. This schedule shall contain, as necessary, reasonable time milestones for engineering, procurement, fabrication, equipment installation and process refinement. This request shall also contain documentation of the need for the time extension to achieve compliance and the justification for each of the milestones indicated in the schedule.

3. Within one hundred and twenty (120) days of the submittal date of the request, the Board shall act to either approve or disapprove the request. A schedule for compliance becomes effective upon the date of the written order of the Board.
4. Compliance schedules of longer than eighteen (18) months' duration shall contain requirements for periodic reporting of progress toward compliance.
5. An owner or operator of an air contaminant source operating in non-compliance with these rules, but under an approved compliance schedule, who fails to meet that schedule or make reasonable progress toward completion of that schedule, shall be subject to enforcement procedures in accordance with these rules.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE
ACDP OR ~~FEDERAL~~ ~~TITLE V~~ OPERATING PERMITS

Section 34-050 Applicability

Sections 34-060 through 34-080 shall apply to all stationary sources required to obtain ACDP's under 34-090 through 34-160 or ~~Federal~~ ~~Title V~~ Operating Permits under 34-170 through 34-200.

Section 34-060 Plant Site Emission Limit Rules

1. Policy. The Authority recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of permit holders as contained in Section 34-060. However, by the adoption of these rules, the Authority does not intend to:
 - A. Limit the use of existing production capacity of any air quality permittee (except for synthetic minor source permittees);
 - B. Cause any undue hardship or expense to any permittee due to the utilization of existing unused productive capacity; or,
 - C. Create inequity within any class of permittees subject to specific industrial standards which are based on emissions related to production.
2. Plant Site Emission Limits (PSEL) may be established at levels higher than baseline if a demonstrated need exists to emit at a higher level, PSD increments and air quality standards would not be violated, and reasonable further progress in implementing control strategies would not be impeded.
3. Definitions
 - "Actual Emissions" means the mass rate of emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission

factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

- A. For purposes of determining actual emissions as of the baseline period:
- (1) Except as provided in paragraph (2) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;
 - (2) The Authority may assume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10 percent of the actual emissions calculated under paragraph (1) of this subsection.
- B. For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.
- C. For purposes of determining actual emissions for emission statements for Major Source Interim Emission Fees under LRAPA Title 35 and for [Federal] ~~Title V~~ Operating Permit Fees under OAR 340[-28-2560 through 340-28-2720] ~~DIVISION 220~~, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- "Aggregate Insignificant Emissions" means the annual actual emissions of any regulated air pollutant as defined in OAR 340[-28-110]200-0020, for any [federal] ~~Title V~~ [e]Operating [p]Permit major source, including the usage of exempt mixtures, up to the lowest of the following applicable level:
 - A. one ton for each criteria pollutant;
 - B. 500 pounds for PM10 in a PM10 nonattainment area;
 - C. 120 pounds for lead;
 - D. the lesser of the amount established in OAR 340[-32-4500]244-0230, Table 3, or 1,000 pounds for each Hazardous Air Pollutant;
 - E. an aggregate of 5,000 pounds for all Hazardous Air Pollutants.
 - "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.

- "Baseline Period" means either calendar years 1977 or 1978. The Authority shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
- "Categorically Insignificant Activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.
 - A. constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under OAR Chapter 340, Divisions 200 through ~~321~~268, or less than 0.1% by weight of any carcinogen listed in the U. S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year.
 - B. evaporative and tail pipe emissions from on-site motor vehicle operation;
 - C. distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;
 - D. natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;
 - E. office activities;
 - F. food service activities;
 - G. janitorial activities;
 - H. personal care activities;
 - I. groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
 - J. on-site laundry activities;
 - K. on-site recreation facilities;
 - L. instrument calibration;
 - M. maintenance and repair shop;
 - N. automotive repair shops or storage garages;
 - O. air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

- P. refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
- Q. bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;
- R. temporary construction activities;
- S. warehouse activities;
- T. accidental fires;
- U. air vents from air compressors;
- V. air purification systems;
- W. continuous emissions monitoring vent lines;
- X. demineralized water tanks;
- Y. pre-treatment of municipal water, including use of deionized water purification systems;
- Z. electrical charging stations;
- AA. fire brigade training;
- BB. instrument air dryers and distribution;
- CC. process raw water filtration systems;
- DD. pharmaceutical packaging;
- EE. fire suppression;
- FF. blueprint making;
- GG. routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
- HH. electric motors;

- II. storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
- JJ. on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
- KK. natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
- LL. pressurized tanks containing gaseous compounds;
- MM. vacuum sheet stacker vents;
- NN. emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
- OO. log ponds;
- PP. storm water settling basins;
- QQ. fire suppression and training;
- RR. paved roads and paved parking lots within an urban growth boundary;
- SS. hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
- TT. health, safety, and emergency response activities;
- UU. emergency generators and pumps used only during loss of primary equipment or utility service;
- VV. non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
- WW. non-contact steam condensate flash tanks;
- XX. non-contact steam vents on condensate receivers, deaerators and similar equipment;
- YY. boiler blowdown tanks;
- ZZ. industrial cooling towers that do not use chromium-based water treatment chemicals;

- AAA. ash piles maintained in a wetted condition and associated handling systems and activities;
- BBB. oil/water separators in effluent treatment systems;
- CCC. combustion source flame safety purging on startup;
- DDD. broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;
- EEE. stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
- FFF. white water storage tanks.

- "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
- "Plant Site Emission Limit (PSEL)" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL may consist of more than one assessable emission.
- "Significant Emission Rate (SER)" means

A. Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Significant Emission Rates for Pollutants Regulated Under the Clean Air Act	
Significant Pollutant	Emission Rate
1. Carbon Monoxide	100.00 Tons/Year
2. Nitrogen Oxides	40.0 Tons/Year
3. Particulate Matter	25.0 Tons/Year
4. PM ₁₀	15.0 Tons/Year
5. Sulfur Dioxide	40.0 Tons/Year
6. VOCs	40.0 Tons/Year
7. Lead	0.60 Tons/Year
8. Mercury	0.10 Tons/Year

Significant Emission Rates for Pollutants Regulated Under the Clean Air Act	
9. Beryllium	0.0004 Tons/Year
10. Asbestos	0.007 Tons/Year
11. Vinyl Chloride	1.0 Tons/Year
12. Fluorides	3.0 Tons/Year
13. Sulfuric Acid Mist	7.0 Tons/Year
14. Hydrogen Sulfide	10.0 Tons/Year
15. Total Reduced Sulfur (including hydrogen sulfide)	10.0 Tons/Year
16. Reduced Sulfur Compounds (including hydrogen sulfide)	10.0 Tons/Year

- B. For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.
- C. Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than $1 \mu\text{g}/\text{m}^3$ (24-hour average) shall be deemed to be emitting at a significant emission rate.
4. Requirements for Plant Site Emission Limits
- A. Plant Site Emission Limits (PSEL) shall be incorporated in all Air Contaminant Discharge Permits (ACDPs) and [~~Federal Operating Permits (FOPs)~~ ~~Title V Operating Permits~~], except minimal source permits and special letter permits, as a means of managing airshed capacity. Except as provided for in 34-060-6 and 7, all sources subject to regular permit requirements shall be subject to PSELs for all regulated pollutants. PSELs will be incorporated in permits when permits are renewed, modified, or newly issued.
- B. The emissions limits established by PSELs shall provide the basis for:
- (1) assuring reasonable further progress toward attaining compliance with ambient air standards;
 - (2) assuring that compliance with ambient air standards and Prevention of Significant Deterioration increments are being maintained;
 - (3) administering offset, banking and bubble programs; and
 - (4) establishing the baseline for tracking consumption of Prevention of Significant Deterioration increments.

5. Criteria for Establishing Plant Site Emission Limits

- A. For existing sources, PSELs shall be based on the baseline emission rate for a particular pollutant at a source and shall be adjusted upward or downward pursuant to Authority rules.
- B. If an applicant requests that the PSEL be established at a rate higher than the baseline emission rate, the applicant shall:
 - (1) demonstrate that the requested increase is less than the significant emission rate increase defined in Section 34-060-3; or
 - (2) provide an assessment of the air quality impact pursuant to procedures specified in Section 38-015 to Section 38-020. A demonstration that no air quality standards of ~~or~~ PSD increment will be violated in an attainment area or that a growth increment or offset is available in a non-attainment area shall be sufficient to allow an increase in the PSEL to an amount not greater than the plant's demonstrated need to emit as long as no physical modification of an emissions unit is involved.
- C. Increases above baseline emission rates shall be subject to public notice and opportunity for public hearing pursuant to applicable permit requirements.
- D. PSELs shall be established on at least an annual emission basis and a short-term period emission basis that is compatible with source operation and air quality standards.
- E. Mass emission limits may be established separately within a particular source for process emissions, combustion emissions, and fugitive emissions.
- F. Documentation of PSEL calculations shall be available to the permittee.
- G. For new sources, PSELs shall be based on application of applicable control equipment requirements and projected operating conditions.
- H. PSELs shall not be established which allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit condition unless specific provisions of Section 34-060-8 are met.
- I. PSELs may be changed pursuant to Authority rules when:
 - (1) Errors are found or better data is available for calculating PSELs.
 - (2) More stringent control is required by a rule adopted by the Environmental Quality Commission or the Authority.
 - (3) An application is made for a permit modification pursuant to the Air Contaminant Discharge Permit requirements (34-090 through 34-160) and the New Source Review requirements (Title 38), or Rules Applicable to Sources Required to Have ~~[Federal]~~ ~~Title V~~ Operating Permits (34-170 through 34-200). Approval may be granted based on growth increments, offsets, or available Prevention of Significant Deterioration increments.

(4) The Authority finds it necessary to initiate modifications of a permit pursuant to Section 34-130-15 or OAR 340[-28-2280]218-0200, Reopenings.

6. Plant Site Emission Limits for Sources of Hazardous Air Pollutants

A. For purposes of establishing PSELS, hazardous air pollutants listed under OAR 340-32-130]244-0040 or OAR 340[-32-5400]244-0230 shall not be considered regulated pollutants under Section 34-060-4.A until such time as the Authority determines otherwise.

B. The Authority may establish PSELS for hazardous air pollutants for the following causes:

- (1) An owner or operator elects to establish a PSEL for any hazardous air pollutant emitted for purposes of determining emission fees as prescribed in Title 35; or
- (2) The source is subject to a hazardous air pollutant emission standard, limitation, or control requirement other than Plant Site Emission Limits.

C. Procedures for establishing and modifying PSELS for hazardous air pollutant emissions shall be consistent with Section 34-060-5, except for the following:

- (1) a baseline emission rate shall not apply; and
- (2) the provisions of Section 34-060-8 shall not apply.

D. PSELS established for hazardous air pollutants shall not be used for any provisions other than those prescribed in subsection B of this section.

7. Plant Site Emission Limits for Insignificant Activities

A. For purposes of establishing PSELS, emissions from categorically insignificant activities listed in Subsection 34-060-3 shall not be considered regulated air pollutants under Section 34-060-4 until such time as the Authority determines otherwise, except as provided in subsection C of this section.

B. For purposes of establishing PSELS, emissions from non-exempt insignificant mixture usage and aggregate insignificant emissions listed in Subsection 34-060-3 shall be considered regulated air pollutants under Section 34-060-4.

C. For purposes of determining New Source Review or Prevention of Significant Deterioration applicability, Title 38, emissions from insignificant activities shall be considered.

8. Alternative Emission Controls (Bubble)

A. Alternative emission controls may be approved for use within a plant site such that specific mass emission limit rules are exceeded if:

- (1) such alternatives are not specifically prohibited by a permit condition;

- (2) net emissions for each pollutant are not increased above the PSEL;
- (3) The net air quality impact is not increased as demonstrated by procedures required by Section 38-035 (Requirements for Net Air Quality Benefit);
- (4) No other pollutants including malodorous, toxic or hazardous pollutants are substituted;
- (5) Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER), where required by a previously issued permit, and New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), where required, are not relaxed;
- (6) specific mass emission limits are established for each emission unit involved such that compliance with the PSEL can be readily determined; or
- (7) application is made for a permit modification and such modification is approved by the Authority.

B. Operators of existing sources requesting alternative emission controls shall, at the time of application, pay the following fees:

- (1) a filing fee [~~of \$93~~] as listed in Table A, Part I, item J of this rule; and
- (2) an application processing fee [~~of \$500~~] as listed in Table A, Part I, item D of this rule.

9. Temporary PSD Increment Allocation

A. On demonstration to the Authority, PSELs may include a temporary or time-limited allocation against an otherwise unused PSD increment in order to accommodate voluntary fuel switching or other cost or energy saving proposals if:

- (1) no ambient air quality standard is exceeded;
- (2) no applicable PSD increment is exceeded;
- (3) no nuisance condition is created; and
- (4) the applicant's proposed and approved objective continues to be realized.

B. When such demonstration is being made for changes to the PSEL, it shall be presumed that ambient air quality monitoring shall not be required of the applicant for changes in hours of operation, changes in production levels, voluntary fuel switching or for cogeneration projects unless, in the opinion of the Authority, extraordinary circumstances exist.

C. Such temporary allocation of a PSD increment shall be set forth in a specific permit condition issued pursuant to the Authority's notice and permit issuance or modification procedures.

D. Such temporary allocations are for a specific time period and may be recalled with proper notice.

Section 34-070 Sampling, Testing and Monitoring of Air Contaminant Emissions

1. Program

A. As part of its coordinated program of air quality control and preventing and abating air pollution, the Authority may:

- (1) require any person responsible for emissions of air contaminants to make or have made tests to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
- (2) require full reporting of all test procedures and results furnished to the Authority in writing and signed by the person or persons responsible for conducting the tests; and
- (3) require continuous monitoring of specified air contaminant emissions and periodic regular reporting of the results of such monitoring.

B. At the request of the Authority, an owner or operator of a source required to conduct emissions tests may be required to provide emission testing facilities as follows:

- (1) sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
- (2) utilities for sampling and testing equipment.

C. Testing shall be conducted in accordance with the Department's Source Sampling Manual (January, 1992), the Department's Continuous Monitoring Manual (January, 1992), or an applicable EPA Reference Method unless the Authority, where allowed under applicable federal requirements:

- (1) specifies or approves, in specific cases, minor changes in methodology;
- (2) approves the use of an equivalent method or alternative method which will provide adequate results;
- (3) waives the requirement for tests because the owner or operator of a source has demonstrated by other means to the Authority's satisfaction that the affected facility is in compliance with applicable requirements; or
- (4) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

2. Stack Heights and Dispersion Techniques

A. 40 CFR, Parts 51.100 (ff) through 51.100(kk), 51.118, 51.160 through 51.166 (July 1, 1993) are by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.

B. In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in calculations as noted above.

C. This section has the following general applicability:

- (1) With respect to the use of excessive stack height, stacks 65 meters high or greater, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or greater which were constructed before that date, are subject to this section, with the exception that certain stacks at federally owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt.
- (2) With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant, is subject to this section. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion techniques to increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.

D. Definitions:

- (1) Where found in the federal rule, the term "reviewing agency" means the Authority, the Department, or the EPA, as applicable;
- (2) Where found in the federal rule, the term "authority administering the State Implementation Plan" means the Authority, the Department, or the EPA;
- (3) The "procedures" referred to in 40 CFR 51.164 are the New Source Review procedures at the Department (OAR 340-28-1900 to 340-28-2000] ~~Division 224~~) or at the Authority (Title 38); and the review procedures for new, or modifications to, minor sources, at the Department (OAR 340-[28-800 to 340-28-820] ~~0200 to 0220~~, 340[-28-1700 to 340-28-1790] ~~Division 216~~) or at the Authority (34-035).
- (4) Where "the state" or "state, or local control agency" is referred to in 40 CFR 51.118, it means the Department or the Authority.
- (5) Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of the Department or the Authority, as approved by the EPA, or any EPA-promulgated regulations (see 40 CFR Part 52, Subpart MM).

3. Methods

- A. Any sampling, testing, or measurement performed under this regulation shall conform to methods contained in the Department's Source Sampling Manual or to recognized applicable standard methods approved in advance by the Authority.
- B. The Authority may approve any alternative method of sampling provided it finds that the proposed method is satisfactory and complies with the intent of these regulations and is at least equivalent to the uniform recognized procedures in objectivity and reliability, and is demonstrated to be reproducible, selective, sensitive, accurate and applicable to the program.

4. Authority Testing. The Authority, instead of requesting tests and sampling of emissions from the person responsible for an air contamination source, may conduct such tests alone or in conjunction with said person. If the testing or sampling is performed by the Authority, a copy of the results shall be provided to the person responsible for the air contamination source.
5. Records--Maintaining and Reporting
 - A. Upon notification from the Director, all persons owning or operating a source within Lane County shall keep and maintain written records of the nature, type and amounts of emissions from such source and other information as may be required by the Director to determine whether the source is in compliance with applicable emission rules, limitations or other control measures.
 - B. The records shall be submitted to the Authority on an annual basis, or more frequently if requested in writing by the Authority. They shall be submitted using an Emissions Inventory Questionnaire form provided by the Authority [~~commencing in 1995, for the calendar year 1994~~]. Except as may be otherwise provided by rule, annual periods are January 1 through December 31. A more frequent basis for reporting may be required due to noncompliance or to protect human health or the environment.
 - C. The reports required by this rule shall be submitted by the end of the first calendar quarter of the next year (March 31).

Section 34-080 Excess Emissions

See Title 36, Section 36-001 through 36-030.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE AIR CONTAMINANT DISCHARGE PERMITS (ACDP)

Section 34-090 Purpose and Applicability

1. In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, no person shall construct, install, establish, modify, enlarge, develop or operate an air contaminant source listed in Table A Part II, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.
2. The purpose of Sections 34-090 through 34-160 is to prescribe the requirements and procedures for obtaining ACDP's for stationary sources listed in Table A Part II. Sections 34-090 through 34-160 shall not apply to [Federal] ~~title V~~ Operating Permit program sources unless an ACDP is required by 34-110(2), 34-110(4), 34-120 or 38-001.

3. Sources not listed in Table A Part II are subject to requirements for construction (34-035) and may be subject to registration requirements (34-030).

Section 34-100 Permit Categories

The following list delineates the types of permit which may apply to a stationary source:

1. Title V [~~Federal~~] Operating Permit, for major stationary sources as defined by OAR 340[-28-2110]20030020-53(b). Permitting requirements for [~~Federal~~] Title V Operating Permit program sources are prescribed in Sections 34-110-2 and 4, and Sections 34-170 through 34-200.
2. Regular ACDP, for stationary sources listed in Table A Part II. Permitting requirements for regular ACD permits are prescribed in Sections 34-110 through 34-160.
3. Synthetic Minor ACDP, for stationary sources defined by OAR 340[-28-110(-117)]20030020. Permitting procedures for Synthetic Minor ACDP's are prescribed in Sections 34-110-2, 4 and 5, and 34-120 through 34-160.
4. Multiple Source Permit. When a single site includes more than one air contaminant source, a single ACDP may be issued including all sources located at the site. For uniformity such applications shall separately identify, by subsection, each air contaminant source included from Table A Part II. Permitting procedures for multiple source permits are the same as for regular ACDP's and are prescribed in Sections 34-130 through 34-160.
 - A. When a single air contaminant source which is included in a multiple-source ACDP is subject to permit modification, revocation, suspension, or denial, such action by the Authority shall only affect that individual source without thereby affecting any other source subject to the permit.
 - B. When a multiple-source ACDP includes air contaminant sources subject to the jurisdictions of both the Department and the Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.
5. Minimal Source Permit
 - A. The Lane Regional Air Pollution Authority may designate any source as a "minimal source" based upon the following criteria:
 - (1) quantity and quality of emissions;
 - (2) type of operation;
 - (3) compliance with Authority regulations;
 - (4) minimal impact on the air quality of the surrounding region.

B. If a source is designated as a minimal source, the compliance determination fee, provided by Section 34-150 (ACDP Permits) will be collected no less frequently than every five (5) years.

6. Letter Permits

A. Any source listed in Table A, Part II, with no, or insignificant, air contaminant discharges may apply to the Authority for a letter permit.

B. The determination of applicability of this letter permit shall be made solely by the Authority.

C. If issued a letter permit, the application processing fee and/or annual compliance determination fee, provided by Section 34-150 (ACDP Fees) may be waived by the Authority.

Section 34-110 Permit Required

1. No person shall construct, install, establish, develop or operate any air contaminant source which is referred to in Table A Part II, appended hereto and incorporated herein by reference, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.

2. No person shall construct, install, establish, or develop any major source, as defined by OAR 340[-28-2110]200-0020 that will be subject to the [federal] Title V [e]Operating [p]Permit program without first obtaining an ACDP from the Authority. Any [Federal] Title V Operating Permit program source required to have obtained an ACDP prior to construction shall:

A. choose to become a synthetic minor source, Section 34-120, and remain in the ACDP program; or

B. file a complete application to obtain the [Federal] Title V Operating Permit within twelve (12) months after initial startup.

3. No person shall modify any source covered by an ACDP under 34-100 through 34-160 such that the emissions are significantly increased without first applying for and obtaining a permit modification.

4. No person shall modify any source required to be covered by an ACDP under 34-100 through 34-160 such that the source becomes subject to the [Federal] Title V Operating Permit program, 34-170 through 34-200 without first applying for and obtaining a modified ACDP. Any [Federal] Title V Operating Permit program source required to have obtained an ACDP prior to modification shall:

A. choose to become a synthetic minor source, 34-120, and remain in the ACDP program;

B. choose to remain a synthetic minor source, 34-120, and remain in the ACDP program; or

- C. file a complete application to obtain the [Federal] Title V Operating Permit within twelve (12) months after initial startup of the modification.
5. No person shall increase emissions above the PSEL or operate in excess of the enforceable condition to limit potential to emit and remain a synthetic minor source without first applying for and obtaining a modified ACDP.
6. No person shall modify any source covered by an ACDP under 34-100 through 34-160 and not required to obtain a [Federal] Title V Operating Permit such that:
 - A. the process equipment is substantially changed or added to; or
 - B. the emissions are significantly changed, without first notifying the Authority.

Section 34-120 Synthetic Minor Sources

1. Enforceable conditions to limit a source's potential to emit shall be included in the ACDP for a synthetic minor source. Enforceable conditions, in addition to the PSEL established under 34-060, shall include one or more of the following physical or operational limitations, but in no case shall exceed the conditions used to establish the PSEL:
 - A. restrictions on hours of operation;
 - B. restrictions on levels of production;
 - C. restrictions on the type or amount of material combusted, stored, or processed;
 - D. additional air pollution control equipment; or
 - E. other limitations on the capacity of a source to emit air pollutants.
2. The reporting and monitoring requirements of the conditions which limit the potential to emit contained in the ACDP of synthetic minor sources shall meet the requirements of 34-070.
3. To avoid being required to submit an application for a [Federal] Title V Operating Permit, the owner or operator of a major source shall obtain an ACDP or a modification to an ACDP containing conditions that would qualify the source as a synthetic minor source prior to the time the owner or operator would be required to submit a [Federal] Title V Operating Permit application.
4. Applications for synthetic minor source status shall be subject to notice procedures of 34-130-5.
5. Synthetic minor source owners or operators who cause their source to be subject to the [Federal] Title V Operating Permit program by requesting an increase in the source's potential to emit, when that increase uses the source's existing capacity and does not result from construction or modification, shall:

- A. become subject to 34-170 through 34-200 (OAR 340-~~28-2100 through 340-28-2320~~ ~~Division 218~~);
 - B. submit a [Federal] ~~Title V~~ Operating Permit application pursuant to OAR 340-~~28-2120~~ ~~218-0040~~; and
 - C. receive a [Federal] ~~Title V~~ Operating Permit before commencing operation in excess of the enforceable conditions to limit potential to emit.
6. Synthetic minor source owners or operators who cause their source to be subject to the [Federal] ~~Title V~~ Operating Permit program by requesting an increase in the source's potential to emit, when that increase is the result of construction or modification, shall:
- A. submit an application for the modification of the existing ACDP;
 - B. receive the modified ACDP before beginning construction or modification;
 - C. become subject to 34-170 through 34-200 (OAR 340-~~28-2100 through 340-28-2320~~ ~~Division 218~~); and
 - D. submit a [Federal] ~~Title V~~ Operating Permit application under OAR 340-~~28-2120~~ ~~218-0040~~ to obtain a [Federal] ~~Title V~~ Operating Permit within twelve (12) months after initial startup of the construction or modification.
7. Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-~~28-2110(1)(a)~~ ~~218-0020(1)(a)~~.

Section 34-130 General Procedures for Obtaining ACDP Permits (Note: Procedures for reviewing new major sources or major modifications are contained in Title 38, New Source Review.)

1. No person shall commence construction, installation or modification of an air contaminant discharge source prior to obtaining an Air Contaminant Discharge Permit. The Director may allow commencement of construction prior to obtaining an ACDP, if applicant demonstrates no emissions increase of any regulated pollutant.
2. Any person intending to construct, install or establish a new source or renew an [expired] ~~existing~~ permit shall submit a complete permit application on forms provided by the Authority and containing the following information:
 - A. name, address and nature of business;
 - B. a description of the production processes and a related flow chart;
 - C. a plot plan showing location of all air contaminant sources, all discharge points and the surrounding residential and commercial property;

- D. type and quantity of fuels used;
 - E. amount, nature and duration of all emissions of air contaminants;
 - F. plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
 - G. estimated efficiency of air pollution control equipment;
 - H. any information on pollution prevention measures and cross-media impacts the person wants the Authority to consider in determining applicable control requirements and evaluating compliance methods;
 - I. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under 32-007-1 and 2; and
 - J. other pertinent information required by the Authority.
3. Unless otherwise specified, within fifteen (15) days after receiving the permit application the Authority will review the application to determine the adequacy of the information submitted.
- A. If the Authority determines that additional information is needed, it will promptly request the needed information from the applicant. The permit 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 ninety (90) days of the request.
 - B. If, in the opinion of the Director, additional measures are necessary to gather facts regarding the permit application, the Director will notify the applicant of his intent to institute said measures 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.
 - C. When the information in the permit application is deemed adequate, the applicant will be notified that the application is complete for processing.
 - D. Following determination that it is complete for processing, each permit application will be reviewed on its own merit, in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Lane Regional Air Pollution Authority.
 - E. If, upon review of the permit application, the Authority determines that a permit is not required, the Authority shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Authority on the permit application.

(NOTE: Upon notification by the Authority, a registered source may be required to obtain a permit.)

4. In the event the Authority is unable to complete action on a permit application within forty-five (45) days of closing of the public comment period or hearing record under subsection 5 of this section, the applicant shall be deemed to have received a temporary or conditional permit. Caution should be exercised by the applicant under a temporary or conditional permit, since it will expire upon final action by the Authority to grant or deny the original application, and since such temporary or conditional permit does not authorize any construction activity, operation or discharge which will violate any of the laws, rules or regulations of the State of Oregon or the Lane Regional Air Pollution Authority.
5. Public Notice. If the Authority proposes to issue a permit, public notice of proposed provisions prepared by the Authority will be forwarded to the applicant and other interested persons, at the discretion of the Authority, for comment. The public notice shall allow thirty (30) days for written comment from the applicant, the public and the interested local, state and federal agencies prior to issuance of the permit. Public notice shall include the names and quantities of new or increased emissions for which permit limits are proposed or new or increased emissions which exceed Significant Emission Rates established by the Authority. If, within fourteen (14) days after commencement of the public notice period, the Authority receives written requests from ten (10) persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Authority shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Notice of such a hearing may be given, at the Authority's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons. The Authority shall take final action on the permit application within forty-five (45) days of the closing of the public comment period or the hearing record.
6. The Authority may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Authority shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.
7. The Authority shall promptly notify the applicant in writing of the final action taken on the application. If the conditions of the 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 permit issued shall be attached to the notification.
8. If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Authority, the applicant may request a hearing before the Board of Directors or its authorized representative. Such a request for hearing shall be made in writing to the Director within twenty (20) days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the rules of the Authority.

9. If the Authority proposes to deny issuance of a permit, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the applicant requests a hearing. Any hearing held shall be conducted pursuant to the rules of the Authority.
10. Permits issued by the Authority will specify those activities, operations, emissions and discharges which are permitted, as well as requirements, limitations and conditions which must be met.
11. No permit will be issued to an air contaminant source which is not in compliance with applicable rules, unless a compliance schedule is made a condition of the permit.
12. Each permit proposed to be issued or revised by the Authority shall be submitted to the Department of Environmental Quality at least thirty (30) days prior to the proposed issuance date.
13. A copy of each permit issued, modified or revoked by the Authority pursuant to this section shall be promptly submitted to the Department.
14. The Authority may waive the procedures prescribed in these rules and issue special permits of duration not to exceed sixty (60) days from the date of issuance for unexpected or emergency activities, operations, emissions or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources and shall include provisions for compliance with applicable emissions standards of the Authority. Application for such permits shall be in writing and may be in the form of a letter which fully describes the emergency and the proposed activities, operations, emissions or discharges, as described in subsection 2 of this section.
15. The Authority may institute modification of a permit due to changing conditions or standards, receipt of additional information or other reason, by notifying the permittee by registered or certified mail of its intention to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modifications shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing, and the hearing shall be conducted pursuant to the rules of the Authority. A copy of the modified permit shall be forwarded to the permittee as soon as the modification becomes effective. The existing permit shall remain in effect until the modified permit is issued.
16. The procedure 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 Authority in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny a permit.

Section 34-140 Permit Duration

1. The duration of permits may vary but shall not exceed ten (10) years, ~~except that Synthetic Minor Permits shall not be issued for more than five (5) years.~~ The expiration date will be recorded on each permit issued.
2. Air Contaminant Discharge Permits issued by the Authority shall be automatically terminated:
 - A. Within sixty (60) days after sale or exchange of the activity or facility which requires a permit;
 - B. Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application;
 - C. Within one (1) year after a plant closure lasting continuously for one (1) or more years.
 - D. Upon issuance of a new, renewal or modified permit for the same operation; or
 - E. Upon written request of the permittee.
3. In the event that it becomes necessary to suspend or terminate a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application or any other cause, the Authority shall notify the permittee by registered or certified mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests hearing. Such a request for hearing shall be made in writing and shall state the grounds for the request.
4. Termination of a permit resulting from continuous plant closure shall subject the source to review as a new non-permitted source upon application to operate the facility.
5. If the Authority finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may suspend or terminate a permit, effective immediately. Notice of such suspension or termination must state the reasons for action and advise the permittee that he may request a hearing. Such a request for hearing shall be made in writing within ninety (90) days of the date of suspension and shall state the grounds for the request.
6. Any hearing requested under this Section shall be conducted pursuant to the rules of the Authority.

Section 34-150 ACDP Fees

1. All persons applying for an [new] ACD permit for a new source; a source operating without a permit or a renewal of an existing ACDP shall at the time of application pay the following fees:
 - A. ~~[A] a filing fee [of \$93] as listed in Table A Part I, item J, of this rule;~~
 - B. ~~[A] an application processing fee as listed in Table A Part II of this rule; and~~
 - C. ~~[A] an annual compliance determination fee as listed in Table A Part II of this rule.~~
 - D. ~~New and previously unpermitted sources are also subject to initial construction review (Table A Part I).~~

Both the application processing fee and the annual compliance fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories).

2. All persons applying for a modification of an existing ACDP shall at the time of application pay the following fees:
 - A. a filing fee [of \$93] ~~as listed in Table A Part I, Item J, of this rule;~~ and
 - B. an application processing fee ~~as listed in Table A Part II of this rule.~~

The application processing fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories). Modifications subject to the requirements of Section 34-035, Requirements for Construction, may be subject to the fees of Table A Part I, in addition to the fees of Table A Part II.

3. All persons applying for a Synthetic Minor ACDP (34-120) shall at the time of application pay the following fees:
 - A. a filing fee [of \$93] ~~as listed in OAR 340-216-0090 Table 1, Part I;~~
 - B. an application processing fee ~~as listed in OAR 340-216-0090 Table 1, Part I;~~
 - C. an annual compliance determination fee ~~as listed in OAR 340-216-0090 Table 1, Part I;~~ and
 - D. all of the applicable fees of LRAPA Title 34, Table A Part I.
4. The fee schedule contained in Table A Part II shall be applied to determine the ACDP fees on a standard industrial classification (SIC) basis.

5. Applications for multiple-source permits received pursuant to Section 34-100-4 (Permit Categories) shall be subject to a single [93] filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in Table A Part II.
6. In addition to the fees mentioned above, sources may be subject to the fees of Table A Part I. The fees for construction review shall be based on the definitions of review levels in Section 34-035-3.
7. Modifications of existing, unexpired permits, which are instituted by the Authority due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and which do not require refiling or review of an application or plans and specifications, shall not require submittal of the filing fee or the application processing fee.
8. The annual compliance determination fee shall be paid at least thirty (30) days prior to the start of each subsequent permit year. Failure to remit the annual compliance determination fee on time shall be considered grounds for not issuing a permit or for terminating an existing permit. Also, such a failure is, in and of itself, a violation and may subject the permittee to enforcement procedures as defined in Title 15 of LRAPA Rules and Regulations.
9. If a permit is issued for a period of less than one year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than twelve (12) months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance fee by the number of months covered by the permit and dividing by twelve (12).
10. If a temporary or conditional permit is issued in accordance with adopted procedure, fees submitted with the application shall be applied to the regular permit when it is granted or denied.
11. All fees shall be made payable to the Authority.
12. Table A Part II of this Title lists all air contaminant sources required to have a permit and the associated fee schedule.

~~13. The fees in LRAPA 34, Table A will increase by four (4) percent on July 1 of each year beginning on July 1, 2001.~~

Oregon SIP Rule. Section 34-150 Amended 05/12/98.

Section 34-160 New Source Review

New Source Review requirements are contained in LRAPA Title 38, Sections 38-001 through 38-050.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE
~~FEDERAL OPERATING PERMITS (FOP) TITLE V OPERATING PERMITS~~

Section 34-170 Applicability

Sections 34-180 through 34-200 apply to any stationary source defined under OAR 340-~~[28-2110]218-~~
~~0020~~.

Section 34-180 Authority to Implement

In accordance with OAR 340-~~[28-100]218-~~0010, OAR 340-~~218-~~0010, and OAR 340-~~[32-110]244-~~
~~0020~~, the Authority is authorized to implement all Oregon Administrative Rules, Divisions ~~[28]218-~~
~~220~~ and ~~[32]244~~, which apply to sources subject to the Title V ~~[Federal]~~ Operating Permit program
in Lane County. LRAPA shall implement Division ~~[28]218-~~220 and ~~[32]244~~ rules as they pertain to
Title V ~~[Federal]~~ Operating Permit Program sources until such time as it adopts its own ~~[Federal]~~ ~~Title~~
~~V~~ Permit Program rules.

Section 34-190 Definitions

All definitions relevant to ~~[Federal]~~ ~~Title V~~ Operating Permit Program rules are contained in OAR 340-
~~[28-110]200-~~0020 and are adopted here by reference in their entirety.

Section 34-200 ~~[Federal]~~ ~~Title V~~ Operating Permitting Program Requirements and Procedures

All rules pertaining to permitting of sources subject to ~~[Federal]~~ ~~Title V~~ Operating Permit program are
contained in OAR 340-~~[28-2110]218-~~0020 through ~~[2740]220-~~0190 and OAR Division ~~[32]244~~ and
~~248~~, and shall be implemented by the Authority in accordance with Section 34-180.

Title 34 is a part of the Oregon SIP

RULES APPLICABLE TO SOURCES DESIRING GREEN PERMITS

Section 34-210 Applicability

Sections 34-220 through 34-230 apply to stationary sources regulated by the
Authority's rules who voluntarily wish to obtain a Green Permit as defined under OAR 340-014-0105.

Section 34-210 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

Section 34-220 Authority to Implement

In accordance with OAR 340-104-0100, the Authority is authorized to implement all Oregon
Administrative Rules in Division 14 that apply to Green Permits.

Section 34-220 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

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Section 34-230 Green Permits Permitting Program Requirements and Procedures

All rules and definitions pertaining to requirements and procedures for obtaining Green Permits are contained in OAR 340-014-0100 through OAR 340-014-0165 and are adopted here by reference in their entirety.

Section 34-230 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

T O U E A
 AIR CONTAMINANT SOURCES AND
 ASSOCIATED FEE SCHEDULE
 PART I

NOTE: Fees in A-I are in addition to any other applicable fees.

<p>A. Late Payment 1.5 %</p> <p style="padding-left: 40px;">[(1) 8-30 days] [10]</p> <p style="padding-left: 40px;">[(2) Greater than 30 days] [25]</p> <p style="padding-left: 40px;">(In addition to this late fee, sources are subject to enforcement action for late payment.)</p> <p>B. Ambient Monitoring Network Review \$[900] 1,053</p> <p>C. Modeling Review \$[2,000] 2,340</p> <p>D. Alternative Emission Control Review \$[1,500] 1,755</p> <p>E. Non-technical permit modification (name change, ownership transfer, similar) \$[50] 59</p> <p>F. Construction Review (see Section 34-035 for definition of level of construction review)</p> <p style="padding-left: 20px;">(1) Level I \$200</p> <p style="padding-left: 20px;">(2) Level II \$[2,000] 2,210</p> <p style="padding-left: 20px;">(3) Level III \$[10,000] 11,050</p> <p style="padding-left: 20px;">(4) Level IV \$[20,000] 24,310</p>	<p>G. Elective Permits--Synthetic Minor Sources</p> <p>(1) Permit application or modification</p> <p style="padding-left: 20px;">According to the fee in OAR 340-216-0090 Table 1 Part I in effect at time of permitting action</p> <p style="padding-left: 40px;">[(a) Regular] \$1,9800]</p> <p style="padding-left: 40px;">[(b) Simple] *\$1,000]</p> <p>(2) Annual compliance assurance</p> <p style="padding-left: 20px;">According to the fee in OAR 340-216-0090 Table 1 Part I in effect at time of permitting action</p> <p style="padding-left: 40px;">[(a) Regular] \$1,000]</p> <p style="padding-left: 40px;">[(b) Simple] *\$500]</p> <p>H. Emission Banking Review</p> <p style="padding-left: 20px;">(1) Initial setup \$1,000</p> <p style="padding-left: 20px;">(2) Annual review \$500</p> <p>I. Emission Offsetting Review \$1,000</p> <p>J. Filing 98</p>
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[*—These fees may apply where a source electing to be a synthetic minor would otherwise require a federal operating permit due to its potential to emit air contaminants above the major source threshold and the source has two or less equipment types. The applicability of these fees will be determined by the Director.]

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in Part II, in addition to fee for other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	PART II	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
1. Seed cleaning located in Air Quality Maintenance Areas, commercial operations only (not elsewhere classified)		0723	\$[608] 721	\$[930] 1,099
2. RESERVED				
3. Flour and other grain mill products in Air Quality Maintenance Areas (a) 10,000 or more tons per year (b) Less than 10,000 tons per year		2041	\$[1,984] 2,343	\$[1,835] 2,162
		2041	\$[1,525] 1,802	\$[781] 928
4. Cereal preparations in Air Quality Maintenance Areas		2043	\$[1,984] 2,343	\$[1,327] 1,559
5. Blended and prepared flour in Air Quality Maintenance Areas				
(a) 10,000 or more tons per year		2045	\$[1,984] 2,343	\$[1,327] 1,559
(b) Less than 10,000 tons per year		2045	\$[1,525] 1,802	\$[769] 901
6. Prepared feeds for animals and fowl in Air Quality Maintenance Areas				
(a) 10,000 or more tons per year		2048	\$[1,984] 2,343	\$[1,835] 2,162
(b) Less than 10,000 tons per year		2048	\$[1,228] 1,742	\$[1,438] 1,703
7. Beet sugar manufacturing		2063	\$[2,592] 3,063	\$[9,102] 10,730

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	PART II	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
8. Rendering plant				
(a) 10,000 or more tons per year		2077	\$[2,443]2,883	\$[2,939]3,460
(b) Less than 10,000 tons per year		2077	\$[1,835]2,162	\$[1,587]1,875
9. Coffee roasting				
(a) [1 to 40 Kg. roasting capacity] less than 30 tons/year		2095	\$399	\$595
(b) [Greater than 40 Kg. roasting capacity] 30 tons/year or more roasted product		2095	\$[1,228]1,442	\$[1,203]1,415
10. Sawmill and/or planing mill				
(a) 25,000 or more board feet per shift		2421	\$[1,228]1,442	\$[1,835]2,162
(b) Less than 25,000 board feet per shift (no DEQ equivalent)		2421	\$[409]480	\$[856]1,009
11. Hardwood mills		2426	\$[409]480	\$[1,153]1,354
12. Shake and shingle mills with air transfer systems		2429	\$[409]480	\$[434]511
13. Mill work (including kitchen cabinets and structural wood members) 25,000 or more board feet per shift		2431, 2434 & 2439	\$[918]1,081	\$[1,438]1,703
14. Plywood manufacturing and/or veneer drying				
(a) 25,000 or more square feet per hour (3/8" basis finished product)		2435 & 2436	\$[3,819]4,505	\$[3,695]4,361

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
(b) 10,000 or more but less than 25,000 square feet per hour (3/8" basis finished product)	2435 & 2436	[\$1,848] \$1,244	[\$2,157] \$2,946
(c) less than 10,000 square feet per hour (3/8" basis finished product)	2435 & 2436	\$1,081	\$1,559
15. Veneer manufacturing only (not elsewhere classified)	2435 & 2436	[\$918] \$1,081	[\$1,450] \$1,559
16. Wood preserving	2491	\$2,002	\$1,921
17. Particleboard manufacturing (including strandboard, flakeboard and waferboard)			
(a) ≥ 10,000 sq.ft./hr--3/4" basis finished product	249[2]3	[\$3,819] \$4,505	[\$4,352] \$5,135
(b) < 10,000 sq.ft./hr--3/4" basis finished product	249[2]3	[\$1,835] \$2,162	[\$2,083] \$2,450
18. Hardboard manufacturing			
(a) ≥ 10,000 sq.ft./hr--1/8" basis finished product	2493	[\$3,819] \$4,505	[\$3,571] \$4,217
(b) < 10,000 sq.ft./hr--1/8" basis finished product	2493	[\$1,835] \$2,162	[\$1,835] \$2,162
19. Battery separator manufacturing	3069	[\$1,525] \$1,802	[\$3,174] \$3,748
20. Furniture and fixture manufacturing 25,000 or more board feet/shift	2511	[\$918] \$1,081	[\$1,438] \$1,703

Note: A filing fee of ~~\$918~~ is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
21. Pulp mills, paper mills and paperboard mills	611, 2621 & 2631	\$[7,638]9,009	\$[15,822]18,658
22. Building paper and building board mills	2661	\$1,228]1,442	\$[1,203]1,415
23. Alkalies and chlorine manufacturing			
(a) Simple [Permit]*	2812	\$[2,145]2,523	\$[3,150]3,721
(b) Complex [Permit]*	2812	\$[3,745]4,415	\$[4,204]4,955
24. Calcium carbide manufacturing			
(a) Simple [Permit] *	2819	\$[2,294]2,703	\$[3,150]3,721
(b) Complex [Permit] *	2819	\$[4,005]4,730	\$[4,204]4,730
25. Nitric acid manufacturing			
(a) Simple [Permit] *	2819	\$[1,525]1,802	\$[1,587]1,875
(b) Complex [Permit] *	2819	\$[2,678]3,154	\$[2,120]2,496
26. Ammonia manufacturing			
(a) Simple [Permit] *	2819	\$[1,525]1,802	\$[1,835]2,162
(b) Complex [Permit] *	2819	\$[2,678]3,154	\$[2,443]2,883
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere classified)			
(a) Simple [Permit] *	2819 & 2869	\$[1,984]2,343	\$[2,257]2,659
(b) Complex [Permit] *	2819 & 2869	\$[3,472]4,100	\$[2,988]3,531

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	PART II		Application Processing Fee	Annual Compliance Determination Fee
	Standard Industrial Classification Number			
28. Synthetic resin manufacturing				
(a) [Simple Permit *] <250,000 Tons of Product Per Year	2821		\$[1,525]1,802	\$[1,835]2,162
(b) [Complex Permit *] >250,000 Tons of Product Per Year	2821		\$[2,678]3,154	\$[2,443]2,883
29. Charcoal manufacturing	2861		\$[2,145]3,534	\$[3,819]4,505
30. Pesticide/Herbicide manufacturing	2879		\$[3,819]4,505	\$[15,822]18,658
31. Petroleum refining	2911		\$[7,638]9,009	\$[15,822]18,658
32. Asphalt production by distillation	2951		\$[1,525]1,802	\$[1,835]2,162
33. Asphalt blowing plants	2951		\$[1,525]1,802	\$[2,381]2,803
34. Asphaltic Concrete Paving Plants [Asphalt Production]				
(a) Stationary	2951		\$1,001	\$2,182
(b) Portable	2951		\$1,001	\$2,182
35. Asphalt felts or coating	2952		\$[818] 901	\$[1,818]1,622
36. Blending, compounding or refining of lubricating oils and reprocessing of oils and solvents for fuel	2992		\$[1,376]1,622	\$[1,711]2,019
37. Glass container manufacturing	3221		\$[1,525]1,802	\$[2,257]2,659
38. Cement manufacturing	3241 & 3251		\$[4,886]5,765	\$[11,594]13,667

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

		PART II	
Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
39. Concrete Manufacturing including Redimix and CTB	3271, 3272 & 3273	310 360	484 577
40. Lime manufacturing	3274	2,294 2,749	1,203 1,415
41. Gypsum products	3275	1,228 1,442	1,327 1,559
42. Sand and Gravel Plants: Rock Crusher			
(a) Stationary	1429, 1442, 1446 & 3295	\$1,870	\$1,960
(b) Portable	1429, 1442, 1446 & 3295	\$1,370	\$1,160
(c) [Stationary or] Portable less than [< 300,000 Tons/Year Throughput] 150 Tons/hour maximum rated capacity (no DEQ equivalent)	1429, 1442, 1446 & 3295	248 450	372 750
43. Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	3,819 4,505	3,150 3,721
44. Incinerators	4953 & 7261		
(a) 250 or more ton/day capacity or an off-site infectious waste incinerator		18,327 21,622	7,899 9,316
(b) 50 or more but less than 250 tons/day capacity		4,588 5,405	2,393 2,829
(c) 0.5 or more but less than 50 tons/day capacity		769 901	930 1,099
(d) crematoriums and pathological waste incinerators not elsewhere classified		769 901	930 1,099
(e) PCB and/or off-site hazardous waste incinerator		18,327 21,622	7,899 9,316

Note: A filing fee of ~~9378~~ is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
45. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified) (a) 3,500 or more tons per year production (b) Less than 3,500 tons per year production	3321 & 3322 & 3324 & 3325	[\$3,819]4,505 [\$918]1,081	[\$2,765]3,261 [\$1,438]1,708
46. Primary aluminum production	3334	[\$7,638]9,009	[\$15,822]18,658
47. Primary smelting of zirconium or hafnium or primary smelting and refining of other ferrous or non-ferrous metals not elsewhere classified (a) ≥ 2,000 TPY production (b) < 2,000 TPY production	3339 3339	[\$7,638]9,009 [\$2,240]4,505	[\$15,822]18,658 [\$2,480]3,117
48. Primary smelting of silicon	3339	[\$3,236]3,883	[\$7,291]8,749
49. Secondary smelting and refining of nonferrous metals	3341	[\$1,835]2,162	[\$1,835]2,162
50. Nonferrous metal foundries (100 or more tons/year metal charged)	3361, 3362 & 3369	[\$918]1,081	[\$1,587]1,875
51. [Electroplating, polishing and anodizing] RESERVED	[3471]	\$620	\$1,190
52. Galvanizing and pipe coating--exclude all other activities	3479	[\$769]901	[\$1,203]1,415
53. Battery manufacturing	3691	[\$918]1,090	[\$1,587]1,875

Note: A filing fee of ~~\$9[3]8~~ is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
54. Grain elevators--intermediate storage only, located in Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	4221	\$[1,376]1,622	\$[2,492]2,946
(b) Less than 20,000 tons per year	4221	\$[769] 901	\$[1,203]1,415
55. Electric power generation or cogeneration			
(a) Solid fuel--25 MW or greater	4911	\$[30,554]36,036	\$[15,822]18,658
(b) Solid Fuel--less than 25 MW	4911	\$[14,471]17,067	\$[7,775]9,170
(c) Oil or gas fired	4911	\$[2,728]3,244	\$[3,819]4,505
56. Fuel burning Equipment at gas production and/or distribution facilities	4925	\$[2,902]3,424	\$[1,835]2,162
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain in Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	5153	\$[3,819]4,505	\$[3,150]3,721
(b) Less than 20,000 tons per year	5153	\$[1,066]1,261	\$[1,203]1,415
58. Fuel-Burning Equipment (gas or oil), Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$2,753	\$3,819
(b) >100 and <250 million BTU/hr	4961	\$1,872	\$1,730
(c) >10 and <100 million BTU/hr	4961	\$1,228	\$1,210
(d) <10 million BTU/hr	4961	\$409	\$434
<i>(Note: DEQ does not charge fees for gas-fired boilers)</i>			

Note: A filing fee of \$9[~~3~~]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
59. Fuel-Burning Equipment Inside the AQMA (Wood or Coal Only) Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$4,352	\$3,745
(b) >100 and <250 million BTU/hr	4961	\$3,088	\$2,877
(c) >10 and <100 million BTU/hr	4961	\$2,244	\$1,897
(d) <10 million BTU/hr	4961	\$1,365	\$1,252
60. Fuel-Burning Equipment Outside the AQMA (Wood or Coal Only) Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$3,274	\$2,988
(b) >100 and <250 million BTU/hr	4961	\$2,443	\$2,641
(c) >10 and <100 million BTU/hr	4961	\$1,476	\$1,624
(d) <10 million BTU/hr	4961	\$608	\$1,327
61. Sources not listed herein which would emit 5 or more tons of PM10/year in a PM10 non-attainment area, or 10 or more tons per year [of the aggregate] of any [air contaminants, including] criteria pollutant elsewhere in Lane County, including but not limited to: [particulates] PM, SO _x , NO _x or [hydrocarbons] Volatile Organic Compounds (VOC), if the source were to operate uncontrolled			
(a) Complex [Permit] * <i>[(Complex Permit fees proposed to increase to \$10,000, effective July 1, 1999.)]</i>		\$ 7,800 16,216	\$ 7,800 11,532
(b) Moderate [Permit]		\$ 4,400 4,505	\$ 4,400 2,019
(c) Simple [Permit] *		\$ 1,000 1,031	\$ 1,000 865

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
62. Sources not listed herein which would emit significant malodorous emissions as determined by Authority review of sources which are known to produce similar air contaminant emissions			
(a) [Complex Permit] Problematic and/or High Risk ** [(Complex Permit fees proposed to increase to \$10,000, effective July 1, 1999.)]		\$ [7,800] 16,216	\$ [7,800] 11,532
(b) Moderate [Permit] Concern **		\$ [4,400] 4,505	\$ [4,400] 2,019
(c) [Simple Permit] Marginal Concern **		\$ [1,000] 1,081	\$ [1,000] 865
63. Sources not listed herein for which an air quality problem is identified by the Authority, including but not limited to: open storage of dusty [or odorous] material [dry material handling air transfer systems] and sandblasting operations			
(a) [Complex Permit] Problematic and/or High Risk ** [(Complex Permit fees proposed to increase to \$10,000, effective July 1, 1999.)]		\$ [7,800] 16,216	\$ [7,800] 11,532
(b) Moderate [Permit] Concern **		\$ [4,400] 4,505	\$ [4,400] 2,019
(c) [Simple Permit] Marginal Concern **		\$ [1,000] 1,081	\$ [1,000] 865
64. Bulk gasoline plants	5100 & 5171	\$ [608] 721	\$ [781] 928
65. Bulk gasoline terminals	5171	\$ [6,113] 7,207	\$ [2,951] 3,117
66. Volatile organic Liquid storage tanks--39,000 gallons or more capacity (not elsewhere classified) [except for water]	4200, 5169 & 5171	\$ [310] 360/tank	\$ [546] 640/tank

Note: A filing fee of \$~~9[3]~~8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
67. Can or drum coating			
(a) ≥ 50,000 units/mon.	3411 & 3412	\$[9,164]10,811	\$[4,749]5,595
(b) < 50,000 units/mon.	3411 & 3412	\$[2,356]721	\$[1,488]1,244
68. Paper or other substrate coating	2641 & 3861	\$[9,164]10,811	\$[4,749]5,595
69. Coating flat wood	2400 & 2672	\$[3,050]3,604	\$[2,108]1,875
70. Surface coating manufacturing			
(a) 100 tons or more of VOC per year	2851	\$[3,050]3,604	\$[2,108]2,487
(b) 10 tons or more but less than 100 tons/year VOC	2851	\$[918]1,081	\$[1,054]1,244
(c) Less than 10 tons VOC per year	2851	\$[310]360	\$[446]523
71. Flexographic or rotogravure printing			
(a) ≥ 60 tons VOC per year	2751, 2754 & 2759	\$4,055	\$3,604
(b) 10 tons or more but less than 60 tons VOC per year per plant	2751, 2754 & 2759	\$780	\$1,680
72. RESERVED			
73. Minor sources of HAPs (not elsewhere classified) including area [S] sources subject to federal NESHAPS rules under Section 112 of the federal Clean Air Act (except demolition or renovation)			
		\$[608]721	\$[769]901

Note: A filing fee of \$9[3]8 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
74. Major [S]sources of [toxic] hazardous air pollutants (HAPs), including those subject to Maximum Available Control Technology (MACT) requirements (not elsewhere classified)			
(a) [High Toxicity **] Complex*		\$[1,525]16,216	\$[1,463]11,532
(b) Moderate [Toxicity *]*		\$[1,029]4,505	\$[1,220]2,019
75. Soil remediation Plants			
(a) Stationary (emissions ≥ [SER]10 Tons/year)	1799	\$[1,525]1,802	\$[1,430]1,703
(b) Portable (emissions ≥ [SER]10 Tons/year)	1799	\$[1,525]1,802	\$[1,035]1,703
(c) Stationary [←emissions ←SER] or	[1799	\$372]	\$496]
[←d] Portable (emissions [←SER] < 10 tpy)	1799	\$[372] 440	\$[620] 733

[* — Complex Permit:

- sources requiring PSD or NSR review or
- sources requiring source-specific MACT/GACT determination or
- sources requiring a large amount of staff time to complete the permitting process

Simple Permit:

- sources which are not complex

** — New York State Air Guide 1 1985-86 Edition]

The Authority will assign a level of difficulty (complex, moderate, or simple) on the basis of the estimated time required for processing the permit application and compliance assurance activities. Factors considered in the determination will be: type of process, quality of the information provided by the applicant in regard to evaluation of emissions, regulatory requirements, and applicable emission controls; complexity of applicable requirements; number of sources in the permit; level of emissions; and un-addressed compliance issues.

Note: A filing fee of \$9[3]8 is required for all sources.

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 34

Stationary Source Rules and Permitting Procedures

Section 34-001 General Policy and Rule Organization

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the county, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, LRAPA has set forth in this title the air pollution control rules and permitting procedures which apply to all stationary sources regulated by the Authority in Lane County.

This title is organized as follows:

34-010 Rules applicable to all stationary sources, including:

- 34-015 Request for Information
- 34-020 Information Exempt from Disclosure
- 34-025 Highest and Best Practicable Treatment and Control (HBPT)
- 34-030 Source Registration
- 34-035 Requirements for Construction
- 34-040 Compliance Schedules

34-050 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP) or Title V Operating Permits, including:

- 34-060 Plant Site Emission Limits (PSEL) Rules
- 34-070 Sampling, Testing, Monitoring and Reporting
- 34-080 Excess Emissions

34-090 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP), including:

- 34-100 Permit Categories
- 34-110 Requirements to Obtain Permit
- 34-120 Synthetic Minor Permitting Procedures
- 34-130 General Procedures for ACD Permits
- 34-140 Permit Duration
- 34-150 ACDP Fees
- 34-160 New Source Review

34-170 Rules applicable to sources required to have Title V Operating Permits, as specified by OAR 340 Divisions 218, 220 and 244 in their entirety, including:

- 34-180 Authority to Implement
- 34-190 Definitions
- 34-200 Title V Operating Permitting Program Requirements and Procedures

34-210 Rules Applicable to Sources Desiring Green Permits

- 34-220 Authority to Implement
- 34-230 Green Permits Permitting Program Requirements and Procedures

Section 34-001 Amended 06/13/00.

Section 34-005 Definitions

All relevant definitions for this title can be found with the general definitions listed in Title 12, with the following exceptions:

1. Plant Site Emission Limit (PSEL) definitions, which may be found in Section 34-060; and
2. Definitions pertaining to Title V Operating Permits, which may be found in OAR 340-200-0020.

Section 34-005 Amended 06/13/00

RULES APPLICABLE TO ALL STATIONARY SOURCES

Section 34-010 Applicability

Unless specified elsewhere, 34-015 through 34-040 shall apply to all stationary sources in Lane County.

Section 34-015 Request for Information

All sources subject to Title 34 shall provide in a reasonably timely manner any and all information that the Authority may reasonably require for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

1. issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
2. ascertain applicability of any requirement;
3. ascertain compliance or noncompliance with any applicable requirement; and
4. incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

Compliance with this section may require the installation and maintenance of continuous monitors and electronic data handling systems.

Amended June 13, 2000

34.2

Section 34-020 Information Exempt from Disclosure

1. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to the Authority under Title 34 shall be presumed to be subject to inspection upon request by any person unless such information is determined to be exempt from disclosure pursuant to subsections 2 or 3 of this section.
2. If an owner or operator claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the owner or operator shall comply with the following procedures:
 - A. The writing shall be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page shall be so marked.
 - B. The owner or operator shall state the specific statutory provision under which it claims exemption from disclosure and explain why the writing meets the requirements of that provision.
 - C. For writings that contain both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.
3. For a writing to be considered exempt from disclosure as a "trade secret," it shall meet all of the following criteria:
 - A. the information shall not be patented;
 - B. it shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;
 - C. it shall be information which derives actual or potential economic value from not being disclosed to other persons; and
 - D. it shall give its users the chance to obtain a business advantage over competitors not having the information.

Section 34-025 Highest and Best Practicable Treatment and Control Requirements

See Title 32, Section 32-005-1 through 9 (11/10/94).

Section 34-025 Amended 09/09/97

Section 34-030 Source Registration

Any air contaminant source which is not subject to the ACDP rules (34-090 through 34-160) or the Title V Operating Permit program rules (34-170 through 34-200) shall register with the Authority upon request pursuant to 34-030-1 through 4.

1. Registration shall be completed within thirty (30) days following the mailing date of the request by the Authority.
2. Registration shall be made on forms furnished by the Authority and completed by the owner, lessee of the source, or agent.
3. The following information shall be reported by registrants:
 - A. name, address, and nature of business;
 - B. name of local person responsible for compliance with these rules;
 - C. name of person authorized to receive requests for data and information;
 - D. a description of the production processes and a related flow chart;
 - E. a plot plan showing the location and height of all air contaminant sources (the plot plan shall also indicate the nearest residential or commercial property);
 - F. type and quantity of fuels used;
 - G. amount, nature, and duration of air contaminant emissions;
 - H. estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and
 - I. any other information requested by the Authority.
4. Once a year, upon the annual date of registration, a person responsible for an air contaminant source shall reaffirm in writing the correctness and current status of the information furnished to the Authority. Any changes in any of the factual data reported under subsection 3 of this section shall be reported to the Authority, at which time re-registration may be required on forms furnished by the Authority.

Section 34-030 Amended 06/13/00; Section 34-030 Amended 09/09/97

Section 34-035 Requirements for Construction (or Non-Major Modification) (Major Modification Requirements are Contained in Title 38)

1. Notification: No person shall commence construction of a new source or modification of an existing air contaminant source without first notifying the Authority, on a form supplied by the Authority, and obtaining an Authority to Construct if required under (2) below. Section 34-035 shall not apply to Oregon Title V Operating Permit Program sources. Sections 34-035(1) and (2) do not apply to construction or modification projects subject to the provisions of Section 34-110.
2. Authority to Construct: Any person planning construction of a new source; or a modification project which would result in an increase of emissions above permit limits and/or which would trigger new applicable requirements shall submit to the Director a construction review fee and

a Notice of Construction which includes all information necessary to perform any analysis or make any determination required by these rules. Such information shall include the following:

- A. name, address, and nature of business;
 - B. name of local person responsible for compliance with these rules;
 - C. name of person authorized to receive requests for data and information;
 - D. a description of the production processes and a related flow chart;
 - E. a plot plan showing the location and height of all air contaminant sources and indicating the nearest residential or commercial property;
 - F. type and quantity of fuels used;
 - G. Amount, nature and duration of air contaminant emissions;
 - H. Plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
 - I. estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
 - J. any information on pollution prevention measures and cross-media impacts desired to be considered in determining applicable control requirements and evaluating compliance methods;
 - K. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under subsections 32-007-1 and 2 ;
 - L. amount and method of refuse disposal; and
 - M. corrections and revisions to the plans and specifications to ensure compliance with applicable rules, orders and statutes.
3. Construction review by the Authority is subject to applicable fees listed in Table A Part I of this title. Construction review fees are assessed based on the review levels defined below:
- A. Level I review applies to construction projects which meet all of the following criteria:
 - (1) do not result in an increase in emissions or production over permitted limits;
 - (2) do not require ACDP modification prior to the ACDP renewal date;
 - (3) add a single piece of air pollution control equipment or replace an existing emission or process unit with a device of equivalent capacity; and
 - (4) require minimal review by the Authority.

- B. Level II review applies to construction projects which:
- (1) trigger an applicable requirement but do not result in an increase in emissions over permitted limits; or
 - (2) result in changes in emissions or throughputs to multiple emission points from those identified in the ACDP permit application; and
 - (3) require a moderate amount of review by the Authority.
- C. Level III review applies to construction projects which:
- (1) result in net emission increases which are less than the Significant Emission Rate (SER) as defined in LRAPA Title 38 (New Source Review), subsection 005-12; and
 - (2) require a substantial amount of review and analysis by the Authority.
- D. Level IV review applies to construction projects which:
- (1) result in a net emission increase which is greater than or equal to the SER and are therefore subject to New Source Review/Prevention of Significant Deterioration review; or
 - (2) require extensive review and analysis by the Authority.
- E. For construction projects which do not clearly fit any of the levels described in subsections A through D of this section, the Authority shall assign a review level based on an estimate of the review time required and the level which most closely fits the construction project. The Authority may waive construction fees for sources with minimal or letter permits as defined in 34-100-5 and 6.
4. Within sixty (60) days of receipt of all required information, the Authority shall make a determination as to whether the proposed construction or non-major modification is in accordance with the provisions of these rules. Modifications which increase emissions above baseline emission rates shall require a 30-day public notice period.
- A. If the proposed construction is found to be in accordance with the provisions of these rules, the Authority shall issue a "Notice of Authority to Construct." This issuance shall not relieve the owner or operator of the obligation of complying with all other titles of these rules.
- B. If the proposed construction is found not to be in accordance with the provisions of these rules, the Director may issue an order prohibiting construction. Failure to issue the order within the sixty (60) day period shall be considered a determination that the construction may proceed in accordance with the information provided in the application.
- C. Any person against whom an order prohibiting construction is issued may, within twenty (20) days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for a hearing, and shall be submitted to the Director. Any hearing shall be conducted as a contested case pursuant to Title 14.

- D. Deviation from approved plans or specifications, without the written permission of the Director, shall constitute a violation of these rules.
 - E. The Authority may require any order or other notice to be displayed on the premises designated. No person shall mutilate, alter, or remove such order or notice unless authorized to do so by the Authority.
5. Notice shall be provided in writing to the Authority of the completion of construction and the date when operation will commence. Such notice will be provided within thirty (30) days of completion of the construction project on forms provided by the Authority. The Authority, following receipt of the notice of completion, shall inspect the premises.

Section 30-035 Amended 06/13/00; Section 34-035 Amended 09/09/97

Section 34-040 Compliance Schedules for Existing Sources Affected by New Rules

1. No existing source of air contaminant emissions will be allowed to operate out of compliance with the provisions of new rules, unless the owner or operator of that source first obtains a Board-approved compliance schedule which lists the steps being taken to achieve compliance and the final date when compliance will be achieved. Approval of a reasonable time to achieve compliance shall be at the discretion of the Board.
2. The owner or operator of any existing air contaminant source found by the Director to be in non-compliance with the provisions of new rules shall submit to the Board for approval a proposed schedule of compliance to meet those provisions. This schedule shall be in accordance with timetables contained in the new rules or in accordance with an administrative order by the Director. This schedule shall contain, as necessary, reasonable time milestones for engineering, procurement, fabrication, equipment installation and process refinement. This request shall also contain documentation of the need for the time extension to achieve compliance and the justification for each of the milestones indicated in the schedule.
3. Within one hundred and twenty (120) days of the submittal date of the request, the Board shall act to either approve or disapprove the request. A schedule for compliance becomes effective upon the date of the written order of the Board.
4. Compliance schedules of longer than eighteen (18) months' duration shall contain requirements for periodic reporting of progress toward compliance.
5. An owner or operator of an air contaminant source operating in non-compliance with these rules, but under an approved compliance schedule, who fails to meet that schedule or make reasonable progress toward completion of that schedule, shall be subject to enforcement procedures in accordance with these rules.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE
ACDP OR TITLE V OPERATING PERMITS

Section 34-050 Applicability

Sections 34-060 through 34-080 shall apply to all stationary sources required to obtain ACDP's under 34-090 through 34-160 or Title V Operating Permits under 34-170 through 34-200.

Section 34-060 Plant Site Emission Limit Rules

1. Policy. The Authority recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of permit holders as contained in Section 34-060. However, by the adoption of these rules, the Authority does not intend to:
 - A. Limit the use of existing production capacity of any air quality permittee (except for synthetic minor source permittees);
 - B. Cause any undue hardship or expense to any permittee due to the utilization of existing unused productive capacity; or,
 - C. Create inequity within any class of permittees subject to specific industrial standards which are based on emissions related to production.
2. Plant Site Emission Limits (PSEL) may be established at levels higher than baseline if a demonstrated need exists to emit at a higher level, PSD increments and air quality standards would not be violated, and reasonable further progress in implementing control strategies would not be impeded.
3. Definitions
 - "Actual Emissions" means the mass rate of emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.
 - A. For purposes of determining actual emissions as of the baseline period:
 - (1) Except as provided in paragraph (2) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;
 - (2) The Authority may assume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10 percent of the actual emissions calculated under paragraph (1) of this subsection.

- B. For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.
 - C. For purposes of determining actual emissions for emission statements for Major Source Interim Emission Fees under LRAPA Title 35 and for [Federal] Title V Operating Permit Fees under OAR 340 Division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- "Aggregate Insignificant Emissions" means the annual actual emissions of any regulated air pollutant as defined in OAR 340-200-0020, for any Title V Operating Permit program source, including the usage of exempt mixtures, up to the lowest of the following applicable level:
 - A. one ton for each criteria pollutant;
 - B. 500 pounds for PM10 in a PM10 nonattainment area;
 - C. 120 pounds for lead;
 - D. the lesser of the amount established in OAR 340-244-0230, Table 3, or 1,000 pounds for each Hazardous Air Pollutant;
 - E. an aggregate of 5,000 pounds for all Hazardous Air Pollutants.
 - "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.
 - "Baseline Period" means either calendar years 1977 or 1978. The Authority shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
 - "Categorically Insignificant Activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.
 - A. constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under OAR Chapter 340, Divisions 200 through 268, or less than 0.1% by weight of any carcinogen listed in the U. S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year.
 - B. evaporative and tail pipe emissions from on-site motor vehicle operation;
 - C. distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

- D. natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;
- E. office activities;
- F. food service activities;
- G. janitorial activities;
- H. personal care activities;
- I. groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
- J. on-site laundry activities;
- K. on-site recreation facilities;
- L. instrument calibration;
- M. maintenance and repair shop;
- N. automotive repair shops or storage garages;
- O. air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
- P. refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
- Q. bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;
- R. temporary construction activities;
- S. warehouse activities;
- T. accidental fires;
- U. air vents from air compressors;
- V. air purification systems;
- W. continuous emissions monitoring vent lines;
- X. demineralized water tanks;

- Y. pre-treatment of municipal water, including use of deionized water purification systems;
- Z. electrical charging stations;
- AA. fire brigade training;
- BB. instrument air dryers and distribution;
- CC. process raw water filtration systems;
- DD. pharmaceutical packaging;
- EE. fire suppression;
- FF. blueprint making;
- GG. routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
- HH. electric motors;
- II. storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
- JJ. on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
- KK. natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
- LL. pressurized tanks containing gaseous compounds;
- MM. vacuum sheet stacker vents;
- NN. emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
- OO. log ponds;
- PP. storm water settling basins;
- QQ. fire suppression and training;

- RR. paved roads and paved parking lots within an urban growth boundary;
 - SS. hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
 - TT. health, safety, and emergency response activities;
 - UU. emergency generators and pumps used only during loss of primary equipment or utility service;
 - VV. non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
 - WW. non-contact steam condensate flash tanks;
 - XX. non-contact steam vents on condensate receivers, deaerators and similar equipment;
 - YY. boiler blowdown tanks;
 - ZZ. industrial cooling towers that do not use chromium-based water treatment chemicals;
 - AAA. ash piles maintained in a wetted condition and associated handling systems and activities;
 - BBB. oil/water separators in effluent treatment systems;
 - CCC. combustion source flame safety purging on startup;
 - DDD. broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;
 - EEE. stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
 - FFF. white water storage tanks.
- "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
 - "Plant Site Emission Limit (PSEL)" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL may consist of more than one assessable emission.
 - "Significant Emission Rate (SER)" means
 - A. Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Significant Emission Rates for Pollutants Regulated Under the Clean Air Act	
Significant Pollutant	Emission Rate
1. Carbon Monoxide	100.00 Tons/Year
2. Nitrogen Oxides	40.0 Tons/Year
3. Particulate Matter	25.0 Tons/Year
4. PM ₁₀	15.0 Tons/Year
5. Sulfur Dioxide	40.0 Tons/Year
6. VOCs	40.0 Tons/Year
7. Lead	0.60 Tons/Year
8. Mercury	0.10 Tons/Year
9. Beryllium	0.0004 Tons/Year
10. Asbestos	0.007 Tons/Year
11. Vinyl Chloride	1.0 Tons/Year
12. Fluorides	3.0 Tons/Year
13. Sulfuric Acid Mist	7.0 Tons/Year
14. Hydrogen Sulfide	10.0 Tons/Year
15. Total Reduced Sulfur (including hydrogen sulfide)	10.0 Tons/Year
16. Reduced Sulfur Compounds (including hydrogen sulfide)	10.0 Tons/Year

B. For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.

C. Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (24-hour average) shall be deemed to be emitting at a significant emission rate.

4. Requirements for Plant Site Emission Limits

A. Plant Site Emission Limits (PSEL) shall be incorporated in all Air Contaminant Discharge Permits (ACDPs) and Title V Operating Permits, except minimal source permits and special letter permits, as a means of managing airshed capacity. Except as provided for in 34-060-6 and 7, all sources subject to regular permit requirements shall be subject to

PSELs for all regulated pollutants. PSELs will be incorporated in permits when permits are renewed, modified, or newly issued.

- B. The emissions limits established by PSELs shall provide the basis for:
 - (1) assuring reasonable further progress toward attaining compliance with ambient air standards;
 - (2) assuring that compliance with ambient air standards and Prevention of Significant Deterioration increments are being maintained;
 - (3) administering offset, banking and bubble programs; and
 - (4) establishing the baseline for tracking consumption of Prevention of Significant Deterioration increments.

5. Criteria for Establishing Plant Site Emission Limits

- A. For existing sources, PSELs shall be based on the baseline emission rate for a particular pollutant at a source and shall be adjusted upward or downward pursuant to Authority rules.
- B. If an applicant requests that the PSEL be established at a rate higher than the baseline emission rate, the applicant shall:
 - (1) demonstrate that the requested increase is less than the significant emission rate increase defined in Section 34-060-3; or
 - (2) provide an assessment of the air quality impact pursuant to procedures specified in Section 38-015 to Section 38-020. A demonstration that no air quality standards or PSD increment will be violated in an attainment area or that a growth increment or offset is available in a non-attainment area shall be sufficient to allow an increase in the PSEL to an amount not greater than the plant's demonstrated need to emit as long as no physical modification of an emissions unit is involved.
- C. Increases above baseline emission rates shall be subject to public notice and opportunity for public hearing pursuant to applicable permit requirements.
- D. PSELs shall be established on at least an annual emission basis and a short-term period emission basis that is compatible with source operation and air quality standards.
- E. Mass emission limits may be established separately within a particular source for process emissions, combustion emissions, and fugitive emissions.
- F. Documentation of PSEL calculations shall be available to the permittee.
- G. For new sources, PSELs shall be based on application of applicable control equipment requirements and projected operating conditions.
- H. PSELs shall not be established which allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit condition unless specific provisions of Section 34-060-8 are met.

- I. PSELS may be changed pursuant to Authority rules when:
- (1) Errors are found or better data is available for calculating PSELS.
 - (2) More stringent control is required by a rule adopted by the Environmental Quality Commission or the Authority.
 - (3) An application is made for a permit modification pursuant to the Air Contaminant Discharge Permit requirements (34-090 through 34-160) and the New Source Review requirements (Title 38), or Rules Applicable to Sources Required to Have Title V Operating Permits (34-170 through 34-200). Approval may be granted based on growth increments, offsets, or available Prevention of Significant Deterioration increments.
 - (4) The Authority finds it necessary to initiate modifications of a permit pursuant to Section 34-130-15 or OAR 340-218-0200, Reopenings.

6. Plant Site Emission Limits for Sources of Hazardous Air Pollutants

- A. For purposes of establishing PSELS, hazardous air pollutants listed under OAR 340-244-0040 or OAR 340-244-0230 shall not be considered regulated pollutants under Section 34-060-4.A until such time as the Authority determines otherwise.
- B. The Authority may establish PSELS for hazardous air pollutants for the following causes:
 - (1) An owner or operator elects to establish a PSEL for any hazardous air pollutant emitted for purposes of determining emission fees as prescribed in Title 35; or
 - (2) The source is subject to a hazardous air pollutant emission standard, limitation, or control requirement other than Plant Site Emission Limits.
- C. Procedures for establishing and modifying PSELS for hazardous air pollutant emissions shall be consistent with Section 34-060-5, except for the following:
 - (1) a baseline emission rate shall not apply; and
 - (2) the provisions of Section 34-060-8 shall not apply.
- D. PSELS established for hazardous air pollutants shall not be used for any provisions other than those prescribed in subsection B of this section.

7. Plant Site Emission Limits for Insignificant Activities

- A. For purposes of establishing PSELS, emissions from categorically insignificant activities listed in Subsection 34-060-3 shall not be considered regulated air pollutants under Section 34-060-4 until such time as the Authority determines otherwise, except as provided in subsection C of this section.
- B. For purposes of establishing PSELS, emissions from non-exempt insignificant mixture usage and aggregate insignificant emissions listed in Subsection 34-060-3 shall be considered regulated air pollutants under Section 34-060-4.

- C. For purposes of determining New Source Review or Prevention of Significant Deterioration applicability, Title 38, emissions from insignificant activities shall be considered.

8. Alternative Emission Controls (Bubble)

- A. Alternative emission controls may be approved for use within a plant site such that specific mass emission limit rules are exceeded if:

- (1) such alternatives are not specifically prohibited by a permit condition;
- (2) net emissions for each pollutant are not increased above the PSEL;
- (3) The net air quality impact is not increased as demonstrated by procedures required by Section 38-035 (Requirements for Net Air Quality Benefit);
- (4) No other pollutants including malodorous, toxic or hazardous pollutants are substituted;
- (5) Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER), where required by a previously issued permit, and New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), where required, are not relaxed;
- (6) specific mass emission limits are established for each emission unit involved such that compliance with the PSEL can be readily determined; or
- (7) application is made for a permit modification and such modification is approved by the Authority.

- B. Operators of existing sources requesting alternative emission controls shall, at the time of application, pay the following fees:

- (1) a filing fee as listed in Table A, Part I, item J of this rule; and
- (2) an application processing fee as listed in Table A, Part I, item D of this rule.

9. Temporary PSD Increment Allocation

- A. On demonstration to the Authority, PSELs may include a temporary or time-limited allocation against an otherwise unused PSD increment in order to accommodate voluntary fuel switching or other cost or energy saving proposals if:

- (1) no ambient air quality standard is exceeded;
- (2) no applicable PSD increment is exceeded;
- (3) no nuisance condition is created; and
- (4) the applicant's proposed and approved objective continues to be realized.

- B. When such demonstration is being made for changes to the PSEL, it shall be presumed that ambient air quality monitoring shall not be required of the applicant for changes in hours of operation, changes in production levels, voluntary fuel switching or for cogeneration projects unless, in the opinion of the Authority, extraordinary circumstances exist.

- C. Such temporary allocation of a PSD increment shall be set forth in a specific permit condition issued pursuant to the Authority's notice and permit issuance or modification procedures.
- D. Such temporary allocations are for a specific time period and may be recalled with proper notice.

Section 34-060 Amended 06/13/00; Section 34-060 Amended 06/13/00; Section 34-060 Amended 05/12/98.

Section 34-070 Sampling, Testing and Monitoring of Air Contaminant Emissions

1. Program

- A. As part of its coordinated program of air quality control and preventing and abating air pollution, the Authority may:
 - (1) require any person responsible for emissions of air contaminants to make or have made tests to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
 - (2) require full reporting of all test procedures and results furnished to the Authority in writing and signed by the person or persons responsible for conducting the tests; and
 - (3) require continuous monitoring of specified air contaminant emissions and periodic regular reporting of the results of such monitoring.
- B. At the request of the Authority, an owner or operator of a source required to conduct emissions tests may be required to provide emission testing facilities as follows:
 - (1) sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
 - (2) utilities for sampling and testing equipment.
- C. Testing shall be conducted in accordance with the Department's Source Sampling Manual (January, 1992), the Department's Continuous Monitoring Manual (January, 1992), or an applicable EPA Reference Method unless the Authority, where allowed under applicable federal requirements:
 - (1) specifies or approves, in specific cases, minor changes in methodology;
 - (2) approves the use of an equivalent method or alternative method which will provide adequate results;
 - (3) waives the requirement for tests because the owner or operator of a source has demonstrated by other means to the Authority's satisfaction that the affected facility is in compliance with applicable requirements; or
 - (4) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

2. Stack Heights and Dispersion Techniques

- A. **40 CFR, Parts 51.100 (ff) through 51.100(kk), 51.118, 51.160 through 51.166 (July 1, 1993)** are by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.
- B. In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in calculations as noted above.
- C. This section has the following general applicability:
 - (1) With respect to the use of excessive stack height, stacks 65 meters high or greater, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or greater which were constructed before that date, are subject to this section, with the exception that certain stacks at federally owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt.
 - (2) With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant, is subject to this section. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion techniques to increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.
- D. Definitions:
 - (1) Where found in the federal rule, the term "reviewing agency" means the Authority, the Department, or the EPA, as applicable;
 - (2) Where found in the federal rule, the term "authority administering the State Implementation Plan" means the Authority, the Department, or the EPA;
 - (3) The "procedures" referred to in **40 CFR 51.164** are the New Source Review procedures at the Department (OAR 340 Division 224) or at the Authority (Title 38); and the review procedures for new, or modifications to, minor sources, at the Department (OAR 340-0200 to 0220, 340 Division 216) or at the Authority (34-035).
 - (4) Where "the state" or "state, or local control agency" is referred to in **40 CFR 51.118**, it means the Department or the Authority.
 - (5) Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of the Department or the Authority, as approved by the EPA, or any EPA-promulgated regulations (see **40 CFR Part 52, Subpart MM**).

3. Methods

- A. Any sampling, testing, or measurement performed under this regulation shall conform to methods contained in the Department's Source Sampling Manual or to recognized applicable standard methods approved in advance by the Authority.

- B. The Authority may approve any alternative method of sampling provided it finds that the proposed method is satisfactory and complies with the intent of these regulations and is at least equivalent to the uniform recognized procedures in objectivity and reliability, and is demonstrated to be reproducible, selective, sensitive, accurate and applicable to the program.
- 4. Authority Testing. The Authority, instead of requesting tests and sampling of emissions from the person responsible for an air contamination source, may conduct such tests alone or in conjunction with said person. If the testing or sampling is performed by the Authority, a copy of the results shall be provided to the person responsible for the air contamination source.
 - 5. Records--Maintaining and Reporting
 - A. Upon notification from the Director, all persons owning or operating a source within Lane County shall keep and maintain written records of the nature, type and amounts of emissions from such source and other information as may be required by the Director to determine whether the source is in compliance with applicable emission rules, limitations or other control measures.
 - B. The records shall be submitted to the Authority on an annual basis, or more frequently if requested in writing by the Authority. They shall be submitted using an Emissions Inventory Questionnaire form provided by the Authority. Except as may be otherwise provided by rule, annual periods are January 1 through December 31. A more frequent basis for reporting may be required due to noncompliance or to protect human health or the environment.
 - C. The reports required by this rule shall be submitted by the end of the first calendar quarter of the next year (March 31).

Section 34-070 Amended 06/13/00.

Section 34-080 Excess Emissions

See Title 36, Section 36-001 through 36-030.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE
AIR CONTAMINANT DISCHARGE PERMITS (ACDP)

Section 34-090 Purpose and Applicability

- 1. In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, no person shall construct, install, establish, modify, enlarge, develop or operate an air contaminant source listed in Table A Part II, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.

2. The purpose of Sections 34-090 through 34-160 is to prescribe the requirements and procedures for obtaining ACDP's for stationary sources listed in Table A Part II. Sections 34-090 through 34-160 shall not apply to Title V Operating Permit program sources unless an ACDP is required by 34-110(2), 34-110(4), 34-120 or 38-001.
3. Sources not listed in Table A Part II are subject to requirements for construction (34-035) and may be subject to registration requirements (34-030).

Section 34-090 Amended 06/13/00.

Section 34-100 Permit Categories

The following list delineates the types of permit which may apply to a stationary source:

1. Title V Operating Permit, for major stationary sources as defined by OAR 340-200-0020-63(b). Permitting requirements for Title V Operating Permit program sources are prescribed in Sections 34-110-2 and 4, and Sections 34-170 through 34-200.
2. Regular ACDP, for stationary sources listed in Table A Part II. Permitting requirements for regular ACD permits are prescribed in Sections 34-110 through 34-160.
3. Synthetic Minor ACDP, for stationary sources defined by OAR 340-200-0020. Permitting procedures for Synthetic Minor ACDP's are prescribed in Sections 34-110-2, 4 and 5, and 34-120 through 34-160.
4. Multiple Source Permit. When a single site includes more than one air contaminant source, a single ACDP may be issued including all sources located at the site. For uniformity such applications shall separately identify, by subsection, each air contaminant source included from Table A Part II. Permitting procedures for multiple source permits are the same as for regular ACDP's and are prescribed in Sections 34-130 through 34-160.
 - A. When a single air contaminant source which is included in a multiple-source ACDP is subject to permit modification, revocation, suspension, or denial, such action by the Authority shall only affect that individual source without thereby affecting any other source subject to the permit.
 - B. When a multiple-source ACDP includes air contaminant sources subject to the jurisdictions of both the Department and the Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.
5. Minimal Source Permit
 - A. The Lane Regional Air Pollution Authority may designate any source as a "minimal source" based upon the following criteria:
 - (1) quantity and quality of emissions;

- (2) type of operation;
- (3) compliance with Authority regulations;
- (4) minimal impact on the air quality of the surrounding region.

B. If a source is designated as a minimal source, the compliance determination fee, provided by Section 34-150 (ACDP Permits) will be collected no less frequently than every five (5) years.

6. Letter Permits

- A. Any source listed in Table A, Part II, with no, or insignificant, air contaminant discharges may apply to the Authority for a letter permit.
- B. The determination of applicability of this letter permit shall be made solely by the Authority.
- C. If issued a letter permit, the application processing fee and/or annual compliance determination fee, provided by Section 34-150 (ACDP Fees) may be waived by the Authority.

Section 34-100 Amended 06/13/00.

Section 34-110 Permit Required

1. No person shall construct, install, establish, develop or operate any air contaminant source which is referred to in Table A Part II, appended hereto and incorporated herein by reference, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.
2. No person shall construct, install, establish, or develop any major source, as defined by OAR 340-200-0020 that will be subject to the Title V Operating Permit program without first obtaining an ACDP from the Authority. Any Title V Operating Permit program source required to have obtained an ACDP prior to construction shall:
 - A. choose to become a synthetic minor source, Section 34-120, and remain in the ACDP program; or
 - B. file a complete application to obtain the Title V Operating Permit within twelve (12) months after initial startup.
3. No person shall modify any source covered by an ACDP under 34-100 through 34-160 such that the emissions are significantly increased without first applying for and obtaining a permit modification.
4. No person shall modify any source required to be covered by an ACDP under 34-100 through 34-160 such that the source becomes subject to the Title V Operating Permit program, 34-170 through 34-200 without first applying for and obtaining a modified ACDP. Any Title V Operating Permit program source required to have obtained an ACDP prior to modification shall:

- A. choose to become a synthetic minor source, 34-120, and remain in the ACDP program;
 - B. choose to remain a synthetic minor source, 34-120, and remain in the ACDP program; or
 - C. file a complete application to obtain the Title V Operating Permit within twelve (12) months after initial startup of the modification.
5. No person shall increase emissions above the PSEL or operate in excess of the enforceable condition to limit potential to emit and remain a synthetic minor source without first applying for and obtaining a modified ACDP.
6. No person shall modify any source covered by an ACDP under 34-100 through 34-160 and not required to obtain a Title V Operating Permit such that:
- A. the process equipment is substantially changed or added to; or
 - B. the emissions are significantly changed, without first notifying the Authority.

Section 34-110 Amended 06/13/00.

Section 34-120 Synthetic Minor Sources

1. Enforceable conditions to limit a source's potential to emit shall be included in the ACDP for a synthetic minor source. Enforceable conditions, in addition to the PSEL established under 34-060, shall include one or more of the following physical or operational limitations, but in no case shall exceed the conditions used to establish the PSEL:
 - A. restrictions on hours of operation;
 - B. restrictions on levels of production;
 - C. restrictions on the type or amount of material combusted, stored, or processed;
 - D. additional air pollution control equipment; or
 - E. other limitations on the capacity of a source to emit air pollutants.
2. The reporting and monitoring requirements of the conditions which limit the potential to emit contained in the ACDP of synthetic minor sources shall meet the requirements of 34-070.
3. To avoid being required to submit an application for a Title V Operating Permit, the owner or operator of a major source shall obtain an ACDP or a modification to an ACDP containing conditions that would qualify the source as a synthetic minor source prior to the time the owner or operator would be required to submit a Title V Operating Permit application.
4. Applications for synthetic minor source status shall be subject to notice procedures of 34-130-5.

5. Synthetic minor source owners or operators who cause their source to be subject to the Title V Operating Permit program by requesting an increase in the source's potential to emit, when that increase uses the source's existing capacity and does not result from construction or modification, shall:
 - A. become subject to 34-170 through 34-200 (OAR 340 Division 218);
 - B. submit a Title V Operating Permit application pursuant to OAR 340-218-0040; and
 - C. receive a Title V Operating Permit before commencing operation in excess of the enforceable conditions to limit potential to emit.

6. Synthetic minor source owners or operators who cause their source to be subject to the Title V Operating Permit program by requesting an increase in the source's potential to emit, when that increase is the result of construction or modification, shall:
 - A. submit an application for the modification of the existing ACDP;
 - B. receive the modified ACDP before beginning construction or modification;
 - C. become subject to 34-170 through 34-200 (OAR 340 Division 218); and
 - D. submit a Title V Operating Permit application under OAR 340-218-0040 to obtain a Title V Operating Permit within twelve (12) months after initial startup of the construction or modification.

7. Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-218-0020(1)(a).

Section 34-120 Amended 06/13/00.

Section 34-130 General Procedures for Obtaining ACDP Permits (*Note: Procedures for reviewing new major sources or major modifications are contained in Title 38, New Source Review.*)

1. No person shall commence construction, installation or modification of an air contaminant discharge source prior to obtaining an Air Contaminant Discharge Permit. The Director may allow commencement of construction prior to obtaining an ACDP, if applicant demonstrates no emissions increase of any regulated pollutant.

2. Any person intending to construct, install or establish a new source or renew an existing permit shall submit a complete permit application on forms provided by the Authority and containing the following information:
 - A. name, address and nature of business;

 - B. a description of the production processes and a related flow chart;

- C. a plot plan showing location of all air contaminant sources, all discharge points and the surrounding residential and commercial property;
 - D. type and quantity of fuels used;
 - E. amount, nature and duration of all emissions of air contaminants;
 - F. plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
 - G. estimated efficiency of air pollution control equipment;
 - H. any information on pollution prevention measures and cross-media impacts the person wants the Authority to consider in determining applicable control requirements and evaluating compliance methods;
 - I. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under 32-007-1 and 2; and
 - J. other pertinent information required by the Authority.
3. Unless otherwise specified, within fifteen (15) days after receiving the permit application the Authority will review the application to determine the adequacy of the information submitted.
- A. If the Authority determines that additional information is needed, it will promptly request the needed information from the applicant. The permit 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 ninety (90) days of the request.
 - B. If, in the opinion of the Director, additional measures are necessary to gather facts regarding the permit application, the Director will notify the applicant of his intent to institute said measures 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.
 - C. When the information in the permit application is deemed adequate, the applicant will be notified that the application is complete for processing.
 - D. Following determination that it is complete for processing, each permit application will be reviewed on its own merit, in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Lane Regional Air Pollution Authority.
 - E. If, upon review of the permit application, the Authority determines that a permit is not required, the Authority shall notify the applicant in writing of this determination. Such

notification shall constitute final action by the Authority on the permit application.
(NOTE: Upon notification by the Authority, a registered source may be required to obtain a permit.)

4. In the event the Authority is unable to complete action on a permit application within forty-five (45) days of closing of the public comment period or hearing record under subsection 5 of this section, the applicant shall be deemed to have received a temporary or conditional permit. Caution should be exercised by the applicant under a temporary or conditional permit, since it will expire upon final action by the Authority to grant or deny the original application, and since such temporary or conditional permit does not authorize any construction activity, operation or discharge which will violate any of the laws, rules or regulations of the State of Oregon or the Lane Regional Air Pollution Authority.
5. Public Notice. If the Authority proposes to issue a permit, public notice of proposed provisions prepared by the Authority will be forwarded to the applicant and other interested persons, at the discretion of the Authority, for comment. The public notice shall allow thirty (30) days for written comment from the applicant, the public and the interested local, state and federal agencies prior to issuance of the permit. Public notice shall include the names and quantities of new or increased emissions for which permit limits are proposed or new or increased emissions which exceed Significant Emission Rates established by the Authority. If, within fourteen (14) days after commencement of the public notice period, the Authority receives written requests from ten (10) persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Authority shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Notice of such a hearing may be given, at the Authority's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons. The Authority shall take final action on the permit application within forty-five (45) days of the closing of the public comment period or the hearing record.
6. The Authority may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Authority shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.
7. The Authority shall promptly notify the applicant in writing of the final action taken on the application. If the conditions of the 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 permit issued shall be attached to the notification.
8. If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Authority, the applicant may request a hearing before the Board of Directors or its authorized representative. Such a request for hearing shall be made in writing to the Director within twenty (20) days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the rules of the Authority.
9. If the Authority proposes to deny issuance of a permit, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become

effective twenty (20) days from the date of mailing of such notice unless, within that time, the applicant requests a hearing. Any hearing held shall be conducted pursuant to the rules of the Authority.

10. Permits issued by the Authority will specify those activities, operations, emissions and discharges which are permitted, as well as requirements, limitations and conditions which must be met.
11. No permit will be issued to an air contaminant source which is not in compliance with applicable rules, unless a compliance schedule is made a condition of the permit.
12. Each permit proposed to be issued or revised by the Authority shall be submitted to the Department of Environmental Quality at least thirty (30) days prior to the proposed issuance date.
13. A copy of each permit issued, modified or revoked by the Authority pursuant to this section shall be promptly submitted to the Department.
14. The Authority may waive the procedures prescribed in these rules and issue special permits of duration not to exceed sixty (60) days from the date of issuance for unexpected or emergency activities, operations, emissions or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources and shall include provisions for compliance with applicable emissions standards of the Authority. Application for such permits shall be in writing and may be in the form of a letter which fully describes the emergency and the proposed activities, operations, emissions or discharges, as described in subsection 2 of this section.
15. The Authority may institute modification of a permit due to changing conditions or standards, receipt of additional information or other reason, by notifying the permittee by registered or certified mail of its intention to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modifications shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing, and the hearing shall be conducted pursuant to the rules of the Authority. A copy of the modified permit shall be forwarded to the permittee as soon as the modification becomes effective. The existing permit shall remain in effect until the modified permit is issued.
16. The procedure 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 Authority in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny a permit.

Section 34-130 Amended 06/13/00; Section 34-130 Amended 09/09/97

Section 34-140 Permit Duration

1. The duration of permits may vary but shall not exceed ten (10) years, except that Synthetic Minor Permits shall not be issued for more than five (5) years. The expiration date will be recorded on each permit issued.

2. Air Contaminant Discharge Permits issued by the Authority shall be automatically terminated:
 - A. Within sixty (60) days after sale or exchange of the activity or facility which requires a permit;
 - B. Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application;
 - C. Within one (1) year after a plant closure lasting continuously for one (1) or more years.
 - D. Upon issuance of a new, renewal or modified permit for the same operation; or
 - E. Upon written request of the permittee.
3. In the event that it becomes necessary to suspend or terminate a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application or any other cause, the Authority shall notify the permittee by registered or certified mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests hearing. Such a request for hearing shall be made in writing and shall state the grounds for the request.
4. Termination of a permit resulting from continuous plant closure shall subject the source to review as a new non-permitted source upon application to operate the facility.
5. If the Authority finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may suspend or terminate a permit, effective immediately. Notice of such suspension or termination must state the reasons for action and advise the permittee that he may request a hearing. Such a request for hearing shall be made in writing within ninety (90) days of the date of suspension and shall state the grounds for the request.
6. Any hearing requested under this Section shall be conducted pursuant to the rules of the Authority.

Section 34-140 Amended 06/13/00.

Section 34-150 ACDP Fees

1. All persons applying for an ACD permit for a new source, a source operating without a permit, or a renewal of an existing ACDP shall at the time of application pay the following fees:
 - A. a filing fee as listed in Table A Part I, item J, of this rule;
 - B. an application processing fee as listed in Table A Part II of this rule; and
 - C. an annual compliance determination fee as listed in Table A Part II of this rule.

D. New and previously unpermitted sources are also subject to initial construction review (Table A, Part I).

Both the application processing fee and the annual compliance fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories).

2. All persons applying for a modification of an existing ACDP shall at the time of application pay the following fees:
 - A. a filing fee as listed in Table A Part I, Item J, of this rule; and
 - B. an application processing fee as listed in Table A Part II of this rule.

The application processing fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories). Modifications subject to the requirements of Section 34-035, Requirements for Construction, may be subject to the fees of Table A Part I, in addition to the fees of Table A Part II.

3. All persons applying for a Synthetic Minor ACDP (34-120) shall at the time of application pay the following fees:
 - A. a filing fee as listed in OAR 340-216-0090 Table 1, Part I;
 - B. an application processing fee as listed in OAR 340-216-0090 Table 1, Part I;
 - C. an annual compliance determination fee as listed in OAR 340-216-0090 Table 1, Part I; and
 - D. all of the applicable fees of LRAPA Title 34, Table A Part I.
4. The fee schedule contained in Table A Part II shall be applied to determine the ACDP fees on a standard industrial classification (SIC) basis.
5. Applications for multiple-source permits received pursuant to Section 34-100-4 (Permit Categories) shall be subject to a single filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in Table A Part II.
6. In addition to the fees mentioned above, sources may be subject to the fees of Table A Part I. The fees for construction review shall be based on the definitions of review levels in Section 34-035-3.
7. Modifications of existing, unexpired permits, which are instituted by the Authority due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and which do not require refileing or review of an application or plans and specifications, shall not require submittal of the filing fee or the application processing fee.

8. The annual compliance determination fee shall be paid at least thirty (30) days prior to the start of each subsequent permit year. Failure to remit the annual compliance determination fee on time shall be considered grounds for not issuing a permit or for terminating an existing permit. Also, such a failure is, in and of itself, a violation and may subject the permittee to enforcement procedures as defined in Title 15 of LRAPA Rules and Regulations.
9. If a permit is issued for a period of less than one year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than twelve (12) months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance fee by the number of months covered by the permit and dividing by twelve (12).
10. If a temporary or conditional permit is issued in accordance with adopted procedure, fees submitted with the application shall be applied to the regular permit when it is granted or denied.
11. All fees shall be made payable to the Authority.
12. Table A Part II of this Title lists all air contaminant sources required to have a permit and the associated fee schedule.
13. The fees in LRAPA 34, Table A will increase by four (4) percent on July 1 of each year, beginning on July 1, 2001.

Section 34-150 Amended 06/13/00; Section 34-150 Amended 05/12/98.

Section 34-160 New Source Review

New Source Review requirements are contained in LRAPA Title 38, Sections 38-001 through 38-050.

RULES APPLICABLE TO SOURCES REQUIRED TO HAVE TITLE V OPERATING PERMITS

Section 34-170 Applicability

Sections 34-180 through 34-200 apply to any stationary source defined under OAR 340-218-0020.

Section 34-170 Amended 06/13/00.

Section 34-180 Authority to Implement

In accordance with OAR 340-218-0010, OAR 340-218-0010, and OAR 340-244-0020, the Authority is authorized to implement all Oregon Administrative Rules, Divisions 218, 220, and 244, which apply to sources subject to the Title V Operating Permit program in Lane County. LRAPA shall implement Division 218, 220, and 244 rules as they pertain to Title V Operating Permit Program sources until such time as it adopts its own Title V Permit Program rules.

Section 34-180 Amended 06/13/00.

Section 34-190 Definitions

All definitions relevant to Title V Operating Permit Program rules are contained in OAR 340-200-0020 and are adopted here by reference in their entirety.

Section 34-190 Amended 06/13/00.

Section 34-200 Title V Operating Permitting Program Requirements and Procedures

All rules pertaining to permitting of sources subject to Title V Operating Permit program are contained in OAR 340-218-0020 through 220-0190 and OAR Division 244 and 248, and shall be implemented by the Authority in accordance with Section 34-180.

Section 34-200 Amended 06/13/00.

RULES APPLICABLE TO SOURCES DESIRING GREEN PERMITS

Section 34-210 Applicability

Sections 34-220 through 34-230 apply to stationary sources regulated by the Authority's rules who voluntarily wish to obtain a Green Permit as defined under OAR 340-014-0105.

Section 34-210 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

Section 34-220 Authority to Implement

In accordance with OAR 340-104-0100, the Authority is authorized to implement all Oregon Administrative Rules in Division 14 that apply to Green Permits.

Section 34-220 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

Section 34-230 Green Permits Permitting Program Requirements and Procedures

All rules and definitions pertaining to requirements and procedures for obtaining Green Permits are contained in OAR 340-014-0100 through OAR 340-014-0165 and are adopted here by reference in their entirety.

Section 34-230 is not included in Oregon's SIP. Original adoption of this section 09/14/99.

TABLE A
 AIR CONTAMINANT SOURCES AND
 ASSOCIATED FEE SCHEDULE
 PART I

NOTE: Fees in A-I are in addition to any other applicable fees.

<p>A. Late Payment (In addition to this late fee, sources are subject to enforcement action for late payment.)</p>	<p>1.5 %</p>	<p>G. Elective Permits--Synthetic Minor Sources</p>	
		<p>(1) Permit application or modification (according to the fee in OAR 340-216-0090 Table 1 Part I in effect at time of permitting action)</p>	
<p>B. Ambient Monitoring Network Review</p>	<p>\$ 1,053</p>		
<p>C. Modeling Review</p>	<p>\$ 2,340</p>	<p>(2) Annual compliance assurance According to the fee in OAR 340-216-0090 Table 1 Part I in effect at time of permitting action</p>	
<p>D. Alternative Emission Control Review</p>	<p>\$ 1,755</p>		
<p>E. Non-technical permit modification (name change, ownership transfer, similar)</p>	<p>\$ 59</p>	<p>H. Emission Banking Review</p>	
<p>F. Construction Review (see Section 34-035 for definition of level of construction review)</p>		<p>(1) Initial setup</p>	<p>\$ 1,000</p>
		<p>(2) Annual review</p>	<p>\$ 500</p>
<p>(1) Level I</p>	<p>\$ 200</p>	<p>I. Emission Offsetting Review</p>	<p>\$ 1,000</p>
<p>(2) Level II</p>	<p>\$ 2,210</p>	<p>J. Filing</p>	<p>\$ 98</p>
<p>(3) Level III</p>	<p>\$11,050</p>		
<p>(4) Level IV</p>	<p>\$24,310</p>		

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in Part II, in addition to fee for other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
1. Seed cleaning located in Air Quality Maintenance Areas, commercial operations only (not elsewhere classified)	0723	\$ 721	\$ 1,099
2. RESERVED			
3. Flour and other grain mill products in Air Quality Maintenance Areas			
(a) 10,000 or more tons per year	2041	\$ 2,343	\$ 2,162
(b) Less than 10,000 tons per year	2041	\$ 1,802	\$ 928
4. Cereal preparations in Air Quality Maintenance Areas	2043	\$ 2,343	\$ 1,559
5. Blended and prepared flour in Air Quality Maintenance Areas			
(a) 10,000 or more tons per year	2045	\$ 2,343	\$ 1,559
(b) Less than 10,000 tons per year	2045	\$ 1,802	\$ 901
6. Prepared feeds for animals and fowl in Air Quality Maintenance Areas			
(a) 10,000 or more tons per year	2048	\$ 2,343	\$ 2,162
(b) Less than 10,000 tons per year	2048	\$ 1,442	\$ 1,703

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
7. Beet sugar manufacturing	2063	\$ 3,063	\$10,730
8. Rendering plant			
(a) 10,000 or more tons per year	2077	\$ 2,883	\$ 3,460
(b) Less than 10,000 tons per year	2077	\$ 2,162	\$ 1,875
9. Coffee roasting			
(a) less than 30 tons/year	2095	\$ 399	\$ 595
(b) 30 tons/year or more roasted product	2095	\$ 1,442	\$ 1,415
10. Sawmill and/or planing mill			
(a) 25,000 or more board feet per shift	2421	\$ 1,442	\$ 2,162
(b) Less than 25,000 board feet per shift (no ODEQ equivalent)	2421	\$ 480	\$ 1,009
11. Hardwood mills (no ODEQ equivalent)	2426	\$ 480	\$ 1,354
12. Shake and shingle mills with air transfer systems (no ODEQ equivalent)	2429	\$ 480	\$ 511
13. Mill work (including kitchen cabinets and structural wood members) 25,000 or more board feet per shift	2431, 2434 & 2439	\$ 1,081	\$ 1,703

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	PART II	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
14. Plywood manufacturing and/or veneer drying				
(a) 25,000 or more square feet per hour (3/8" basis finished product)		2435 & 2436	\$ 4,505	\$ 4,361
(b) 10,000 or more but less than 25,000 square feet per hour (3/8" basis finished product)		2435 & 2436	\$ 3,244	\$ 2,946
(c) less than 10,000 square feet per hour (3/8" basis finished product)		3435 & 3436	\$ 1,081	\$ 1,559
15. Veneer manufacturing only (not elsewhere classified)		2435 & 2436	\$ 1,081	\$ 1,559
16. Wood preserving		2491	\$ 2,002	\$ 1,921
17. Particleboard manufacturing (including strandboard, flakeboard and waferboard)				
(a) \geq 10,000 sq.ft./hr--3/4" basis finished product		2493	\$ 4,505	\$ 5,135
(b) $<$ 10,000 sq.ft./hr--3/4" basis finished product		2493	\$ 2,162	\$ 2,450

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
18. Hardboard manufacturing			
(a) ≥ 10,000 sq.ft./hr--1/8" basis finished product	2493	\$ 4,505	\$ 4,217
(b) < 10,000 sq.ft./hr--1/8" basis finished product	2493	\$ 2,162	\$ 2,162
19. Battery separator manufacturing	3069	\$ 1,802	\$ 3,748
20. Furniture and fixture manufacturing 25,000 or more board feet/shift	2511	\$ 1,081	\$ 1,703
21. Pulp mills, paper mills and paperboard mills	2611, 2621 & 2631	\$ 9,009	\$18,658
22. Building paper and building board mills	2661	\$ 1,442	\$ 1,415
23. Alkalies and chlorine manufacturing			
(a) Simple *	2812	\$ 2,523	\$ 3,721
(b) Complex *	2812	\$ 4,415	\$ 4,955
24. Calcium carbide manufacturing			
(a) Simple *	2819	\$ 2,703	\$ 3,721

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II			
Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
(b) Complex *	2819	\$ 4,730	\$ 4,730
25. Nitric acid manufacturing			
(a) Simple *	2819	\$ 1,802	\$ 1,875
(b) Complex *	2819	\$ 3,154	\$ 2,496
26. Ammonia manufacturing			
(a) Simple *	2819	\$ 1,802	\$ 2,162
(b) Complex *	2819	\$ 3,154	\$ 2,883
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere classified)			
(a) Simple *	2819 & 2869	\$ 2,343	\$ 2,659
(b) Complex *	2819 & 2869	\$ 4,100	\$ 3,531
28. Synthetic resin manufacturing			
(a) <250,000 Tons of Product Per Year	2821	\$ 1,802	\$ 2,162
(b) ≥250,000 Tons of Product Per Year	2821	\$ 3,154	\$ 2,883
29. Charcoal manufacturing	2861	\$ 3,534	\$ 4,505

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
30. Pesticide/Herbicide manufacturing	2879	\$ 4,505	\$18,658
31. Petroleum refining	2911	\$ 9,009	\$18,658
32. Asphalt production by distillation	2951	\$ 1,802	\$ 2,162
33. Asphalt blowing plants	2951	\$ 1,802	\$ 2,803
34. Asphaltic Concrete Paving Plants			
(a) Stationary	2951	\$ 1,001	\$ 2,182
(b) Portable	2951	\$ 1,001	\$ 2,182
35. Asphalt felts or coating	2952	\$ 901	\$ 1,622
36. Blending, compounding or refining of lubricating oils and reprocessing of oils and solvents for fuel	2992	\$ 1,622	\$ 2,019
37. Glass container manufacturing	3221	\$ 1,802	\$ 2,659
38. Cement manufacturing	3241 & 3251	\$ 5,765	\$13,667
39. Concrete Manufacturing including Redimix and CTB	3271, 3272 & 3273	\$ 360	\$ 577

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
40. Lime manufacturing	3274	\$ 2,749	\$ 1,415
41. Gypsum products	3275	\$ 1,442	\$ 1,559
42. Sand and Gravel Plants: Rock Crusher			
(a) Stationary	1429, 1442, 1446 & 3295	\$ 1,870	\$ 1,960
(b) Portable	1429, 1442, 1446 & 3295	\$ 1,370	\$ 1,160
(c) Portable less than 150 Tons/hour maximum rated capacity (no ODEQ equivalent)	1429, 1442, 1446 & 3295	\$ 450	\$ 750
43. Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	\$ 4,505	\$ 3,721
44. Incinerators	4953 & 7261		
(a) 250 or more ton/day capacity or an off-site infectious waste incinerator		\$21,622	\$ 9,316
(b) 50 or more but less than 250 tons/day capacity		\$ 5,405	\$ 2,829
(c) 0.5 or more but less than 50 tons/day capacity		\$ 901	\$ 1,099
(d) crematoriums and pathological waste incinerators not elsewhere classified		\$ 901	\$ 1,099
(e) PCB and/or off-site hazardous waste incinerator		\$21,622	\$ 9,316

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
45. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified)	3321, 3322, 3324 & 3325		
(a) 3,500 or more tons per year production		\$ 4,505	\$ 3,261
(b) Less than 3,500 tons per year production		\$ 1,081	\$ 1,703
46. Primary aluminum production	3334	\$ 9,009	\$18,658
47. Primary smelting of zirconium or hafnium or primary smelting and refining of other ferrous or non-ferrous metals not elsewhere classified			
(a) ≥ 2,000 TPY production	3339	\$ 9,009	\$18,658
(b) < 2,000 TPY production	3339	\$ 4,505	\$ 3,117
48. Primary smelting of silicon	3339	\$ 3,883	\$ 8,749
49. Secondary smelting and refining of nonferrous metals	3341	\$ 2,162	\$ 2,162
50. Nonferrous metal foundries (100 or more tons/year metal charged)	3361, 3362 & 3369	\$ 1,081	\$ 1,875
51. RESERVED			

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
52. Galvanizing and pipe coating--exclude all other activities	3479	\$ 901	\$ 1,415
53. Battery manufacturing	3691	\$ 1,090	\$ 1,875
54. Grain elevators--intermediate storage only, located in Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	4221	\$ 1,622	\$ 2,946
(b) Less than 20,000 tons per year	4221	\$ 901	\$ 1,415
55. Electric power generation or cogeneration			
(a) Solid fuel--25 MW or greater	4911	\$36,036	\$18,658
(b) Solid Fuel--less than 25 MW	4911	\$17,067	\$ 9,170
(c) Oil or gas fired	4911	\$ 3,244	\$ 4,505
56. Fuel burning Equipment at gas production and/or distribution facilities	4925	\$ 3,424	\$ 2,162
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain in Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	5153	\$ 4,505	\$ 3,721

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
(b) Less than 20,000 tons per year	5153	\$ 1,261	\$ 1,415
58. Fuel-Burning Equipment (gas or oil), Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$ 2,753	\$ 3,819
(b) >100 and <250 million BTU/hr	4961	\$ 1,872	\$ 1,730
(c) >10 and <100 million BTU/hr	4961	\$ 1,228	\$ 1,210
(d) <10 million BTU/hr	4961	\$ 409	\$ 434
<i>(Note: ODEQ does not charge fees for gas-fired boilers)</i>			
59. Fuel-Burning Equipment Inside the AQMA (Wood or Coal Only) Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$ 4,352	\$ 3,745
(b) >100 and <250 million BTU/hr	4961	\$ 3,088	\$ 2,877
(c) >10 and <100 million BTU/hr	4961	\$ 2,244	\$ 1,897
(d) <10 million BTU/hr	4961	\$ 1,365	\$ 1,252
60. Fuel-Burning Equipment Outside the AQMA (Wood or Coal Only) Aggregate Heat Input			
(a) >250 million BTU/hr	4961	\$ 3,274	\$ 2,988
(b) >100 and <250 million BTU/hr	4961	\$ 2,443	\$ 2,641
(c) >10 and <100 million BTU/hr	4961	\$ 1,476	\$ 1,624

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
(d) <10 million BTU/hr	4961	\$ 608	\$ 1,327
61. Sources not listed herein which would emit 5 or more tons of PM10/year in a PM10 non-attainment area, or 10 or more tons per year of any criteria pollutant elsewhere in Lane County, including but not limited to: [particulates]PM, SO _x , NO _x or [hydrocarbons] Volatile Organic Compounds (VOC), if the source were to operate uncontrolled			
(a) Complex *		\$16,216	\$11,532
(b) Moderate		\$ 4,505	\$ 2,019
(c) Simple *		\$ 1,081	\$ 865
62. Sources not listed herein which would emit significant malodorous emissions as determined by Authority review of sources which are known to produce similar air contaminant emissions			
(a) Problematic and/or High Risk **		\$16,216	\$11,532
(b) Moderate Concern **		\$ 4,505	\$ 2,019
(c) Marginal Concern **		\$ 1,081	\$ 865

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
63. Sources not listed herein for which an air quality problem is identified by the Authority, including but not limited to: open storage of dusty material and sandblasting operations			
(a) Problematic and/or High Risk **		\$16,216	\$11,532
(b) Moderate Concern **		\$ 4,505	\$ 2,019
(c) Marginal Concern **		\$ 1,081	\$ 865
64. Bulk gasoline plants	5100 & 5171	\$ 721	\$ 928
65. Bulk gasoline terminals	5171	\$ 7,207	\$ 3,117
66. Volatile organic Liquid storage tanks--39,000 gallons or more capacity (not elsewhere classified)	4200, 5169 & 5171	\$ 360/tank	\$ 640/tank
67. Can or drum coating			
(a) ≥ 50,000 units/mon.	3411 & 3412	\$10,811	\$ 5,595
(b) < 50,000 units/mon.	3411 & 3412	\$ 721	\$ 1,244
68. Paper or other substrate coating	2641 & 3861	\$10,811	\$ 5,595
69. Coating flat wood	2400 & 2672	\$ 3,604	\$ 1,875

Note: A filing fee of \$98 is required for all sources.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	PART II		
	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
70. Surface coating manufacturing			
(a) 100 tons or more of VOC per year	2851	\$ 3,604	\$ 2,487
(b) 10 tons or more but less than 100 tons/year VOC	2851	\$ 1,081	\$ 1,244
(c) Less than 10 tons VOC per year	2851	\$ 360	\$ 523
71. Flexographic or rotogravure printing			
(a) ≥60 tons VOC per year	2751, 2754 & 2759	\$ 4,055	\$ 3,604
(b) 10 tons or more but less than 60 tons VOC per year per plant	2751, 2754 & 2759	\$ 780	\$ 1,680
72. RESERVED			
73. Minor sources of HAPs (not elsewhere classified) including area sources subject to federal NESHAPS rules under Section 112 of the federal Clean Air Act (except demolition or renovation)		\$ 721	\$ 901
74. Major sources of hazardous air pollutants (HAPs), including those subject to Maximum Available Control Technology (MACT) requirements (not elsewhere classified)			
(a) Complex *		\$16,216	\$11,532
(b) Moderate *		\$ 4,505	\$ 2,019

Note: A filing fee of \$98 is required for all sources.

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

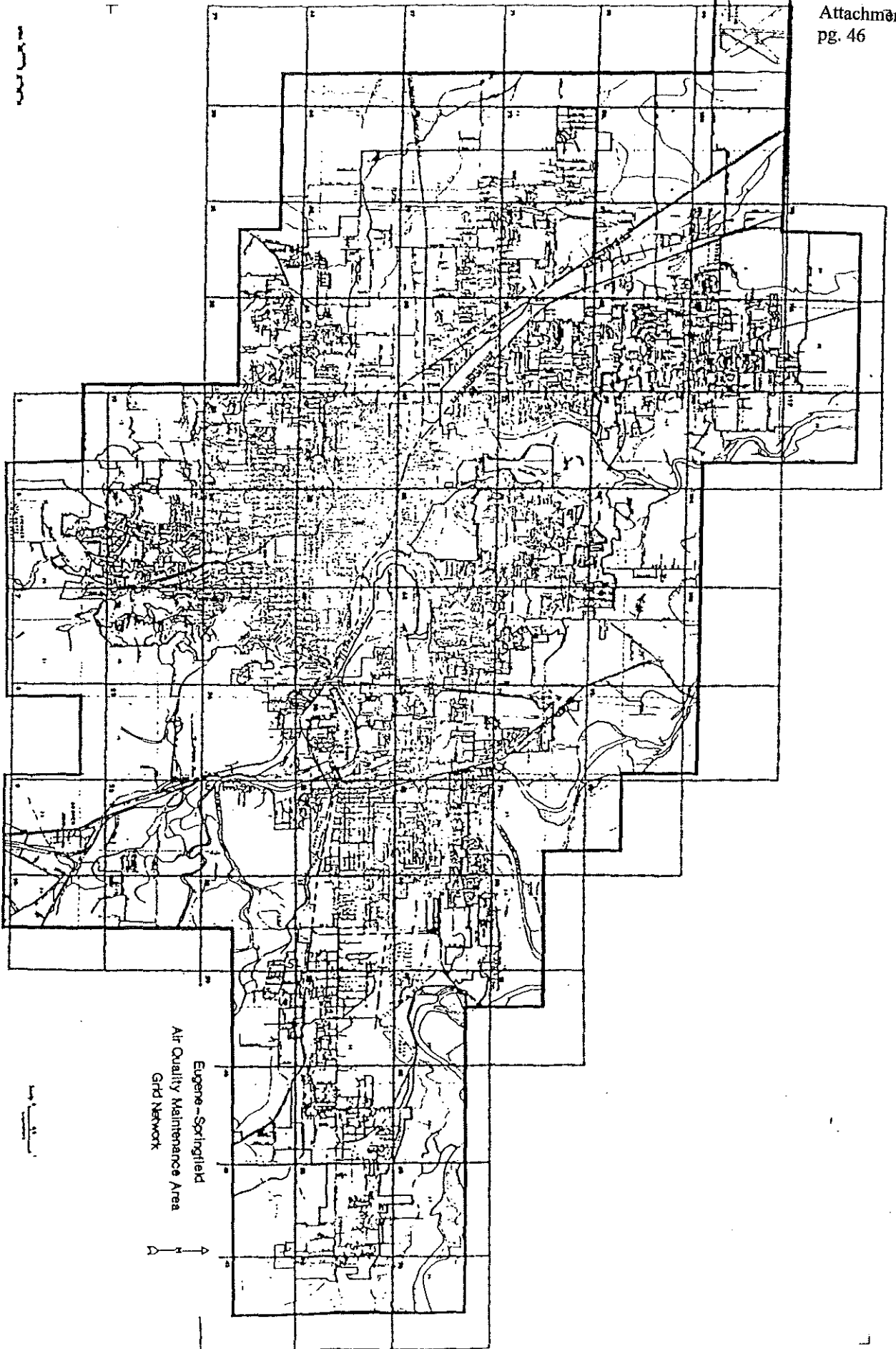
PART II

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
75. Soil remediation Plants			
(a) Stationary (emissions \geq 10 Tons/year)	1799	\$1,802	\$1,703
(b) Portable (emissions \geq 10 Tons/year)	1799	\$1,802	\$1,703
(c) Stationary or Portable (emissions < 10 tpy)	1799	\$ 440	\$ 733

* *The Authority will assign a level of difficulty (complex, moderate, or simple) on the basis of the estimated time required for processing the permit application and compliance assurance activities. Factors considered in the determination will be: type of process; quality of the information provided by the applicant in regard to evaluation of emissions, regulatory requirements, and applicable emission controls; complexity of applicable requirements; number of sources in the permit; level of emissions; and un-addressed compliance issues.*

Note: *A filing fee of \$98 is required for all sources.*

Amended 06/13/2000



May 14, 1985

LRAPA TITLE 34, Tab
A

AGENDA ITEM NO. 8

LRAPA Board of Directors Meeting

June 13, 2000

TO: Board of Directors

FROM: Grecia Castro, Operations Manager, and Sharon Banks, Comptroller

SUBJ: Proposed Amendments to LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," Including Table A, "Air Contaminant Sources and Associated Fee Schedule"

NEED FOR AMENDMENTS

ACDP Fee Increase: An increase in the fees paid by sources required to have Air Contaminant Discharge (ACD) permits is necessary in order to keep up with the escalating costs of implementing and administering the program. On May 12, 1998 the LRAPA Board of Directors approved an amendment to LRAPA rules allowing for an increase in ACDP fees. Prior to that, LRAPA's fees had remained mostly unchanged since 1991. Although the resulting fees, in most cases, were still below the level that a similar source would pay elsewhere in the state, the percentage increase appeared substantial to the sources affected.

Synthetic Minor Fees: On June 25, 1999 the EQC approved a proposal by the Air Quality Division of the Oregon Department of Environmental Quality (ODEQ) to proceed with a fee increase for Title V sources. This rulemaking included an increase in fees charged to sources holding elective permits (synthetic minor sources). As part of a previous amendment to LRAPA's fee schedule, a new category was created for synthetic minor sources. This category was designed to reflect the reduced time spent by staff on permitting and compliance assurance activities for simple sources. Synthetic minors are sources of air emissions that need federally enforceable conditions and additional monitoring to allow them to comply with federal requirements. Based on LRAPA's experience since the minor source fee was established, the level of effort and time required for permitting and compliance activities for synthetic minor sources does not justify the existence of a reduced fee category. The proposed rules will eliminate the specific fees for this category and adopt the DEQ fee by reference. This will mean that, in the future, Synthetic Minor Permits will be treated by LRAPA the same as Title V Permits are, with LRAPA using the state Title V and Synthetic Minor fees in effect at the time a permitting action is being taken.

SUMMARY OF PROPOSED CHANGES

The rule revision proposes increases in various LRAPA charges for permitting and compliance services provided. LRAPA's application and compliance fees would be raised to a level that is 90

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percent of the fees charged by the state, except for the filing fee which will be the same as the state fee. Because these changes would primarily affect those facilities that are paying lower fees as compared to the corresponding state fee, some facilities may not experience a fee increase. To reduce the need for future revisions for minor fee adjustment, it is proposed that both the compliance and application fees be increased automatically by four percent each year.

Construction fee levels II and III would be increased to 85 percent of the fee charged by the state for the equivalent level of review. These fees would affect new sources and sources making substantive modifications.

DETAILS OF PROPOSED CHANGES

The proposed changes are as follows:

34-170: References to state rules are updated to reflect recently adopted state rule revisions.

34-210: Organizational reference information is added for the Green Permits rules adopted in September 1999. These were inadvertently left out when that rulemaking occurred.

34-035: The language is modified to make the rules clearer and easier to understand. Sections affected include 34-035-1, 34-35-2, 34-035-3.A(1), 34-035-3.B(1), 34-035-3.C(1), and 34-035-3-D(1).

34-060: References to state rules are updated to reflect recently adopted state rule revisions.

34-070: References to state rules are updated to reflect recently adopted state rule revisions.

34-100: References to state rules are updated to reflect recently adopted state rule revisions.

34-110: References to state rules are updated to reflect recently adopted state rule revisions.

34-120: References to state rules are updated to reflect recently adopted state rule revisions.

34-150: Subsection 34-150-1 is amended to specify that sources operating without a permit are subject to ACDP fees and that new and previously unpermitted sources are subject to initial construction review. The amount of the filing fee is deleted from 34-150-1.A, 2.A, and 3.A. The proposal moves that fee to Table A, Part I. References to state rules are added to 34-150-2 and 34-150-3. Subsection 34-150-13 is added to provide for an automatic annual increase of four percent in permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. This would affect both Part I and Part II of Table A.

34-170: Reference to state rules is updated to reflect recently adopted state rule revisions.

Table A, Part I:

1. Item A, Late Payment Fees, is changed to 1.5 percent per month until the fees are paid. As is currently the case, sources would also be subject to enforcement action if fees are not paid on time.
2. Item G, Synthetic Minor Sources, fees are eliminated from the table and the state fee for this category adopted by reference.
3. The filing fee is included in Table A, Part I, as Item J.
4. The fees for the rest of the categories on Part I of Table A are generally changed to 90 percent of the ODEQ fee schedule.

Table A, Part II

Fees for most source categories are changed to 90 percent of the state's fee schedule. Several source categories have wording changes for clarity. Attached to the draft amendments is a listing of Lane County permitted sources in each fee category.

RULEMAKING JUSTIFICATION QUESTIONS

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

Response: No. LRAPA is authorized by state law to establish its own ACDP fee schedule.

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

Response: As stated above, there are no state requirements applicable to this case. Additionally, the requirements that are being proposed relate to fees, only, and not to emission standards. Therefore, this question does not apply in this case.

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

Response: Not applicable for the reason given in item 1, above.

4. Will the proposed requirement improve existing requirements or prevent the need for costly retrofit to meet more stringent future requirements?

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Response: Not applicable.

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

Response: Not applicable.

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

Response: Not applicable.

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

Response: The proposed fees will maintain the existing equity for all sources.

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

Response: Not applicable because the requirements that are being proposed relate to fees, only, and not to emission standards.

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

Response: Not applicable for the reasons given in item 2, above.

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

Response: Not applicable because the requirements being proposed relate to fees, only, and not to emission standards.

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

Response: The proposed increase will help maintain the current level of compliance oversight, thereby contributing to the prevention of pollution.

LEGAL AUTHORITY

ORS 183, 468.020, 468A.135; OAR 340-216-0090; LRAPA Titles 13, 14, 34

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June 13, 2000

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PRINCIPAL DOCUMENTS RELIED UPON

1. Attorney General's Uniform and Model Rules of Procedure
2. OAR 340-216
3. LRAPA Title 34

FISCAL AND ECONOMIC IMPACT OF PROPOSED AMENDMENTS

Industry: The fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state.

Public: The increased fees may affect consumers through higher costs of good and services provided by the permitted sources.

LRAPA: The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.

Other Government Agencies: There are three government agencies holding LRAPA permits, one major source, one synthetic minor, and one regular. The proposed changes would result in a 20 percent increase in annual fees for the regular source. The synthetic minor source would be subject to the same fees charged elsewhere in the state. The major source would not be affected.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

PUBLIC COMMENT PROCESS

An initial proposal was sent to LRAPA's mailing list of interested persons (including all holders of Air Contaminant Discharge Permits, Synthetic Minor Permits, and Title V Permits) with a request for their review and comment. It also went to EPA Region 10 in Seattle and Portland and to DEQ Air Quality Division in Portland with a request for their review and comment. DEQ reviewed the proposal and determined that the proposed LRAPA rules are at least as stringent as comparable state rules. We also requested and received DEQ's authorization for LRAPA to serve as hearings officer for the Oregon Environmental Quality Commission (EQC), and this is a joint LRAPA/EQC hearing. Comments received as a result of the initial rulemaking notice are discussed in the "Comments and Responses" section of this report.

The proposal was presented to the LRAPA Advisory Committee in January, and that discussion carried over through the committee's February meeting. The committee did not make a formal

recommendation regarding the proposal. They generally support the fee increase and some mechanism for routine increases in the future. There was some disagreement about whether or not an annual increase should be tied to the CPI as was proposed by staff in the original draft amendments. Several different opinions were voiced, including: the CPI would be a number which reflects the Portland area and would not necessarily apply to Lane County; LRAPA consistently falls further and further behind DEQ in ACDP fees and should have an annual increase of more than the CPI until the difference is made up; the annual increase should be a set percentage rather than the CPI to provide greater financial stability for the agency and to allow industrial sources to know what to expect for the next year. Staff agrees that the annual increase should be a specific percentage and has changed the proposal accordingly.

Notice of this public hearing was published in the May 1 volume of the Secretary of State's Oregon Bulletin, in the May 11 issue of the Oakridge Dead Mountain Echo, and in the May 10 issues of the Eugene Register Guard, the Cottage Grove Sentinel, and the Springfield News. No further written comments have been received regarding the proposed amendments following issuance of these notices.

Following the public hearing, the LRAPA Board will be asked to adopt the rules, either as proposed or with any changes deemed necessary in response to information received at the hearing. If adopted, the amendments will become effective immediately. Following adoption, the amendments will be sent to DEQ for adoption by the EQC. Following EQC adoption, DEQ will forward the amendments to EPA for approval as a revision to Oregon's State Implementation Plan.

COMMENTS AND RESPONSES

The following comments were received in response to the initial rulemaking notice sent to interested persons on February 7, 2000:

1. Douglas Brooke, Hyundai

- A. COMMENT: In the majority of cases, bringing LRAPA's permit fees to within 90 percent of the corresponding DEQ fees will result in 10 to 20 percent increases in application and annual fees above those currently charged by LRAPA. The proposed fees will result in disproportionately high percentage increases for sources in category 14(b).

LRAPA RESPONSE: The fee increase is designed to allow LRAPA to preserve the quality of the program while maintaining equity for all sources, on the basis of fees these sources would have to pay elsewhere in the state. Those sources which are presently paying lower percentages of the corresponding state fee will experience higher increases. No changes are recommended by staff in response to this comment.

Proposed Amendments to LRAPA Title 34
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- B. It is proposed that a new Air Contaminant Source Code (14(c)) be created for Plywood manufacturing facilities with less than 10,000 square feet per hour (3.8" basis finished product). In order to help any industry that would fall under the new code, Mr. Brooke requests that the facilities be identified and allowed to comment on the proposed changes before the changes are finalized.

LRAPA RESPONSE: The old category 14(b) Plywood manufacturing and/or veneer drying of less than 25,000 square feet per hour is being split into two categories. The new code 14(c) will apply to the smaller facilities within the former 14(b) group (e.g. facilities manufacturing less than 10,000 square feet per hour (3.8" basis finished product)). These smaller facilities will actually experience a fee reduction, while those that will remain as 14(b), which are larger facilities, will experience a fee increase. Two of the five facilities mentioned by the commenter are subject to the Title V program and therefore are not affected by the rule change. The other three sources have been informed of the proposed rulemaking. Based on information in LRAPA files Emerald Forest Products Plant #3 would be eligible for placement in category 14(c). Also see response to comment A.

- C. COMMENT: Bringing LRAPA's permit fees to within 90 percent of the corresponding DEQ fees will result in disproportionately high percentage increases for sources in the top level of all "catch all categories" (61(a), 62(a) and 63(a)). These categories are comprised of sources not listed elsewhere in the table which are either: highly complex and would emit over a minimum tonnage of criteria pollutants; are problematic sources of significant malodorous emissions; or problematic or high risk sources with an identified air quality problem. Mr. Brooke requests that the proposed fee increase be reviewed and revised in order to provide a proportional and level increase to all industries involved.

LRAPA RESPONSE: LRAPA disagrees with this comment. As mentioned earlier raising the fees by an equal percentage will maintain the present inequity. Sources are rarely assigned to these categories, since they are designed for the most difficult cases, which take considerable effort and time from staff. At present there is only one source in one of these categories. The two other sources mentioned are Title V facilities.

2. Andy Ginsburg, DEQ Air Quality Division.

- A. COMMENT: Although not being changed by this rule making, Section 34-140 "permit Duration" allows permits to be issued for 10 years. The potential conflict here is that Synthetic Minor permits are limited to a 5-year duration by state rules (OAR 340-216-0090(7)) and federal rules (40 CFR section 60.6). We recommend you review this potential conflict and resolve if necessary.

LRAPA RESPONSE: LRAPA agrees, and the suggested revision to the proposal is included in Subsection 34-140-1.

- B. There are a number of other suggested changes, hand written on the attached rule package, to make the rules more consistent with the State rules. These include rule reference changes to the new rule numbering, and changes in wording from "Federal Operating Permits" to "Title V Operating Permits," along with other minor changes.

LRAPA RESPONSE: LRAPA agrees, and the suggested wording changes and updated State rule numbers are included in the proposed Title 34.

3. Staff has spoken with a representative of Georgia-Pacific who has said he will attend this hearing to address the board with his concern that LRAPA charges fees for natural gas boilers when DEQ's fee schedule no longer includes fees for these boilers. LRAPA staff's position on this issue is that, although natural gas is a clean fuel, most companies which have natural gas-fired boilers also use oil as a backup fuel. The use of oil subjects the source to the fees for oil-fired boilers. The permit must contain the conditions under which the oil may be used, and field staff must inspect the oil facilities to be certain the systems will operate properly. The fees are necessary unless the source went to some other backup fuel such as propane, in which case the permit would need to be written to prohibit the use of oil as a backup fuel.

OPTIONS FOR BOARD ACTION

1. Adopt the amendments to Title 34 as proposed. The revised and updated text of Title 34 would make the permitting rules easier to understand and use. The increased fees would pay a larger percentage of the cost of operating the permitting program and allow the agency to continue its current level of permit processing and performance of the necessary compliance and enforcement activities associated with industrial permitting. The inclusion of a routine annual fee increase would help to keep funding at a stable, predictable level and would also avoid the expensive and time-intensive rulemaking process each year for the purpose of raising the fees.
2. Ask staff to develop a different proposal. Staff considered many options during the early stages of rule development. A number of revisions have been made in the draft amendments as a result of comments received and of the advisory committee's discussion. Given the small number of comments which have been received on the current proposal, it is unlikely that a significantly different proposal would result from additional effort.
3. Do not adopt the proposed amendments. LRAPA's ACDP fee schedule would continue to fall further behind DEQ's fee schedule. Maintaining the current fee revenue while continuing to face higher costs would erode the agency's ability to maintain the current level of service. Funding would not cover the current number of employees available to perform

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permitting functions, and some services would have to be eliminated. Permit issuance would likely fall further behind.

STAFF RECOMMENDATION

It is staff's recommendation that the board adopt the amendments to Title 34 as proposed.

GAC/MJD

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ATTACHMENT TO PROPOSED AMENDMENTS TO LRAPA TITLE 34, TABLE A
01/24/2000

203136 GRAIN MILLERS, INC.	04
208902 FOSTER FOODS OF OREGON	08A
208584 CAFFE ORSINI, INC.	09A
201283 CASCADE ESTATE COFFEES	09A
202541 EQUATOR COFFEE CO.	09A
203524 HAS BEANS, INC.	09A
201270 CAFETO	09A
206119 OLD TOWN COFFEE COMPANY	09A
201269 THE COFFEE CORNER, LTD.	09A
207450 SWANSON BROS. LUMBER CO., INC.	10A
200524 WILLAMETTE INDUSTRIES, COBURG	10A
207504 STARFIRE LUMBER CO.	10A
208865 WEYERHAEUSER COMPANY	10A
206101 OREGON INDUSTRIAL LUMBER PROD	10A
203504 SUNDANCE LUMBER CO., INC.	10A
208866 WEYERHAEUSER COMPOSITE PRODUCT	10A
207459 SENECA SAWMILL COMPANY	10A
206430 PACIFIC RIM HARDWOODS	10A
201203 CONE LUMBER COMPANY	10A
205159 C. MILLER LUMBER, INC.	10A
208853 WEYERHAEUSER CO., WEST.LUMBER	10A
207056 ROSBORO LUMBER CO	10A
207050 ROSBORO LUMBER COMPANY	10A
201276 CASCADIAN COMPANY	10A
203134 WESTERN WOOD PRODUCTS, INC.	10B
207493 SWANSON-SUPERIOR FOREST PRODUC	10B
209550 ZIP-O-LUMBER CO.	10B
203106 GEM LUMBER COMPANY	10B
203126 GRIFFIN MOLDING CO.	10B
208921 WHITSELL MANUFACTURING, INC.	10B
200026 ARCHITECTURAL MILLWORK MFG CO	10B
206433 PACIFIC RIM MANUFACTURING	10B
200030 ARMSTRONG WOOD PRODUCTS	10B
208914 WESTERN PANEL MANUFACTURING	10B
203519 HEARIN INDUSTRIES, INC.	10B
202108 NORTHWEST HARDWOOD - EUGENE	11
208264 SENECA DRY KILNS, INC.	11
203511 HEARIN FOREST INDUSTRIES, INC.	11
207062 THE RIDGE COMPANY	12
206429 PACIFIC POST & POLES	12
207077 THE RIDGE COMPANY	12
208256 TRUS JOIST MACMILLAN (EUGENE)	13
208263 TRUS JOIST MACMILLAN	13
200535 WILLAMETTE IND. PLANER MILL	13
208866 WEYERHAEUSER COMPOSITE PRODUCT	13
206117 CASCADE PACIFIC INDUSTRIES	13
200021 ELK RIVER ENTERPRISES, TDK/ALI	13
208858 WEYERHAEUSER	13
207050 ROSBORO LUMBER COMPANY	14A
203102 GEORGIA-PACIFIC CORPORATION	14A
207510 MCKENZIE FOREST PRODUCTS, LLC	14A
202528 EMERALD FOREST PRODUCTS PLT#1	14B
202526 EMERALD FOREST PRODUCTS, #3	14B
207452 STATES INDUSTRIES, INC.	14B
207451 STATES INDUSTRIES, INC., PLT#2	14B
208864 WILLAMETTE INDUSTRIES, SPLD	14B

THIS LIST OF PERMITTED SOURCES
IN LANE COUNTY INDICATES THE
NUMBER OF PERMITS IN EACH
FEE CATEGORY.

207471	STONE SOUTHWEST CORP. (DBA)	15
202100	DOUGLAS FIR LUMBER CO	15
200524	WILLAMETTE INDUSTRIES, COBURG	15
201287	THE GEERTSEN GROUP LTD.	15
207512	TIMBER PRODUCTS COMPANY	15
202530	EMERALD FOREST PRODUCTS, PLT 2	15
203103	GEORGIA-PACIFIC CORPORATION	15
208250	MCKENZIE FOREST PRODUCTS LLC	15
205145	SPRINGFIELD FOREST PRODUCTS	15
200517	EAGLE VENEER, INC.	15
205108	L.D. MCFARLAND COMPANY LTD.	16
206117	CASCADE PACIFIC INDUSTRIES	16
200502	J. H. BAXTER & COMPANY	16
208866	WEYERHAEUSER COMPOSITE PRODUCT	17A
208867	WEYERHAEUSER COMPANY	17A
200529	WILLAMETTE IND., MDF DIVISION	18A
208894	WHITTIER WOOD PRODUCTS CO.	20
206436	PRECISION PREFINISHING, INC.	20
205808	NEWOOD DISPLAY FIXTURES MFG.	20
204739	LANZ CABINET SHOP, INC.	20
208927	WHITTIER WOOD PRODUCTS-BETHEL	20
203138	GUILD CRAFT PRODUCTS, INC.	20
208850	WEYERHAEUSER PAPER COMPANY	21
200510	BORDEN CHEMICAL, INC.	27A
201221	NESTE RESINS CORPORATION	27A
200510	BORDEN CHEMICAL, INC.	28A
201221	NESTE RESINS CORPORATION	28A
203129	GEORGIA-PACIFIC RESINS, INC.	28B
204402	KINGSFORD MANUFACTURING CO.	29
202500	EUGENE SAND & GRAVEL, INC.	34A
205141	MORSE BROS., INC.	34A
208871	WILDISH SAND & GRAVEL CO.	34A
201286	J.C. COMPTON CONTRACTOR, INC.	34B
204411	KIEWIT PACIFIC CO.	34B
202814	OAKRIDGE SAND & GRAVEL, INC.	39
208661	VIKING CONCRETE, INC.	39
208876	WILLAMETTE GRAYSTONE, INC.	39
207503	SPEC INDUSTRIES, INC.	39
206411	WILDISH CASCADE CONCRETE CO.	39
205141	MORSE BROS., INC.	39
208925	CENTRAL PRE-MIX CONCRETE CO.	39
205163	MORSE BROS., INC., COBURG PLT	39
202516	EUGENE SAND & GRAVEL, INC.	39
205138	F H MCEWEN CONSTRUCTION	42A
208893	WILDISH SAND & GRAVEL CO.	42A
202119	DELTA SAND & GRAVEL CO.	42A
207465	SPRINGFIELD QUARRY ROCK PRODUC	42A
201242	CONSER QUARRY COMPANY	42A
200547	BROWN ROAD SAND & GRAVEL	42A
202524	EUGENE SAND & GRAVEL, INC.	42A
202540	EGGE SAND & GRAVEL L.C.C.	42A
200563	BJ EQUIPMENT COMPANY	42B
202131	D.A. DOUGHTY & SONS	42B
200018	L V ANDERSON & SONS	42B
202821	JAMES W. FOWLER CO.	42B
207076	ROSEBURG FOREST PRODUCTS	42B

204416 KIEWIT PACIFIC CO. (CRUSHER)	42B
200546 PORTABLE ROCK PRODUCTION CO.	<u>42B</u>
202814 OAKRIDGE SAND & GRAVEL, INC.	<u>42C</u>
208270 TERRITORIAL ROCK PRODUCTS INC.	42C
205169 MID-VALLEY GRAVEL COMPANY, INC	42C
203520 LLOYD S. HOCKEMA, INC.	42C
202134 J. DAVIDSON & SONS CONST. CO.	42C
201271 CC & S CRUSHING, INC.	42C
203522 D.R. HENTON, INC.	42C
203521 HAMLIN & SON CONSTRUCTION, INC	42C
201234 CHAPEL OF MEMORIES FUNERAL HOM	44D
207052 REST-HAVEN MEMORIAL PARK	44D
204732 MUSGROVE CREMATORIUM	44D
204721 POOLE-LARSEN FUNERAL HOME, INC	44D
207518 SMITH-LUND-MILLS FUNERAL CHAPE	44D
200565 SIUSLAW VALLEY CREMATORY	44D
200539 BUELL CHAPEL, INC.	<u>44D</u>
208651 VALLEY IRON & STEEL CO.	<u>45B</u>
202125 GLOBE METALLURGICAL INC.	<u>48</u>
202133 DC METALS INC.	<u>49</u>
202508 EUGENE ALUMINUM & BRASS FNDRY	<u>50</u>
207003 QUALITY METAL FINISHING, INC.	51
201266 CASCADE PLATING & MACHINE	51
205158 MCKENZIE CHROME PLATING	51
206405 PIERCE MANUFACTURING CO., INC.	<u>52</u>
203109 GHEEN IRRIGATION WORKS, INC.	52
208850 WEYERHAEUSER PAPER COMPANY	<u>55A</u>
202505 EUGENE WATER & ELECTRIC BOARD	55B
208557 UNIVERSITY OF OREGON	<u>55B</u>
202536 EMERALD PEOPLE'S UTILITY DIST	55C
202537 EUG/SPFLD WATER POL CONTROL	<u>55C</u>
205812 NORTHWEST PIPELINE - SO EUGENE	56
205813 NORTHWEST PIPELINE - SUB METER	56
205811 NORTHWEST PIPELINE CORPORATION	<u>56</u>
208850 WEYERHAEUSER PAPER COMPANY	<u>58A</u>
200029 CHIQUITA PROCESSED FOODS, LLC	58B
203531 HYUNDAI SEMICONDUCTOR AMERICA	<u>58B</u>
209501 CAL YOUNG JR HIGH SCHOOL	58C
206415 ELLIS PARKER ELEM SCHOOL	58C
206416 PATTERSON ELEM SCHOOL	58C
208902 FOSTER FOODS OF OREGON	58C
207478 SOUTH EUGENE HIGH SCHOOL	58C
207479 SANTA CLARA ELEMENTARY	58C
208887 WESTMORELAND ELEM SCHOOL	58C
208886 WASHINGTON ELEM SCHOOL	58C
208863 WILLAMETTE HIGH SCHOOL	58C
207516 SONY DISC MANUFACTURING	58C
207480 SILVER LEA ELEM SCHOOL	58C
207481 SPRING CREEK ELEMENTARY	58C
208888 WHITAKER ELEM SCHOOL	58C
207064 ROOSEVELT JR HIGH SCHOOL	58C
208890 WILLAKENZIE ELEMENTARY	58C
206433 PACIFIC RIM MANUFACTURING	58C
207063 RIVER ROAD ELEM SCHOOL	58C
207457 SHELDON HIGH SCHOOL	58C
207459 SENECA SAWMILL COMPANY	58C

208889 WILLAGILLESPIE ELEMENTARY	58C
207454 SHASTA JR HIGH SCHOOL	58C
201241 COLIN KELLY JR HI SCHOOL	58C
204717 LAUREL HILL ELEM. SCHOOL	58C
202108 NORTHWEST HARDWOOD - EUGENE	58C
205104 MEADOWLARK ELEM SCHOOL	58C
205108 L.D. MCFARLAND COMPANY LTD.	58C
201221 NESTE RESINS CORPORATION	58C
201239 CHURCHILL HIGH SCHOOL	58C
202117 DUNN ELEMENTARY SCHOOL	58C
203510 HARRIS ELEMENTARY SCHOOL	58C
203511 HEARIN FOREST INDUSTRIES, INC.	58C
204408 JOHN F. KENNEDY JR HIGH	58C
203136 GRAIN MILLERS, INC.	58C
202521 EDISON ELEMENTARY SCHOOL	58C
202528 EMERALD FOREST PRODUCTS PLT#1	58C
203129 GEORGIA-PACIFIC RESINS, INC.	58C
201209 R-H MCKENZIE PRODUCTS CO., LLC	58C
200023 NORTHWEST HARDWOODS - BETHEL	58C
200021 ELK RIVER ENTERPRISES, TDK/ALI	58C
200510 BORDEN CHEMICAL, INC.	58C
200502 J. H. BAXTER & COMPANY	58C
200008 AMERICAN LINEN	58C
200002 ADAMS ELEMENTARY SCHOOL	58C
205804 NORTH EUGENE HIGH SCHOOL	58C
200011 AMERICAN STEEL & SUPPLY	58C
200513 BAILEY HILL ELEM SCHOOL	58C
200535 WILLAMETTE IND. PLANER MILL	58C
200529 WILLAMETTE IND., MDF DIVISION	58C
201203 CONE LUMBER COMPANY	58C
205127 MONROE JR HIGH SCHOOL	58C
200526 BRATTAIN ELEM SCHOOL	58C
200517 EAGLE VENEER, INC.	58C
208585 US WEST COMMUNICATIONS, INC.	58D
208586 US WEST COMMUNICATIONS, INC.	58D
202526 EMERALD FOREST PRODUCTS, #3	58D
204739 LANZ CABINET SHOP, INC.	58D
204416 KIEWIT PACIFIC CO. (CRUSHER)	58D
207056 ROSBORO LUMBER CO	59A
207510 MCKENZIE FOREST PRODUCTS, LLC	59A
207050 ROSBORO LUMBER COMPANY	59A
208264 SENECA DRY KILNS, INC.	59B
207471 STONE SOUTHWEST CORP. (DBA)	59B
201284 HMT TECHNOLOGY - EUGENE DIV.	59D
206101 OREGON INDUSTRIAL LUMBER PROD	59D
200550 WILLAMETTE INDUSTRIES, VAUGHN	60
200524 WILLAMETTE INDUSTRIES, COBURG	60
206117 CASCADE PACIFIC INDUSTRIES	60C
203531 HYUNDAI SEMICONDUCTOR AMERICA	61A
205160 MONACO COACH CORPORATION	61A
201279 COUNTRY COACH INC.	61A
202545 EAST EARTH HERB, INC.	61B
204417 KRC (WESTERN) INC.	61B
207516 SONY DISC MANUFACTURING	61B
208922 WILLIAMS' BAKERY	61B
204412 KING DESIGN INTERNATIONAL, INC	61B

200567 MILAN SPORT BOATS COMPANY	62B
206121 ORKOT ENGINEERING PLASTICS	62B
205168 MCKENZIE TOWABLES GROUP	62B
207061 ROSBORO LUMBER COMPANY	63B
208917 WESTERN STRUCTURES, INC.	63B
200550 WILLAMETTE INDUSTRIES, VAUGHN	63B
207050 ROSBORO LUMBER COMPANY	63B
207488 PACIFIC WESTERN EXTRUDED PLAST	63C
208913 WESTWOOD INDUSTRIES, INC.	63C
207075 REXIUS FOREST BY-PRODUCTS, INC	63C
207069 REAL WOOD PRODUCTS CO.	63C
207506 SFPP, L.P.	65
204736 LAURENCE-DAVID, INC.	70B
208929 WESTERN PNEUMATICS, INC.	70B
202805 FORREST PAINT CO.	70B
207519 SHOREWOOD PACKAGING OF OREGON	71
205809 NORTHWEST WEB	71
207523 SHELTON TURNBULL PRINTERS INC	71
205161 MARATHON COACH, INC.	73
207524 TOM SMITH FIBERGLASS, INC.	73
204009 INDUSTRIAL PLATING & MACHINE	73
207522 STAHR DESIGN	73
202538 EMERALD RAIL TECHNOLOGIES, LLC	73
200032 ARAMARK UNIFORM SERVICES	74A
204410 KIMWOOD CORPORATION	74B
204010 INDUSTRIAL PUBLISHING, INC.	74B
201284 HMT TECHNOLOGY - EUGENE DIV.	74B
205162 MOLECULAR PROBES, INC.	74B
208579 UNOCAL (FORMER STATION)	75
203135 GEORGIA PACIFIC RESINS	75
200561 EDGEWOOD SHOPPING CENTER	75
208582 UNOCAL BULK PLANT #0968	75
208271 TMC ENVIRONMENTAL, INC.	75A
208274 TEXACO SERV STN #63-175-0591	75A
205153 SUNNY SERVICE STATIONS	75C
205151 SUNNY SERV STN (JUNCTION CITY)	75C
200033 TIME OIL COMPANY (ALISTO ENG.)	75C
205155 SUNNY SERVICE STATIONS	75C
205154 SUNNY SERVICE STATIONS	75C
208918 WYATT'S TIRE COMPANY	75C
207514 SAFETY-KLEEN SYSTEMS, INC.	75C
202805 FORREST PAINT CO.	75C
204413 TRUAX HARRIS ENERGY (TEXACO)	75C
208273 THE TRUAX CORPORATION-CHEVRON	75C
201285 CSC ENVIRONMENTAL SERVICES, INC	75C
204212 JASPER STORE	75C
204213 JENOVA LAND COMPANY	75C
203532 HERBERT, LEON & MARY JANE	75C
204413 TRUAX HARRIS ENERGY (TEXACO)	75C
203523 HULT & ASSOCIATES	75C
208576 UNOCAL BULK PLANT 0133	75C
200560 B.P. OIL COMPANY (STATION)	75C
200564 EDGEWOOD SHOPPING CENTER	75C
200559 THE JERRY BROWN CO., INC.	75C
200555 B.P. OIL COMPANY (#11017)	75C
200557 TOSCO CORPORATION, SITE #5468	75C

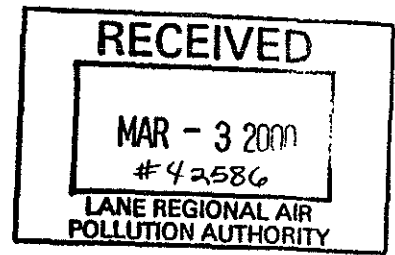
201268 CHEVRON U.S.A., INC.	75C
208580 UNOCAL - FORMER STATION #5944	75C
206440 PACIFIC PETROLEUM CORPORATION	75C
200568 BERGESON-BOESE & ASSOCIATES	75C
206437 PEMCO	75D

March 1, 2000

Grecia Castro, Operations Manager
Lane Regional Air Pollution Authority
1010 Main Street
Springfield, OR 97477

DATE TO: GC-copy
BP-copy
make file

FILE _____



Dear Ms. Castro:

Thank you for the opportunity to respond to the proposed amendments to LRAPA Title 34. In particular I am responding to the fee increases contained in Table A, Air Contaminant Sources and Associated Fee Schedule, Part 1 for Source Codes 14 (b) and (c), 61 (a), 62 (a), and 63 (a).

It is my understanding that the fee increase for application processing and annual compliance determination will bring LRAPA fees to a level within 90 percent of those used by Oregon DEQ. For the most part, this will result in a 10 to 20 percent increase in application and annual fees over the amounts currently charged to LRAPA Air Contaminant Discharge Permit (ACDP) holders.

Under the proposed changes, industries reporting under Air Contaminant Source 14 (b) will see a 75 and 36 percent increase in application and annual fees above current levels (Table 1). The industries reporting under 14 (b) are Emerald Forest Products PLT #1, Emerald Forest Products #3, State Industries, Inc., State Industries Inc., PLT #2, and Willamette Industries, SPLD.

Additionally, sources reporting under Air Contaminant Source codes 61 (a), 62 (a), and 63 (a) will see an increase of 108 and 48 percent above current application and annual fees (Table 1). The industries reporting under 61 (a) are Hyundai Semiconductor America, Monaco Coach Corporation, and Country Coach, Inc. Currently there are no industries reporting under Air Contaminant Source Codes 62 (a) or 63 (a).

Table 1: Proposed Air Contaminant Source Code Increases

Air Contaminant Source Code	Current Application Fee	Proposed Application Fee	Percent Increase	Current Annual Fee	Proposed Annual Fee	Percent Increase
14 (b)	\$1,848	\$3,244	75	\$2,157	\$2,946	36
61 (a)	\$7,800	\$16,216	108	\$7,800	\$11,532	48
62 (a)	\$7,800	\$16,216	108	\$7,800	\$11,532	48
63 (a)	\$7,800	\$16,216	108	\$7,800	\$11,532	48

While the proposed increase in application and annual fees brings LRAPA fees to within 90 percent of DEQ levels, the fee increase is disproportionately felt by industries falling under the Air Contaminant Source Codes listed above. I request that the proposed fee increase be reviewed and revised in order to provide a proportional and level increase to all industries involved.

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Lastly, it is proposed that a new Air Contaminant Source Code (14 (c)) be created for Plywood manufacturing facilities with less than 10,000 square feet per hour (3/8" basis finished product. In order to help any industry that would fall under the new code, I request that the facilities be identified and allowed to comment on the proposed changes before the changes are finalized.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Doug Brooke". The signature is fluid and cursive, with a long horizontal stroke at the end.

Doug Brooke
Industry Representative
LRAPA Citizens Advisory Committee



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Springfield, OR 97477

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MEMORANDUM

TO: Interested Persons

FROM: Grecia Castro, Operations Manager

DATE: February 7, 2000

SUBJ: Proposed Amendments to LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," Including Table A, "Air Contaminant Sources and Associated Fee Schedule"

NEED FOR AMENDMENTS

ACDP Fee Increase: An increase in the fees paid by sources required to have Air Contaminant Discharge (ACD) permits is necessary in order to keep up with the escalating costs of implementing and administering the program. On May 12, 1998 the LRAPA Board of Directors approved an amendment to LRAPA rules allowing for an increase in ACDP fees. Prior to such increase, LRAPA's fees had remained mostly unchanged since 1991. Although the resulting fees, in most cases, were still below the level that a similar source would pay elsewhere in the state, the percentage increase appeared substantial to the sources affected.

Synthetic Minor Fees: On June 25, 1999 the EQC approved a proposal by the Air Quality Division of the Oregon Department of Environmental Quality (ODEQ) to proceed with a fee increase for Title V sources. This rulemaking included an increase in fees charged to sources holding elective permits (synthetic minor sources). As part of a previous amendment to LRAPA's fee schedule, a new category was created for synthetic minor sources. This category was designed to reflect the reduced time spent by staff on permitting and compliance assurance activities for simple sources. Synthetic minors are sources of air emissions that need federally enforceable conditions and additional monitoring to allow them comply with federal requirements. Based on LRAPA's experience since the minor source fee was established, the level of effort and time required for permitting and compliance activities for synthetic minor sources does not justify the existence of a reduced fee category. The proposed rules will eliminate the specific fees for this category and adopt the DEQ fee by reference. This will mean that, in the future, Synthetic Minor Permits will be treated by LRAPA the same as Title V Permits are, with LRAPA using the state Title V and Synthetic Minor fees in effect at the time a permitting action is being taken.

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SUMMARY OF PROPOSED CHANGES

The rule revision proposes increases in various LRAPA charges for permitting and compliance services provided. LRAPA's application and compliance fees would be raised to a level that is 90 percent of the fees charged by the state, except for the filing fee which will be the same as the state fee. Because these changes would primarily affect those facilities that are paying lower fees as compared to the corresponding state fee, some facilities may not experience a fee increase. To reduce the need for future revisions for minor fee adjustment, it is proposed that both the compliance and application fees be increased automatically by the CPI each year.

Construction fee levels II and III would be increased to 85% of the fee charged by the state for the equivalent level of review; these fees would affect new sources and sources making substantive modifications.

DETAILS OF PROPOSED CHANGES

The proposed changes are as follows:

34-170: References to state rules are updated to reflect recently adopted state rule revisions.

34-210: Organizational reference information is added for the Green Permits rules adopted in September 1999. These were inadvertently left out when that rulemaking occurred.

34-035: The language is modified to make the rules clearer and easier to understand. Sections affected include 34-035-1, 34-35-2, 34-035-3.A(1), 34-035-3.B(1), 34-035-3.C(1), and 34-035-3-D(1).

34-060: References to state rules are updated to reflect recently adopted state rule revisions.

34-070: References to state rules are updated to reflect recently adopted state rule revisions.

34-100: References to state rules are updated to reflect recently adopted state rule revisions.

34-110: References to state rules are updated to reflect recently adopted state rule revisions.

34-120: References to state rules are updated to reflect recently adopted state rule revisions.

34-150: Subsection 34-150-1 is amended to specify that sources operating without a permit are subject to ACDP fees and that new and previously unpermitted sources are subject to initial construction review. The amount of the filing fee is deleted from 34-150-1.A, 2.A, and 3.A. The proposal moves that fee to Table A, Part I. References to state rules are added to 34-150-2 and 34-150-3.

34-170: Reference to state rules is updated to reflect recently adopted state rule revisions.

Proposed Amendments to LRAPA Title 34
February 7, 2000

Table A, Part I:

1. Item A, Late Payment Fees, is changed to 1.5 percent per month until the fees are paid. As is currently the case, sources would also be subject to enforcement action if fees are not paid on time.
2. Item G, Synthetic Minor Sources, fees are eliminated from the table and the state fee for this category adopted by reference.
3. The filing fee is included in Table A, Part I, as Item J.
4. The fees for the rest of the categories on Part I of Table A are generally changed to 90 percent of the ODEQ fee schedule..

Table A, Part II

Fees for most source categories are changed to 90 percent of the state's fee schedule. Several source categories have wording changes for clarity.

RULEMAKING JUSTIFICATION QUESTIONS

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

Response: No. LRAPA is authorized by state law to establish its own ACDP fee schedule.

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

Response: As stated above, there are no state requirements applicable to this case. Additionally, the requirements that are being proposed relate to fees, only, and not to emission standards. Therefore, this question does not apply in this case.

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

Response: Not applicable for the reason given in item 1, above.

4. Will the proposed requirement improve existing requirements or prevent the need for costly retrofit to meet more stringent future requirements?

Response: Not applicable.

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

Response: Not applicable.

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

Response: Not applicable.

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

Response: The proposed fees will maintain the existing equity for all sources.

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

Response: Not applicable because the requirements that are being proposed relate to fees, only, and not to emission standards.

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

Response: Not applicable for the reasons given in item 2, above.

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

Response: Not applicable because the requirements being proposed relate to fees, only, and not to emission standards.

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

Response: The proposed increase will help maintain the current level of compliance oversight, thereby contributing to the prevention of pollution.

LEGAL AUTHORITY

ORS 183, 468.020, 468A.135; OAR 340-216-0090; LRAPA Titles 13, 14, 34

Proposed Amendments to LRAPA Title 34
February 7, 2000

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PRINCIPAL DOCUMENTS RELIED UPON

1. Attorney General's Uniform and Model Rules of Procedure
2. OAR 340-216
3. LRAPA Title 34

FISCAL AND ECONOMIC IMPACT OF PROPOSED AMENDMENTS

Industry: The fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state.

Public: The increased fees may affect consumers through higher costs of good and services provided by the permitted sources.

LRAPA: The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.

Other Government Agencies: There are three government agencies holding LRAPA permits, one major source, one synthetic minor, and one regular. The proposed changes would result in a 20 percent increase in annual fees for the regular source. The synthetic minor source would be subject to the same fees charged elsewhere in the state. The major source would not be affected.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

PUBLIC COMMENT PROCESS

This initial proposal is being sent to LRAPA's mailing list of interested persons, including all holders of Air Contaminant Discharge Permits, Synthetic Minor Permits, and Title V Permits. Copies of the actual draft amendments are available by calling Merrie Dinteman at (541) 736-1056 Extension 225. Questions regarding the proposal should be addressed to Grecia Castro at (541) 736-1056 Extension 234 or Sharon Banks at (541) 736-1056 Extension 215. Comments must be in writing and must be received by LRAPA by March 1, 2000. The address for submittal of comments is:

Grecia Castro, Operations Manager
Lane Regional Air Pollution Authority
1010 Main Street
Springfield, OR 97477

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Proposed Amendments to LRAPA Title 34
February 7, 2000

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The proposal was presented to the LRAPA Advisory Committee in January and will be discussed again at the committee's February meeting. The committee's input will be considered in any revisions made to the proposal prior to public hearing. Copies of the entire package are also being submitted to DEQ's Air Quality Division in Portland and EPA Region 10 in Seattle for their review and comment. Any comments received from this initial mailing will be reviewed and, where appropriate, incorporated into a revised proposal.

Staff plans to bring this proposal to the LRAPA Board of Directors in March with a request for authorization to hold a public hearing on the amendments in June. We are asking DEQ to authorize LRAPA to serve as hearings officer for the Oregon Environmental Quality Commission (EQC) when the public hearing is held, making it a joint EQC/LRAPA hearing. Notice of the hearing will be published in the Secretary of State's Oregon Bulletin, and in the Oakridge Dead Mountain Echo, Eugene Register Guard, the Cottage Grove Sentinel, and the Springfield News. This will give interested parties several weeks to study the proposal and provide comments prior to or at the hearing.

Comments received prior to the hearing will again be evaluated and, where appropriate, incorporated into another revised draft proposal for presentation at the public hearing. Following the public hearing, the LRAPA Board will be asked to adopt the rules, either as proposed or with any changes deemed necessary in response to information received at the hearing. Following adoption, the amendments will be sent to DEQ for approval by the EQC. Following EQC adoption, DEQ will forward the amendments to EPA for approval as a revision to Oregon's State Implementation Plan.

GAC/MJD



LRAPA
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NOTICE OF PROPOSED RULEMAKING

TO: Interested Persons

FROM: Grecia Castro, Operations Manager, and Sharon Banks, Comptroller

DATE: April 18, 2000

SUBJ: Proposed Amendments to LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," Including Table A, "Air Contaminant Sources and Associated Fee Schedule"

In February, we sent out an initial notice of proposed amendments to LRAPA Title 34, including the permit fee schedule. We've since received some comments from that mailing, and those comments and LRAPA's responses are included in this updated notice.

NEED FOR AMENDMENTS

ACDP Fee Increase: An increase in the fees paid by sources required to have Air Contaminant Discharge (ACD) permits is necessary in order to keep up with the escalating costs of implementing and administering the program. On May 12, 1998 the LRAPA Board of Directors approved an amendment to LRAPA rules allowing for an increase in ACDP fees. Prior to that increase, LRAPA's fees had remained mostly unchanged since 1991. Although the resulting fees, in most cases, were still below the level that a similar source would pay elsewhere in the state, the percentage increase appeared substantial to the sources affected.

Synthetic Minor Fees: On June 25, 1999 the EQC approved a proposal by the Air Quality Division of the Oregon Department of Environmental Quality (ODEQ) to proceed with a fee increase for Title V sources. This rulemaking included an increase in fees charged to sources holding elective permits (synthetic minor sources). As part of a previous amendment to LRAPA's fee schedule, a new category was created for synthetic minor sources. This category was designed to reflect the reduced time spent by staff on permitting and compliance assurance activities for simple sources. Synthetic minors are sources of air emissions that need federally enforceable conditions and additional monitoring to allow them comply with federal requirements. Based on LRAPA's experience since the minor source fee was established, the level of effort and time required for permitting and compliance activities for synthetic minor sources does not justify the existence of a reduced fee category. The proposed rules will eliminate the specific fees for this category and adopt the ODEQ fee by reference. This will mean that, in the future, Synthetic Minor Permits will be treated by LRAPA the same as Title V Permits are, with LRAPA using the state Title V and Synthetic Minor fees in effect at the time a permitting action is being taken.

COMMENTS RECEIVED TO DATE, AND LRAPA RESPONSES

The following comments have been received in response to the initial rulemaking notice sent to interested persons on February 7, 2000:

1. Douglas Brooke, Hyundai

- A. COMMENT: In the majority of cases, bringing LRAPA's permit fees to within 90 percent of the corresponding ODEQ fees will result in 10 to 20 percent increases in application and annual fees above those currently charged by LRAPA. The proposed fees will result in disproportionately high percentage increases for sources in category 14(b).

LRAPA RESPONSE: The fee increase is designed to allow LRAPA to preserve the quality of the permitting and compliance program while maintaining equity for all sources, on the basis of fees these sources would have to pay elsewhere in the state. There are five sources which are presently paying lower percentages of the corresponding state fee and will experience higher increases. No changes are recommended by staff in response to this comment.

- B. COMMENT: It is proposed that a new Air Contaminant Source Code (14(c)) be created for Plywood manufacturing facilities with less than 10,000 square feet per hour (3.8" basis finished product). In order to help any industry that would fall under the new code, Mr. Brooke suggests that the facilities be identified and allowed to comment on the proposed changes before the changes are finalized.

LRAPA RESPONSE: The old category 14(b) Plywood manufacturing and/or veneer drying of less than 25,000 square feet per hour is being split into two categories. The new code 14(c) will apply to the smaller facilities within the former 14(b) group (e.g. facilities manufacturing less than 10,000 square feet per hour (3.8" basis finished product)). These smaller facilities will actually experience a fee reduction, while those that will remain as 14(b), which are larger facilities, will experience a fee increase. Two of the five facilities mentioned by the commenter are subject to the Title V program and therefore are not affected by the rule change. The other three sources have been informed of the proposed rulemaking. Based on information in LRAPA files Emerald Forest Products Plant #3 would be eligible for placement in category 14(c). Also see response to comment A.

- C. COMMENT: Bringing LRAPA's permit fees to within 90 percent of the corresponding ODEQ fees will result in disproportionately high percentage increases for sources in the top level of all "catch all categories" (61(a), 62(a) and 63(a)). These categories are comprised of sources not listed elsewhere in the table which are either: highly complex and would emit over a minimum tonnage of criteria pollutants; are problematic sources of significant malodorous emissions; or problematic or high risk sources with an identified air quality

problem. Mr. Brooke requests that the proposed fee increase be reviewed and revised in order to provide a proportional and level increase to all industries involved.

LRAPA RESPONSE: LRAPA disagrees with this comment. As mentioned earlier raising the fees by an equal percentage will maintain the present inequity. Sources are rarely assigned to these categories, since they are designed for the most difficult cases, which take considerable effort and time from staff. At present there is only one source in one of these categories. The two other sources mentioned are Title V facilities.

2. Andy Ginsburg, ODEQ Air Quality Division.

- A. COMMENT: Although not being changed by this rule making, Section 34-140 "permit duration" allows permits to be issued for 10 years. The potential conflict here is that Synthetic Minor permits are limited to a 5-year duration by state rules (OAR 340-216-0090(7)) and federal rules (40 CFR section 60.6). We recommend you review this potential conflict and resolve if necessary.

LRAPA RESPONSE: LRAPA agrees, and the suggested revision to the proposal is included in Subsection 34-140-1.

- B. COMMENT: There are a number of other suggested changes, hand-written on the attached rule package, to make the rules more consistent with the State rules. These include rule reference changes to the new rule numbering, and changes in wording from "Federal Operating Permits" to "Title V Operating Permits," along with other minor changes.

LRAPA RESPONSE: LRAPA agrees, and the suggested wording changes and updated State rule numbers are included in the proposed Title 34.

3. LRAPA Advisory Committee

The LRAPA Advisory Committee has also reviewed and discussed the proposal. The committee did not make a formal recommendation regarding the proposal. They generally understand the need for, and support the fee increase and some mechanism for routine minor increases in the future. There was some disagreement about whether or not an annual increase should be tied to the CPI as was proposed by staff in the original draft amendments. Several different opinions were voiced, including: the CPI would be a number which reflects the Portland area and would not necessarily apply to Lane County; LRAPA consistently falls further and further behind ODEQ in ACDP fees and should have an annual increase of more than the CPI until the difference is made up; the annual increase should be a set percentage rather than the CPI to provide greater financial stability for the agency and to allow industrial sources to know what to expect for the next year.

STAFF RESPONSE: Staff agrees that the annual increase should be a specific percentage and has changed the proposal accordingly.

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SUMMARY OF PROPOSED CHANGES

The rule revision proposes increases in various LRAPA charges for permitting and compliance services provided. LRAPA's application and compliance fees would be raised to a level that is 90 percent of the fees charged by the state, except for the filing fee which will be the same as the state fee. Because these changes would primarily affect those facilities that are paying lower fees as compared to the corresponding state fee, some facilities may not experience a fee increase. To reduce the need for future revisions for minor fee adjustment, it is proposed that both the compliance and application fees be increased automatically by four percent each year.

Construction fee levels II and III would be increased to 85 percent of the fee charged by the state for the equivalent level of review. These fees would affect new sources and sources making substantive modifications.

DETAILS OF PROPOSED CHANGES

The proposed changes are as follows:

34-170: References to state rules are updated to reflect recently adopted state rule revisions.

34-210: Organizational reference information is added for the Green Permits rules adopted in September 1999. These were inadvertently left out when that rulemaking occurred.

34-035: The language is modified to make the rules clearer and easier to understand. Sections affected include 34-035-1, 34-35-2, 34-035-3.A(1), 34-035-3.B(1), 34-035-3.C(1), and 34-035-3-D(1).

34-060: References to state rules are updated to reflect recently adopted state rule revisions.

34-070: References to state rules are updated to reflect recently adopted state rule revisions.

34-100: References to state rules are updated to reflect recently adopted state rule revisions.

34-110: References to state rules are updated to reflect recently adopted state rule revisions.

34-120: References to state rules are updated to reflect recently adopted state rule revisions.

34-150: Subsection 34-150-1 is amended to specify that sources operating without a permit are subject to ACDP fees and that new and previously unpermitted sources are subject to initial construction review. The amount of the filing fee is deleted from 34-150-1.A, 2.A, and 3.A. The proposal moves that fee to Table A, Part I. References to state rules are added to 34-150-2 and 34-150-3. Subsection 34-150-13 is added to provide for an automatic annual increase of four percent in permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. This would affect both Part I and Part II of Table A.

34-170: Reference to state rules is updated to reflect recently adopted state rule revisions.

Table A, Part I:

1. Item A, Late Payment Fees, is changed to 1.5 percent per month until the fees are paid. As is currently the case, sources would also be subject to enforcement action if fees are not paid on time.
2. Item G, Synthetic Minor Sources, fees are eliminated from the table and the state fee for this category adopted by reference.
3. The filing fee is included in Table A, Part I, as Item J.
4. The fees for the rest of the categories on Part I of Table A are generally changed to 90 percent of the ODEQ fee schedule..

Table A, Part II

Fees for most source categories are changed to 90 percent of the state's fee schedule. Several source categories have wording changes for clarity. Attached to the draft amendments is a listing of Lane County permitted sources in each fee category.

RULEMAKING JUSTIFICATION QUESTIONS

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

Response: No. LRAPA is authorized by state law to establish its own ACDP fee schedule.

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

Response: As stated above, there are no state requirements applicable to this case. Additionally, the requirements that are being proposed relate to fees only, and not to emission standards. Therefore, this question does not apply in this case.

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

Response: Not applicable for the reason given in item 1, above.

4. Will the proposed requirement improve existing requirements or prevent the need for costly retrofit to meet more stringent future requirements?

Response: Not applicable.

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

Response: Not applicable.

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

Response: Not applicable.

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

Response: The proposed fees will maintain the existing equity for all sources.

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

Response: Not applicable because the requirements that are being proposed relate to fees only, and not to emission standards.

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

Response: Not applicable for the reasons given in item 2, above.

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

Response: Not applicable because the requirements being proposed relate to fees only, and not to emission standards.

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

Response: The proposed increase will help maintain the current level of compliance oversight, thereby contributing to the prevention of pollution.

LEGAL AUTHORITY

ORS 183, 468.020, 468A.135; OAR 340-216-0090; LRAPA Titles 13, 14, 34

Proposed Amendments to LRAPA Title 34
April 18, 2000

Page 7 of 8

PRINCIPAL DOCUMENTS RELIED UPON

1. Attorney General's Uniform and Model Rules of Procedure
2. OAR 340-216
3. LRAPA Title 34

FISCAL AND ECONOMIC IMPACT OF PROPOSED AMENDMENTS

Industry: The fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state.

Public: The increased fees may affect consumers through higher costs of good and services provided by the permitted sources.

LRAPA: The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting and compliance program.

Other Government Agencies: There are four government agencies holding LRAPA permits, one major source, two synthetic minors, and one regular. The proposed changes would result in a 20 percent increase in annual fees for the regular source, Eugene-Springfield Waste Water Pollution Control. The synthetic minor sources (EWEB and U of O) would be subject to the same fees charged elsewhere in the state. These sources are currently charged the regular synthetic minor fee, which is the higher of the two rates in Table A Part I. The state has only one fee for synthetic minor permits which corresponds to LRAPA's current fee for regular synthetic minors. The major source (Lane County Public Works--Short Mountain Landfill) would not be affected.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

PUBLIC HEARING AND PUBLIC COMMENT PROCESS

The LRAPA Board of Directors has authorized public hearing on the proposed amendments, as follows:

Date: Tuesday, June 13, 2000 Time: 12:15 p.m.

Location: LRAPA meeting room
1010 Main Street
Springfield, Oregon

Proposed Amendments to LRAPA Title 34
April 18, 2000

Page 8 of 8

Copies of the revised draft rule amendments may be obtained by calling Merrie Dinteman at 541-736-1056 Extension 225. In addition to this updated mailing to interested persons, notice of the hearing will be published in the May 1 volume of the Secretary of State's Oregon Bulletin, and in the Oakridge Dead Mountain Echo, Eugene Register Guard, the Cottage Grove Sentinel, and the Springfield News.

Comments received prior to the hearing will again be evaluated and, where appropriate, incorporated into another revised draft proposal for presentation at the public hearing. All comments received prior to the June 13 public hearing must be in writing and should be addressed to:

LRAPA Board of Directors
1010 Main Street
Springfield, OR 97477

Any written comments submitted on the day of the hearing must be presented orally to the board by the person submitting them. While written comments will be received until the day of the hearing, it would be helpful if we could have them by Monday, June 5, to give staff time to respond to the comments and provide the information to the board members prior to the hearing date. Persons wishing to present oral testimony may do so at the public hearing on June 13.

The proposed amendments were reviewed by the Oregon Department of Environmental Quality (ODEQ) and were determined to be at least as stringent as state rules. LRAPA also received from ODEQ authorization to serve as hearings officer for the Oregon Environmental Quality Commission (EQC). Consequently, the public hearing will be a joint EQC/LRAPA hearing. Following the public hearing, the LRAPA Board will be asked to adopt the rules, either as proposed or with any changes deemed necessary in response to information received at the hearing. If the rules are adopted by the board, they will become effective immediately. They will be forwarded to ODEQ for approval by the EQC, after which ODEQ will forward them to the Environmental Protection Agency (EPA) for approval as a revision to Oregon State Implementation Plan (SIP).

GAC/MJD

OREGON BULLETIN

Supplements the 2000 Oregon Administrative Rules Compilation

VOLUME 39, No. 5
May 1, 2000

For March 16, 2000 - April 14, 2000



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BILL BRADBURY
Secretary of State

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NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 731.804, 744.852, 744.854, 744.856 & 744.858

Proposed Adoptions: 836-071-0350, 836-071-0360, 836-071-0370, 836-071-0380, 836-071-0390, 836-071-0400

Last Date for Comment: 6-16-00

Summary: ORS 744.850 to 744.858 were enacted in the 1999 regular legislative session to establish a limited license that authorizes vehicle rental agencies to offer and sell specified types of insurance in connection with the rental of vehicles. The types of insurance all relate to the rental and use of vehicles. The proposed rules implement the limited license program by establishing fees, describing the information to be submitted in license applications and renewals and establishing other applicable procedures and requirements.

**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Sue Munson

Address: 350 Winter St. NE, Rm. 440, Salem, OR 97301-3883

Telephone: (503) 947-7272

Stat. Auth.: ORS 731.244 & 743.550

Stats. Implemented: ORS 743.550

Proposed Amendments: 836-010-0011

Last Date for Comment: 6-5-00

Summary: This proposed rulemaking amends the rule solely for the purpose of adding to the Exhibit a new certification statement for student health insurance. The rule and Exhibit are otherwise unchanged. The certification statement provides guidelines for filing forms providing for that coverage.

Rules Coordinator: Sue Munson

Address: 350 Winter St. NE, Rm. 440, Salem, OR 97301-3883

Telephone: (503) 947-7272

**Department of Consumer and Business Services, Oregon
Occupational Safety and Health Division
Chapter 437**

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-002-0223

Last Date for Comment: 6-9-00

Summary: Oregon OSHA proposes to repeal three paragraphs in OAR 437-002-0223, Division 2/N, Material Handling and Storage. The three paragraphs; (34) Modifications; (35) Nameplates and Markings; and (36) Capacity Markings, all dealing with Industrial Vehicles, are not necessary because the federal standard (1910.178(a)(4) and (6)) adopted into our Division 2/N, has similar language.

Rules Coordinator: Sue Joye

Address: Oregon OSHA, 350 Winter St. NE, Salem, OR 97310

Telephone: (503) 378-3272

**Department of Environmental Quality
Chapter 340**

Date: 5-22-00

Time: 2 p.m.

Location: 811 SW 6th Ave., Rm. 10
Portland, Oregon

Hearing Officer: Susan Greco

Stat. Auth.: ORS 183.341, 468.020, 192.410

Stats. Implemented: ORS 183.341, 183.335, 183.430 & 192.410 - 192.440

Proposed Adoptions: 340-011-0122, 340-011-0124, 340-011-0131

Proposed Amendments: 340-011-0005, 340-011-0010, 340-011-0097, 340-011-0098, 340-011-0103, 340-011-0107, 340-011-0132, 340-011-0136, 340-011-0310, 340-011-0330, 340-011-0340, 340-011-0360, 340-011-0370, 340-011-0380, 340-011-0390, 340-012-0049

Proposed Repeals: 340-011-0102, 340-011-0116, 340-011-0142, 340-011-0350

Last Date for Comment: 5-24-00

Summary: Makes permanent temporary rule changes adopted in February 2000. These changes affect the procedures for contested case hearings conducted by hearing officers from the Central Hearing Division. These changes also adopt the most recent version of the Oregon Administrative Rules General's Model Rule. Additionally the rulemaking makes housekeeping changes to the rules governing public records including updating the amount charged to cover staff time

and clarifies various procedures that the Department has been following but have not been in the rules.

**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Susan M. Greco

Address: 811 SW 6th Ave., Portland, OR 97213

Telephone: (503) 229-5213

Date: 6-13-00

Time: 12:15 pm

Location: LRAPA Meeting Rm.
1010 Main St.
Springfield, OR

Hearing Officer: Brian L. Jennison

Stat. Auth.: ORS 183 & 468A

Stats. Implemented: ORS 183 & 468A

Proposed Amendments: 340-200-0040

Last Date for Comment: 6-13-00

Summary: Under the proposed amendments, LRAPA would amend Title 34 to: update references to state rules which have been renumbered; revise language for clarity; remove the fees for Synthetic Minor Permits from Table A, Part I, so that LRAPA would use the state's fee schedule for those permits as it does for the rest of the Title V program; change the late payment fee in Table A, Part I, to 1.5 percent per month until the fees are paid; increase construction fee levels II and III to 85 percent of the fees charged by the state for the equivalent levels of review; increase the fees in Table A, Part II, to generally 90 percent of the corresponding state fee schedule; and add provision for an automatic annual increase of four percent in the permit fees to keep up with inflation and maintain LRAPA's level of service in permitting.

Verbal comments will be accepted at the public hearing on June 13, 2000. Comments received prior to the hearing date must be in writing. While written comments may be submitted until June 13, it would be helpful to get written comments in by Monday, June 5, 2000 to allow time for staff to respond to the comments and get the information to the board members prior to the hearing date. Any written comments submitted on the day of the hearing must be presented orally by the commenter at the hearing. For questions regarding this notice contact Merrie Dinteman at (541) 736-1056 ext. 225.

Rules Coordinator: Susan Greco

Address: Lane Regional Air Pollution Authority <#13><#9>101 Main Street <#13><#9>Springfield, OR 97477

Telephone: (503) 229-5213

Date: 5-15-00

Time: 9 a.m.

Location: Oregon DEQ
811 SW 6th Ave.
Portland
Conference Rm. 10

Hearing Officer: Sherman Olson

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.115, 454.625, 454.775, 468.020, 468.045, 468B.015 & 468B.020

Proposed Amendments: Rules in chapter 340, division 71

Last Date for Comment: 5-15-00

Summary: To clarify the flexibility in the written performance-based criteria to be used by the Technical Review Committee and Department staff when reviewing and evaluating new or innovative technologies and materials for use in Oregon. It would also alter the formula for calculating trench length if the trench width deviates from the standard 2 foot trench width.

Rules Coordinator: Susan Greco

Address: 811 SW 6th Ave., Portland, OR 97204

Telephone: (503) 229-5213

Date: 5-25-00

Time: 4:30 p.m.

Location: 811 SW 6th Ave.
Portland
Rm. 3A

Hearing Officer: DEQ Staff

Stat. Auth.: ORS 465.400

Stats. Implemented: ORS 465.315

Proposed Amendments: 340-122-0070, 340-122-0085, 340-122-0090

Last Date for Comment: 5-31-00

NOTICE OF PROPOSED RULEMAKING HEARING

(Statements of Need and Fiscal Impact Accompany this Form)

AGENCY: Lane Regional Air Pollution Authority and
Department of Environmental Quality

The above named agency gives notice of hearing.

HEARING TO BE HELD:

Date:	Time:	Location:
06-13-00	12:15 p.m.	LRAPA Meeting Room 1010 Main Street Springfield, Oregon

Hearings Officer: Brian L. Jennison (541) 726-2514 Ext. 216

Stat. Auth.: ORS 183 and 468A

Stats. Implemented: ORS 183 and 468.A

Proposed Amendments: OAR 340-200-0040; LRAPA Title 34, Sections 001, 005, 030, 035, 050, 060, 070, 090, 100, 110, 120, 130, 140, 150, 170, 180, 190, 200

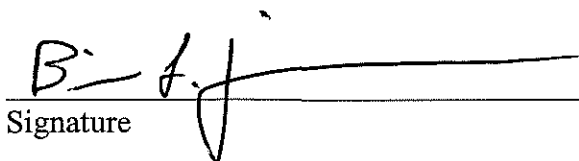
Last Date for Comment: June 13, 2000. Verbal comments will be accepted at the public hearing on 06-13-00. Comments received prior to the hearing date must be in writing. While written comments may be submitted until June 13, it would be helpful to get written comments in by Monday, June 5, 2000 to allow time for staff to respond to the comments and get the information to the board members prior to the hearing date. Any written comments submitted on the day of the hearing must be presented orally by the commenter at the hearing.

Summary: Under the proposed amendments, LRAPA would amend Title 34 to: update references to state rules which have been renumbered; revise language for clarity; remove the fees for Synthetic Minor Permits from Table A, Part I, so that LRAPA would use the state's fee schedule for those permits as it does for the rest of the Title V program; change the late payment fee in Table A, Part I, to 1.5 percent per month until the fees are paid; increase construction fee levels II and III to 85 percent of the fees charged by the state for the equivalent levels of review; increase the fees in Table A, Part II, to generally 90 percent of the corresponding state fee schedule; and add provision for an automatic annual increase of four percent in the permit fees to keep up with inflation and maintain LRAPA's level of service in permitting.

Rules Coordinator: Merrie Dinteman (541) 736-1056 Ext. 225

Address: Lane Regional Air Pollution Authority, 1010 Main Street, Springfield, OR 97477

Signature



April 17, 2000
Date

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

(Lane Regional Air Pollution Authority)
Department of Environmental Quality
Agency and Division

OAR 340
Administrative Rules Chapter Number

In the Matter of	)	Statutory Authority,
	)	Statutes Implemented,
	)	Statement of Need,
	)	Principal Documents Relied Upon,
	)	Statement of Fiscal Impact

Statutory Authority: ORS 183, ORS 468.020, ORS 468A.135

Other Authority: OAR 340-216-0090; LRAPA Titles 13, 14, and 34

Statutes Implemented: ORS 468.020, ORS 468A.135

Need for the Rule(s): An increase in the fees paid by sources required to have Air Contaminant Discharge Permits is necessary in order to keep up with the escalating costs of implementing and administering the program. The proposed amendments would add provision for an automatic four percent annual increase in ACDP fees to help maintain LRAPA's level of service.

As part of a previous amendment to LRAPA's fee schedule, a new category was created for synthetic minor sources which was designed to reflect reduced time spent by staff on permitting and compliance assurance activities for simple sources. Synthetic minors are sources of air emissions that need federally enforceable conditions and additional monitoring to allow them to comply with federal requirements. Based on LRAPA's experience since the minor source fee was established, the level of effort and time required for permitting and compliance activities for synthetic minor sources does not justify the existence of a reduced fee category. The Oregon Department of Environmental Quality has increased its fees for Title V sources, including the synthetic minor category. The proposed rules would eliminate the specific fees for synthetic minor permits from LRAPA's fee schedule and adopt the DEQ fee by reference.

References to OAR Chapter 340 throughout the rule need to be updated to reflect renumbering of permitting rules in Chapter 340.

As a SIP revision, the proposed amendments would affect OAR 340-200-0040

Documents Relied Upon: Attorney General's Uniform and Model Rules of Procedure; OAR 340-216; LRAPA Title 34

Lane Regional Air Pollution Authority/
Department of Environmental Quality

Chapter 340
-2-

Fiscal and Economic Impact:

Industry: The fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state. Sources operating without a permit would be subject to ACDP fees, and new and previously unpermitted sources would be subject to initial construction review.

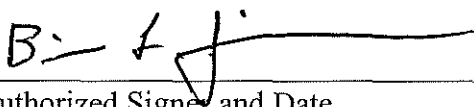
Public: The increased fees may affect consumers through higher costs of goods and services provided by the permitted sources.

LRAPA: The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.

Other Government Agencies: There are three government agencies holding LRAPA permits, one major source, one synthetic minor, and one regular. The proposed changes would result in a 20 percent increase in annual fees for the regular source. The synthetic minor source would be subject to the same fees charged elsewhere in the state. The major source would not be affected.

Administrative Rule Advisory Committee consulted?: LRAPA's Citizens Advisory Committee was consulted and had no specific formal comments.

If not, why?:

 April 12, 2000
Authorized Signer and Date

GUARD PUBLISHING COMPANY

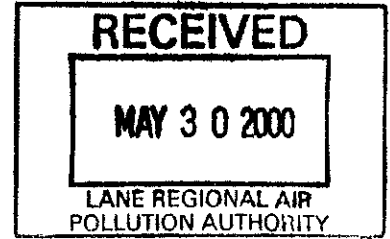
P.O. BOX 10188 PHONE (541) 485-1234
EUGENE, OREGON 97440

Legal Notice 1966775

Legal Notice Advertising

LANE REGIONAL AIR POLLUTION
ATTN: MERRIE DINTEMAN
1010 MAIN ST.
SPRINGFIELD, OR 97477

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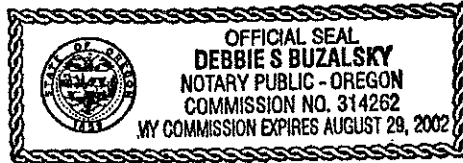


AFFIDAVIT OF PUBLICATION

STATE OF OREGON, }
COUNTY OF LANE, } ss.

I, **Kelly Gant**, being first duly affirmed, depose and say that I am the Advertising Manager, or his principal clerk, of The Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the **Notice of Intent**, printed copy of which is hereto annexed, was published in the entire issue of said newspaper for **one** successive and consecutive **day(s)** in the following issues:

May 10, 2000



Kelly Gant

Subscribed and affirmed to before me this May 25, 2000

Debbie Buzalsky

Notary Public of Oregon

My commission expires: August 29, 2002

Account #: **111252**
INVOICE **1966775**
Case: **Adopt Amendment to LRAPA Rules (SIP Revision)**
Amt Due: **\$199.00**

NOTICE OF INTENT TO ADOPT AMENDMENTS TO LRAPA RULES (SIP REVISION)
In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:
To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," including Table A, "Air Contaminant Sources and Associated Fee Schedule," to: update references to state rules which have been renumbered; revise language for clarity; remove the fees for Synthetic Minor Permits from Table A, Part I, so that LRAPA would use the state's fee schedule for those permits as it does for the rest of the Title V program; change the late payment fee in Table A, Part I, to 1.5 percent per month until the fees are paid; increase construction fee levels II and III to 85 percent of the fees charged by the state for the equivalent levels of review; increase the fees in Table A, Part II, to generally 90 percent of the corresponding state fee schedule; and add provision for an automatic annual increase of four percent in the permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. These amendments, if adopted, will revise Oregon's State Implementation Plan.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at LRAPA office at 1010 Main Street, Springfield, Oregon until June 13, 2000. Oral comments may be made at the public hearing on June 13, 2000. Comments received prior to the hearing must be in writing. While written comments may be submitted until June 13, it would be helpful to get written comments in by Monday, June 5, 2000 in order to allow time for staff to respond to the comments and get the information to the board members prior to the hearing date. Any written comments submitted on the day of the hearing must be presented orally by the commenter at the hearing. Written comments should be addressed to: LRAPA Board of Directors, 1010 Main Street, Springfield, Oregon 97477.

No. 1966775 — May 10, 2000.

WHO IS AFFECTED: Sources subject to Air Contaminant Discharge Permits in Lane County. Fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state. The increased fees may affect consumers through higher costs of goods and services provided by the permitted sources. The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.
PUBLIC HEARING:
Public hearing on the above rule adoption will be held at the LRAPA Board of Directors:
Location: LRAPA Meeting Room, 1010 Main Street, Springfield, Oregon
Date: Tuesday, June 13, 2000
Time: 12:15 p.m.

**NOTICE OF INTENT TO
ADOPT AMENDMENTS TO
LRAPA RULES (SIP
REVISION)**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," including Table A, "Air Contaminant Sources and Associated Fee Schedule," to: update references to state rules which have been renumbered; revise language for clarity; remove the fees for Synthetic Minor Permits from Table A, Part I, so that LRAPA would use the state's fee schedule for those permits as it does for the rest of the Title V program; change the late payment fee in Table A, Part 1, to 1.5 percent per month until the fees are paid; increase construction fee levels II and III to 85 percent of the fees charged by the state for the equivalent levels of review; increase the fees in Table A, Part II, to generally 90 percent of the corresponding state fee schedule; and add provision for an automatic annual increase of four percent in the permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. These amendments, if adopted, will revise Oregon's State Implementation Plan.

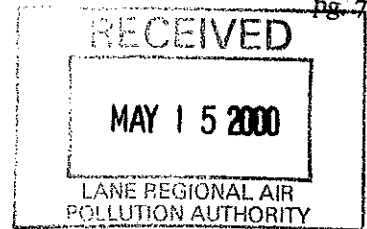
WHO IS AFFECTED: Sources subject to Air Contaminant Discharge Permits in Lane County. Fees would increase for most sources but would still be lower than those sources would pay for the same services in the rest of the state. The increased fees may affect consumers through higher costs of goods and services provided by the permitted sources. The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.

PUBLIC HEARING:

Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:
Location: LRAPA Meeting Room, 1010 Main Street, Springfield, Oregon
Date: Tuesday, June 13, 2000
Time: 12:15 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office at 1010 Main Street, Springfield, Oregon until June 13, 2000. Oral comments may be made at the public hearing on June 13, 2000. Comments received prior to the hearing must be in writing. While written comments may be submitted until June 13, it would be helpful to get written comments in by Monday, June 5, 2000 in order to allow time for staff to respond to the comments and get the information to the board members prior to the hearing date. Any written comments submitted on the day of the hearing must be presented orally by the commenter at the hearing. Written comments should be addressed to: LRAPA Board of Directors, 1010 Main Street, Springfield, Oregon 97477.

my:10 (108)



Affidavit of Publication

State of Oregon, County of Lane-ss

I, Belinda DuBell being duly sworn, depose and say that I am the legal clerk of the Springfield News a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state, that the legal publication re: Notice of Intent to Adopt Amendments to LRAPA Rules (SIP Revision).

A printed copy of which is hereto annexed, was published in the entire issue of said newspaper for one successive and consecutive weeks in the following issues: May 10, 2000.

THE SPRINGFIELD NEWS

by: Belinda DuBell

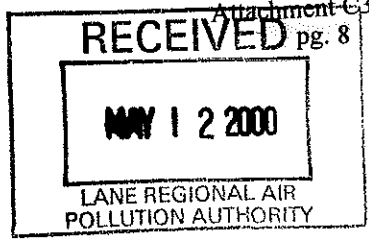
Subscribed and sworn to me this 10th day of May, 2000 by: Belinda DuBell

Fran Ramsey
Notary Public for Oregon

My commission expires August 08, 2003.



1477



Affidavit of Publication

State of Oregon
County of Lane

I, Robin Reiser, being first duly sworn, depose and say that I am the legal clerk of The Cottage Grove Sentinel, a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published Cottage Grove in the aforesaid county and state; that:

NOTICE OF INTENT TO ADOPT AMENDMENTS TO LRAPA RULES (SIP REVISION)
In accordance with Title of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:
To amend LRAPA Title 34.....

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for one week in the following issue:
May 10, 2000.

Robin Reiser
Subscribed and sworn to before me this 10th day of May 2000.

NOTICE OF INTENT TO ADOPT AMENDMENTS TO LRAPA RULES (SIP REVISION)

In accordance with Title of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," including Table A, "Air contaminant sources and Associated Fee Schedule," to: update references to state rules which have been renumbered; revise language for clarity; remove the fees for Synthetic Minor Permits from Table A, Part I, so that LRAPA would use the state's fee schedule for those permits as it does for the rest of the Title V program; change the late payment fee in Table A, Part I, to 1.5 percent per month until the fees are paid; increase construction fee levels II and III to 85 percent of the fees charged by the state for the equivalent levels of review; increase the fees in Table A, Part II to generally 90 percent of the corresponding state fee schedule; and add provision for and automatic annual increase of four percent in the permit fees to keep up with inflation and maintain LRAPA's level of service in permitting. These amendments, if adopted will revise Oregon's State implementation Plan.

WHO IS AFFECTED: Sources subject to Air Contaminant Discharge Permits in Lane County. Fees would increase for most sources but still would be lower than those sources would pay for the same services in the rest of the state. The increased fees may affect consumers through higher costs of goods and services provided by the permitted sources. The additional fees would allow LRAPA to maintain its current staffing level to perform the duties required by the permitting program.

PUBLIC HEARING:
Public hearing in the above rule adoption will be held before the LRAPA Board of Directors:

Location: LRAPA Meeting Room
1010 Main Street
Springfield, Oregon
Date: Tuesday, June 13, 2000
Time: 12:15 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office at 1010 Main Street, Springfield, Oregon until June 13, 2000. Oral comments may be made at the public hearing on June 13, 2000. Comments received prior to the hearing must be in writing. While written comments may be submitted until June 13, it would be helpful to get written comments in by Monday, June 5, 2000 in order to allow time for staff to respond to the comments and get the information to the board members prior to the hearing date. Any written comments submitted on the day of the hearing must be presented orally by the commenter at the hearing. Written comments should be addressed to: LRAPA Board of Directors, 1010 Main Street, Springfield, Oregon 97477.

Rosemary E. Lilja
Notary Public for Oregon



144

Affidavit of Publication

State of Oregon
County of Lane



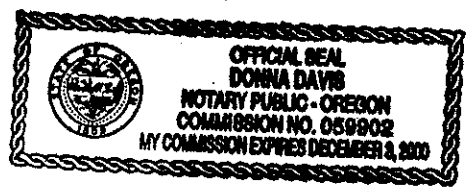
I, Larry D. Roberts, being first
duly sworn deposes and say that I am the
Publisher of the Dead Mountain Echo, a newspaper of
general circulation published at Oakridge, Oregon in
the aforesaid county and state, as defined by ORS 193-
010 ET SEQ that a notice, a printed copy of which is
hereto annexed, was published in the entire issue of
said newspaper for :
one consecutive weeks, in the
following issues: #5, 5/11/00.

Signed:.....*Larry D. Roberts*.....

Subscribed and sworn to before me this
...*30*.....day of *May*....., *2000*.....

Donna Davis.....Notary Public of Oregon

My commission expires:.....*12-3-2000*.....





1010 Main Street
Springfield, OR 97477

phone (541) 736-1056
fax (541) 726-1205
1-877-285-7272
www.lrapa.org
E-mail: lrapa@lrapa.org

MEMORANDUM

TO: Environmental Quality Commission

FROM: Brian L. Jennison, Ph.D., Hearings Officer *BJ*

SUBJ: Public Hearing, June 13, 2000, LRAPA Title 34 Amendments

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority on June 13, 2000 in the LRAPA meeting room at 1010 Main Street, Springfield, Oregon. The purpose of the hearing was to adopt amendments to LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," including Table A, "Air Contaminant Sources and Associated Fee Schedule."

Summary of Testimony

There was no public testimony presented at the hearing. Written comments received prior to the hearing, as well as LRAPA's response and any changes made to the proposed amendments as a result of those comments, are detailed in the attached staff report dated June 13, 2000.

Action of the LRAPA Board of Directors

Based on the information presented, the board adopted the amendments to Title 34 by unanimous vote.

/MJD

MJD

MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY--JUNE 13, 2000
LRAPA Meeting Room
1010 Main Street
Springfield, Oregon

ATTENDANCE:

Board: Betty Taylor, Chair--Eugene; Jim Chartier--Eugene; Al Johnson--Eugene; Sid Leiken--Springfield; Pat Patterson--Cottage Grove/Oakridge; Pete Sorenson--Lane County (via phone)
(ABSENT: At-Large Position Vacant)

Staff: Brian Jennison--Director; Grecia Castro; Merrie Dinteman; Brett Jacobs; Kim Metzler; John Morrissey; Laura Wipper

Advisory Committee: Russ Ayers; Lorena Young

1. OPENING: Taylor called the meeting to order at 12:16 p.m.
2. CONSENT CALENDAR (May 9, 2000 minutes and expense reports through April 30, 2000):
ACTION: MSP(SORENSEN/LEIKEN)(UNANIMOUS) APPROVAL OF CONSENT CALENDAR.
3. PUBLIC PARTICIPATION: None.
4. DIRECTOR'S REPORT: Jennison had nothing to add to the written report, and the board had no questions.
5. OLD BUSINESS:

Update and Possible Action on Strategic Planning. At the joint board/advisory committee meeting the previous week to finalize the strategic plan, concern was raised that placing stable funding in the list of urgent priorities at the beginning of the plan seems to place greater emphasis on funding that on the agency's mission. It was suggested at that time that stable funding be removed from that list but left where it appears in the tactical plans elsewhere in the document. Patterson said adequate, predictable funding is critical to the operation of the agency and should not be downplayed. Wipper suggested that staff write an introduction for the plan which includes the importance of adequate and predictable funding to completion of the goals in this plan. Stable funding could be removed from the list of urgent priorities but left where it is found in the tactical plans.

ACTION: MSP(PATTERSON/SORENSEN)(UNANIMOUS) THAT THE NEED FOR STABLE, PREDICTABLE FUNDING TO SUPPORT THE CORE PROGRAMS BE PUT INTO AN INTRODUCTION AND REMOVED FROM THE LIST OF URGENT PRIORITIES.

ACTION: MSP(JOHNSON/CHARTIER)(UNANIMOUS) ADOPTION OF THE LRAPA STRATEGIC PLAN.

Monaco Coach Odor Complaint Situation. Michelle Sunia, 91205 Rustic Court, Coburg, reported that the residents of her area are still getting paint odors from Monaco Coach. The odors do not occur as frequently and are not as strong, but they are still there. She said she was also interested in the results of the May 23 meeting in Salem regarding the definition of public nuisance.

Jennison said the DEQ group which met in Salem on May 23 discussed options for action when an agency encounters a chronic odor situation, and consensus among attendees was that LRAPA could be well within its rights to declare Monaco Coburg to be a nuisance. Jennison explained that declaring Monaco Coburg a nuisance would involve issuance of a Notice of Violation and some sort of stipulated order which would require them to resolve the nuisance. It would probably be tied to their permit so that they could not operate if the nuisance situation were not resolved. Jennison said this would cause the situation to become much more adversarial and would likely result in litigation.

Jennison reported that, since the May board meeting, staff has received 41 odor complaints, bringing the total received since September of 1999 to 166. There were also 17 complaints presented to the Coburg City Council in September. In addition, Jennison said that DEQ Director Langdon Marsh had referred to LRAPA a letter received from Congressman DeFazio asking what DeFazio can do to help resolve this situation. DeFazio's letter was in response to an organization called the Concerned Citizens of Coburg. Jennison will be responding to the Congressman's concerns.

There was some discussion regarding the facility's overall compliance with permit conditions. John Morrissey, the LRAPA inspector for this source, explained that there are a number of record keeping, reporting, and monitoring requirements to which Monaco became subject upon startup of that facility. Monaco has not been keeping the records or submitting the reports, as required, for the wood furniture manufacturing aspect of the operation. An added problem is that the Coburg personnel say they can't give LRAPA some of the technical information because it is at their headquarters in Indiana. He said he does not know if they realize they need to have all that information at the Coburg facility. Patterson asked whether they knew when they started that they were going to need to keep the records and submit the reports. Leiken commented that he finds it difficult to believe Monaco was not aware from the beginning that they need to report on the chemicals they use in their processes. Dick Brown said he has read the facility's permit, and it states very clearly exactly what is required.

Johnson expressed concern about seeing in the director's report a list of violations with subsequent action and resolution pending. Morrissey said the company has submitted some of the information, and he is continuing to gather information before making his recommendations for further action. Morrissey added that because painting and finishing processes are involved in both the painting of the coaches and the wood furniture manufacturing operation, it is not known for certain that the odors which are causing the complaints are coming strictly from the coach painting operation. Taylor asked how long LRAPA is to remain patient in this situation and stated she does not want to see it continue all summer. Jennison said staff would prefer to continue to work with the facility to find a technical solution to the problem, until he feels that all the possibilities have been exhausted, to try to avoid having to go further with legal solutions. Dick Brown, 91128 North Miller Street, Coburg, was also present at this meeting and stated that he supports Jennison's approach to the situation and believes his neighbors also support it.

MINUTES
LRAPA Board of Directors Meeting

Board Work Sessions. The board had a joint work session with the advisory committee on June 6 to finalize the strategic plan. The next work session is to be a breakfast meeting with Lane County's legislative delegation.

Meetings with Lane County Legislative Delegation. Over the past few months, the board has been talking about meeting with Lane County's legislative delegation to familiarize them with LRAPA and get their support for a fair share of the state's General Fund air quality program allotment for Lane County. Sorenson said the meeting needs to take in June, July, or August, before the legislators get too busy in the fall. After going over board members' schedules for the next few months, it was decided that the meeting with the legislators should take place in the latter part of August. Sorenson suggested that staff invite the nominees as well as the current legislators. He also suggested that the discussion be kept basically to the fair share issue. Staff was directed to arrange the breakfast meeting in late August.

6. ADVISORY COMMITTEE:

Activity Report. There was nothing new to report.

Committee Appointment. The committee had reviewed the applications and recommended that the board appoint Jennifer Lee Juden to represent public health on the LRAPA Advisory Committee.

ACTION: MSP(CHARTIER/JOHNSON) APPOINTMENT OF JENNIFER LEE JUDEN, REPRESENTING PUBLIC HEALTH. (VOTE: 5 IN FAVOR; TAYLOR ABSTAINING BECAUSE SHE FAVORED A DIFFERENT CANDIDATE)

It was pointed out that this appointment brings the total membership back to 11. All required areas of interest, as well as those desired by the committee, are now represented. Because two of the general public representatives who had not been attending meetings have elected to resign, it is no longer necessary to raise the number of members to 13.

7. PUBLIC HEARING--PROPOSED ADOPTION OF LRAPA BUDGET FOR FY 2000-2001: Jennison reported that the LRAPA Budget Committee met on May 9 and approved the proposed budget for adoption by the board. He said it is a very lean budget and does not include a cost-of-living increase.

Public Hearing. Taylor opened the public hearing at 1:07 p.m. Jennison placed into the record affidavits of hearing notice publication from the Eugene *Register Guard*. Taylor asked if anyone present wished to speak in support of or in opposition to the proposed budget. Hearing no response, Taylor closed the public hearing at 1:08 p.m.

ACTION: MSP(JOHNSON/CHARTIER)(UNANIMOUS) ADOPTION OF THE LRAPA BUDGET FOR FY 2000-2001.

8. PUBLIC HEARING--PROPOSED ADOPTION OF AMENDMENTS TO LRAPA TITLE 34 (PERMITTING RULES) INCLUDING TABLE A (FEE SCHEDULE): Jennison explained that permit fees in Table A provide approximately 85 percent cost recovery for the permitting program, and the proposed amendments would increase various LRAPA charges for permitting and compliance services

to maintain the current level of service. The proposed fee amounts would be approximately 90 percent of the fees charged by the state for those services, although there are some sources for which LRAPA charges a fee which DEQ does not charge. Jennison commented that, rather than LRAPA not charging those fees, LRAPA believes DEQ should be charging them because of the calculations and analysis involved in processing the permits for facilities which include those particular sources.

Sorenson asked whether permit fees could be reduced in favor of additional enforcement action and civil penalties for facilities which violate, in order to reinforce positive behavior and punish negative behavior. Jennison responded that the application fees are set to cover the expenses the agency incurs in evaluating the applications, and whether or not company complies with the rules has no bearing on that work load. In a manner of speaking, the concept of positive behavior reinforcement is in place with the Title V program, because major sources pay lower fees as they reduce their emissions. As far as more or larger civil penalties, Jennison said this would not work for LRAPA since, by state statute, civil penalties must go to Lane County. The only way increased enforcement and collection of civil penalties would help to offset LRAPA's permit program costs would be through legislative action to allow the agency to keep some percentage of the penalties it collects. Jennison suggested this might be something the board would like to discuss with the legislative delegation in August.

Public Hearing. Taylor opened the public hearing at 1:14 p.m. Jennison entered into the record affidavits of hearing notice publication in the *Cottage Grove Sentinel*, the *Eugene Register-Guard*, the *Oakridge Dead Mountain Echo*, and the *Springfield News*. Taylor asked if anyone present wished to speak in favor of or in opposition to the proposed amendments to Title 34. Hearing no response, she closed the public hearing at 1:14 p.m.

Discussion. Leiken brought up the fact that LRAPA went for several years with no increase in permit fees, and then had a large increase in 1998 and now proposed another in 2000. He said he would prefer to see the agency make small increases each year so that businesses are not hit with large increases in the future. Several other board members said they agree with this position. Leiken said he was opposed to the amount of the proposed fee increase. Jennison replied that staff shares the view that regular smaller increases are a better option and that the proposed amendments include provision for a small increase each year. He added that the budget which the board adopted earlier in this meeting is tied to this fee increase. Without the increased revenues, the agency would not be able to support the budget.

There was also some discussion of LRAPA's fees always being a certain percentage of DEQ's fees, and the sense that LRAPA is always trying to catch up with DEQ fee changes. Leiken suggested that perhaps LRAPA should strive for an excellent program and service and set the fees accordingly, with no comparison to DEQ's fees. Sorenson said he thinks it is a plus with the business community, as well as our legislative delegation, for the agency to provide the same service for less money than the state. He added that the bigger sources doing business in Lane County are, in some ways, good allies to LRAPA but could be opponents if Lane County were to get too far out of line with the rest of the state.

Sorenson asked that staff present an oral report in six months relative to cost recovery through permit fees, as well as what the DEQ is doing with its permit fees and any changes LRAPA staff feels might

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LRAPA Board of Directors Meeting

be necessary in LRAPA's fee schedule as a result. He said he would like to have a more formal report of that information in about a year.

ACTION: MSP(SORENSEN/PATTERSON)(UNANIMOUS) ADOPTION OF PROPOSED AMENDMENTS TO LRAPA TITLE 34.

9. APPOINTMENT OF AT-LARGE BOARD MEMBER: The at-large position vacancy was advertised, and two applications were received. Both applicants live within the urban growth boundary of Springfield. One applicant, Lorena Young, is currently on the LRAPA Advisory Committee; and the other, Carol Tannenbaum, is currently on the LRAPA Budget Committee. Johnson said that while he appreciates Young's years on the advisory committee and experience with the issues that face LRAPA, he is somewhat concerned about the fact that she works for Weyerhaeuser and the potential conflict of interest of having an employee of a Title V source on the agency's policy making board. There is still a strong desire on the part of the board to have a representative of the more rural areas of Lane County in the at-large position, preferably but not necessarily the northern part of the county. Sorenson pointed out that the occupational background of the current board is fairly mixed, with education, government, and business and industrial backgrounds. He suggested that occupational background of applicants, as they fit in with the backgrounds of current board members, should also be a consideration. Johnson said he is a little concerned about having to try so hard to get applicants and pointed out that it is important to appoint an individual who is interested and wants to participate.

ACTION: MSP(SORENSEN/JOHNSON)(UNANIMOUS) TO RE-ADVERTISE TO TRY TO GET ADDITIONAL APPLICATIONS. The notice is to include applications from any area of the county except within the Eugene city limits since Eugene already has the maximum number of seats on this board allowed by state statute. The notice is to be published as soon as possible, with a deadline in mid- to late-July for submitting applications. The board is to consider this appointment again at its August meeting. The objective is to try to get a larger pool of applicants from which to select. It is understood that the two applications already received will be considered along with any others received.

10. SCHEDULE FOR EVALUATION OF DIRECTOR'S PERFORMANCE: Taylor suggested that Part I of the evaluation form be eliminated from the form for this initial evaluation, as recommended by staff. She suggested further that the evaluation take place in August rather than July. Jennison said August would be fine with the understanding that if a merit increase is granted it should be retroactive to July 10, which is his six-months anniversary date.

ACTION: MSP(JOHNSON/CHARTIER)(UNANIMOUS) ELIMINATING PART I FROM THE DIRECTOR'S EVALUATION FORM FOR THIS INITIAL EVALUATION, SCHEDULING THE EVALUATION AT THE AUGUST BOARD MEETING, AND MAKING ANY MERIT INCREASE RETROACTIVE TO JULY 10, 2000.

There was some discussion as to whether the evaluation should take place at the regular board meeting or in executive session. Jennison said he would not mind having it in open session. Sorenson suggested that staff check with legal counsel to determine whether open session is mandatory or if the director has a choice between open and closed sessions.

The evaluation form is to be sent out to staff and advisory committee members with a request to return them either to staff or directly to the board. Johnson brought up the issue of confidentiality. The package sent to staff and advisory committee members is to include a list of board members' addresses and a list of options to either give the evaluations to Dinteman to send to the board or to send the evaluations directly to the board members, either individually or to the chair. The deadline for submission should be at least a couple of weeks prior to the August board meeting so that board members will have time to read through them and use that information to help them fill out their evaluation forms.

11. NEW BUSINESS:

Future Agenda Items List. Sorenson asked that a list of future agenda items be placed on current agendas so that, when the board asks that things be done in the future, there will be a list of those items with approximate dates. It would be helpful to the public, as well, to know what the board will be discussing over the next few months. The board would also be able to drop a few things by consensus if the list of items gets too large or higher priority items come up.

July Field Burning Information. Jennison reported that representatives from the state Department of Agriculture's Smoke Management office will be present at the July 11 meeting to talk about the current grass seed field burning program.

DEQ Information. Jennison said the new DEQ Air Quality Administrator, Andy Ginsburg, will attend the board's September 12 meeting to introduce himself and talk to the board about DEQ's air quality program and DEQ's relationship with LRAPA.

Jennison said LRAPA will be represented at a November Environmental Quality Commission retreat, at DEQ's suggestion. LRAPA will be there with various DEQ groups to present the agency and let the commissioners know who we are.

Cottage Grove/Oakridge Board Position. Patterson reminded the board that his two-year appointment will be up at the end of this year, and it would be a good idea to find out if the city of Oakridge knows who might be appointed for 2001-2002. Jennison said Oakridge mayor Don Hampton has said he is interested in returning to the LRAPA board. Patterson said he will be sure to have all of the LRAPA information he has received in a binder to pass on to the Oakridge appointee.

12. ADJOURNMENT: The meeting adjourned at 12:55 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, July 11, 2000, at 12:15 p.m., in the LRAPA meeting room at 1010 Main Street in Springfield, Oregon.

Respectfully submitted,



Merrie Dinteman
Recording Secretary



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390

(503) 229-5696

TDD (503) 229-6993

March 1, 2000

Brian Jennison, Ph.D., Director
Lane Regional Air Pollution Authority
1010 Main Street
Springfield, OR 97477

RE: Proposed Amendments to LRAPA Title 34 Stationary Source Rules and Permitting Procedures, including Table A.

Dear Mr. Jennison:

We have reviewed the proposed amendments to the Lane Regional Air Pollution Authority "Stationary Source Rules and Permitting Procedures", including Table A "Air Contaminant Sources and Associated Fees", dated February 7, 2000. We find the proposed rule amendments to be at least as strict as the comparable rules of the Department of Environmental Quality.

Although not being changed by this rule making, Section 34-140 "Permit Duration" allows permits to be issued for 10 years. The potential conflict here is that Synthetic Minor permits are limited to a 5-year duration by state rules (OAR 340-216-0090(7)) and federal rules (40 CFR section 70.6). We recommend you review this potential conflict and resolve if necessary. There are a number of other suggested changes, hand written on the attached rule package, to make the rules more consistent with the State rules. These include rule reference changes to the new rule numbering, and changes in wording from "Federal Operating Permits" to "Title V Operating Permits", along with other minor changes.

We hereby authorize you, on behalf of the Environmental Quality Commission, to act as Hearings Officer for the public comment process of adopting this proposal as a revisions to the State of Oregon Clean Air Act Implementation Plan. If you have any questions, please contact Laurey Cook at (503) 229-5058.

Sincerely,

Andrew Ginsburg
Administrator
Air Quality Division

AG:DK:jfj
AQ77140.doc

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item J
November 30/December 1 Meeting

Title:

Rules for Open Burning

Summary:

This rulemaking is part of the Air Quality Program's improvement process, in this case, Phase I of revisions to the open burning rules that are intended to clarify and streamline the rules. The proposed rulemaking makes several changes to the existing open burning control program to enhance environmental protection, upgrade administration and enforcement of the program, improve service by allowing local jurisdictions to issue DEQ burn permits and update rules to reflect changes in the law, particularly in regards to agricultural burning.

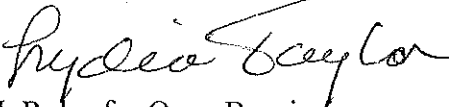
Department Recommendation:

The Commission adopt the rules/rule amendments regarding open burning as an amendment to the Clean Air Act State Implementation Plan as presented in Attachment A of the Department Staff Report.


Report Author


Division Administrator


Director

Date: November 7, 2000
To: Environmental Quality Commission
From: Lydia Taylor 
Subject: Agenda Item J, Rules for Open Burning,
EQC Meeting November 30/December 1, 2000

Background

On April 4, 2000, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would adopt new rules/rule amendments regarding open burning to improve environmental protection, clarify the Department's authority to regulate burning under applicable laws, and streamline the administration of the rules.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on June 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 May 24, 2000.

Public Hearings were held July 18th in Coos Bay, Corvallis and Madras; July 19th in Tillamook; and July 20th in Gresham and Pendleton. Martin Abts, Duane Altig, Larry Calkins and Kevin Downing served as Presiding Officers. Written comment was received through August 10, 2000. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearings and lists all the written comments received. A copy of the comments 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.

This proposal, if adopted, will be submitted to the US Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) (OAR 340-200-0040), which is a requirement of the Clean Air Act. The Department has the statutory authority to address this

issue under ORS 468A.040 and ORS 468.065. The SIP revision authority resides in ORS468A.035.

Keywords and Acronyms

- Agricultural burning – Burning of waste from activities on land currently used or intended to be used for the raising, harvesting and selling of crops or by raising and selling livestock or poultry or their product. These activities are primarily for the purpose of obtaining a profit in money from these agricultural operations.
- Open burning – Burning in open, outdoor fires, burn barrels, burning in certain solid waste or infectious waste incinerators or any other outdoor burning when combustion is not effectively controlled and the resulting combustion products are not vented through a stack or chimney.
- SIP – State Implementation Plan, OAR 340-200-0040. A document prepared by each state describing existing air quality conditions and measures which will be taken to attain and maintain national air quality standards.

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking is Phase I of the Air Quality Program's improvement process intended to clarify and streamline the existing open burning rules. This proposal is intended to reduce the amount of time the Department spends on open burning issues and shift resources to other, higher priority air quality improvement activities.

This proposal clarifies the opportunity to delegate authority to local governments, including fire districts as some local jurisdictions have expressed an interest in enforcing the Department's open burning rules. Such a step would improve service to citizens as air quality concerns can be addressed in one step as citizens seek approval to burn under local government or fire district regulations. This rulemaking also makes several housekeeping changes including updating the listing of open burning control areas based on growth in population.

The 1999 Legislature amended the statutes that provide the governing authority to regulate agricultural burning. These amendments have clarified that outside of field burning in the

Memo To: Environmental Quality Commission

Agenda Item J, Rules for Open Burning, EQC Meeting, November 30/December 1,2000

Page 3

Willamette Valley, the Department is not authorized to regulate agricultural burning. This action will amend the Department's rules to conform to the new statutory authority.

Phase II will follow in a year or two, and is planned to take a more comprehensive look at the program in concert with local regulatory authorities. The goal of Phase II is to provide better customer service by coordinating state and local open burning and nuisance programs.

Relationship to Federal and Adjacent State Rules

There are no federal rules applicable to open burning. The open burning rules are an element of the State Implementation Plan, a federally approved and enforceable strategy outlining how Oregon will meet federal air quality health standards.

Idaho and Washington each have somewhat similar rules placing restrictions of some form of open burning. In California there are no statewide open burning rules and each district is responsible for promulgating and enforcing its own rules. Each of these districts have open burning rules, most with several elements in common including a list of prohibited materials to burn, exemption of certain activities from regulation, restrictions on open burning as alternatives become available and possibly geographic based restrictions.

Authority to Address the Issue

As provided in ORS 468A.010, the Department is directed "to restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state." The extent to which the Department may regulate sources of air pollution is outlined in ORS468A.020, which exempts some forms of open burning from regulation like agricultural burning other than field burning, fires set for fire fighting training and fires set by public agencies for weed abatement and prevention and elimination of a fire hazard.

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

Department staff from throughout the state met over the course of several months to identify the issues associated with the Department's role in implementing open burning controls and to recommend solutions to those problems. Staff consulted with the Department of Justice to resolve legal issues identified. During this time, staff also made inquiries and presentations before potentially affected parties, such as fire districts and local governments, to determine the impact

and feasibility of various approaches to develop these proposed amendments.

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

In keeping with the statutory direction provided by the Legislature, the Environmental Quality Commission's policy since 1976 has been to eliminate open burning practices where alternative waste disposal methods are feasible and practical. The mechanism to accomplish that policy goal has tied population growth in Oregon cities to restrictions on open burning that encourage alternative disposal methods and resource recovery. These rules update the list of cities that fall within the prescribed population growth thresholds. Environmental protection is also enhanced by rule amendments that harmonizes the proposed nuisance definition with the Department's proposed nuisance rules, requires a permit for slash burning in open burning control areas not otherwise regulated by the Smoke Management Plan and requires a permit to burn any waste moved off the property of origin.

These rules also clarify the extent of the authority of the Department to regulate agricultural open burning in light of amendments made in 1999 to the statutes governing open burning. The amendments also streamline administration of the program by clarifying that persons responsible for open burning activity are strictly liable for violations of the rule, clarifying authority to order illegal fires to be extinguished and providing for delegation of open burning authority to local jurisdictions, if requested.

Summary of Significant Public Comment and Changes Proposed in Response

- **Comment: Maintain the current list of open burning control areas.**
Response: The Department does not agree with the comment and recommends adoption of the list of open burning control areas as proposed. The open burning restrictions implement the policy outlined in the rule, i.e., to reduce open burning as a waste disposal option where feasible alternatives are available. Even though the alternatives to open burning cost more than burning itself, these alternatives are available in these communities, and are reasonably required. Air quality has improved in those areas where open burning has been previously curtailed. It is still a prudent approach to restrict open burning even where compliance with the particulate matter standard, the principle criteria pollutant emitted from open burning, has been achieved. Other air contaminants are also present when burning even natural vegetative debris, e.g., benzene and 1,3 butadiene.
- **Comment: Allow burning at night and for longer periods of time through the year.**
Response: The Department does not agree with the comment and does not recommend these changes to the proposed rules. Wind speeds for proper dispersion are much less reliable after

nightfall. The open burning seasons reflect the periods of time where conditions for dispersion and fire prevention are optimally found. There may be days outside of these seasons when conditions are more ideal but it is a burden on local fire districts to expand their fire protection efforts beyond the generally recognized seasons currently in use.

▪ **Comment: Allow storm debris damage to be burned.**

Response: The Department acknowledges that there may be compelling circumstances to burn storm debris in some cases but no changes in the rules are otherwise recommended. The current rules allow for permits to be issued by Department staff when open burning is otherwise prohibited. Removal of storm damage can be a consideration but must be weighed against the availability of feasible alternatives and the potential for an air quality impact. The rules allow these situations to be addressed on a case-by-case basis.

▪ **Comment: Allow tumbleweed burning.**

Response: The Department supports this recommendation and has prepared a recommended revision to the rules. Tumbleweeds blown by the wind are an ongoing disposal issue in parts of eastern Oregon. Disposal by transfer to solid waste landfills is uneconomic and infeasible. The material can be burned hot with minimal smoke and the air quality impacts tend to be insignificant.

▪ **Comment: Allow burning because of agricultural quarantines or to enhance wildlife habitat.**

Response: The Department agrees with these comments and has prepared revisions to the rules. Fire has additional value as a management tool beyond the solid waste disposal utility that the rule is intended to discourage. As originally proposed, the rules would allow farmers to use burning to manage disease and pest control under quarantine. However, an agricultural quarantine may also extend to nonagricultural activities. The Department recommends allowing quarantine burning on nonagricultural land if no alternatives are available and the Department of Agriculture authorizes the burn. Similarly, fire is useful for managing wildlife habitat and for wetland restoration. Under some circumstances federal and state law prescribe the use of fire for these purposes. The Department recommends a change to the rules allowing open burning for wildlife habitat enhancement provided no alternatives are available and the burn is authorized under identified state or federal programs.

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

The rule will become effective on January 2, 2001, before the start of the next burning season. Informational materials will be prepared on the adopted changes and distributed to fire districts around the state. Department field staff will conduct presentations and briefings with key groups to provide information about the program. Members of the public still desiring to burn in open burning control areas will need to apply to the Department for a permit addressing the requirements outlined in 340-264-0180.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding open burning as an amendment to the Clean Air Act State Implementation Plan as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. Department's Evaluation of Public Comment
- E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- F. Rule Implementation Plan

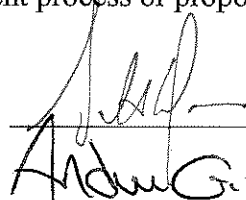
Reference Documents (available upon request)

Written Comments Received (listed in Attachment C)
(Other Documents supporting rule development process or proposal)

Approved:

Section:

Division:



Report Prepared By: Kevin Downing
Phone: 503 229-6549

Date Prepared: November 6, 2000

KD:kd

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10/17/00

DIVISION 264
RULES FOR OPEN BURNING

340-264-0010**How to Use These Open Burning Rules**

- (1) This Division classifies all open burning into one of seven classes: Agricultural; Commercial; Construction; Demolition (which includes land clearing); Domestic (which includes burning commonly called "backyard burning" and burning of yard debris); Industrial; or Slash. Except for field burning within the Willamette Valley ~~which is regulated by~~ through OAR Chapter 340, Division 266 and slash burning ~~which is controlled~~ administered by the forest practices smoke management plan ~~administered by~~ of the Oregon Department of Forestry, this Division prescribes requirements for and prohibitions of open burning for every location in the state. Generally, if a class of open burning is not specifically prohibited in a given location, then it is authorized subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. In addition, some practices specifically mentioned in OAR 340-264-0040 are exempted from this Division.
- (2) Organization of rules:
 - (a) OAR 340-264-0020 is the Policy statement of the Environmental Quality Commission setting forth the goals of this Division;
 - (b) OAR 340-264-0030 contains definitions of terms ~~which~~ that have specialized meanings within the context of this Division;
 - (c) OAR 340-264-0040 lists specific types of open burning and practices ~~which~~ that are not governed by this Division;
 - (d) OAR 340-264-0050 lists general requirements ~~which~~ that ~~are usually applicable~~ apply to any open burning governed by this Division;
 - (e) OAR 340-264-0060 lists general prohibitions ~~which~~ that apply to most open burning;
 - (f) OAR 340-264-0070 establishes the open burning schedule based on air quality and meteorological conditions as required by ORS 468A.570;
 - (g) OAR 340-264-0075 allows the delegation of some or all of the open burning authority to be administered by a local jurisdiction;
 - (h) OAR 340-264-0078 contains the legal description of Open Burning Control Areas and maps that generally depict these areas;
 - (gi) OAR 340-264-0080 indexes each county of the state to a specific rule giving specific restrictions for each class of open burning applicable in the county;
 - (hj) OAR 340-264-0100 through 340-264-0170 are rules ~~which~~ that give specific restrictions to open burning for each class of open burning in the counties named in each rule;
 - (ik) OAR 340-264-0180 provides for a letter permit authorization for open burning under certain circumstances in which open burning otherwise would be prohibited;
 - (jl) OAR 340-264-0190 establishes criteria for use of forced-air pit incineration;
 - ~~(k) OAR 340-264-0200 contains the legal description of Open Burning Control areas and maps which generally depict these areas.~~
- (3) Use of this Division will be made easier by the following procedure:
 - (a) Read OAR 340-264-0050 and 340-264-0060 to understand general requirements and prohibitions ~~which~~ that apply to all burning ~~which is~~ governed by this Division;
 - (b) In OAR 340-264-0030 read the definitions of Agricultural, Commercial, Construction, Demolition, Domestic and Industrial open burning plus the definitions of land clearing and yard

debris to determine the type of burning of concern. Also read OAR 340-264-0040 to determine if the type of burning is exempted from this Division;

- (c) Locate the rule (OAR 340-264-0100 through 340-264-0170) ~~which that~~ governs the county in which burning is to take place. OAR 340-264-0080-0090 is an index to the county rules;
- (d) Read the sections of the county rules ~~which that~~ apply to the type of burning to be accomplished;
- (e) If not prohibited by this Division, obtain a fire permit from the fire district, county court or county commissioners before conducting any burning;
- (f) If the type of burning proposed is prohibited by this Division, refer to OAR 340-264-0180 (Letter Permits) or 340-363-0190 (Forced-Air Pit Incinerators) for a possible alternative.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468, ORS 468A & ORS 477

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0022

340-264-0020

Policy

In order to restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state, it is the policy of the Environmental Quality Commission:

- (1) To eliminate open burning disposal practices where alternative disposal methods are feasible and practicable;
- (2) To encourage the development of alternative disposal methods;
- (3) To emphasize resource recovery;
- (4) To regulate specified types of open burning;
- (5) To encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible; and
- (6) To require specific programs and timetables for compliance with this Division.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0025

340-264-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) "Agricultural Burning for Disease or Pest Control" means open burning of ~~agricultural~~-waste infected or infested with a disease or pest for which the County Extension Service or Oregon Department of Agriculture identify as having no other practicable control exists. Pests or diseases for which no practicable control alternative exists shall include only those pests and diseases identified by the County Extension Service or Oregon Department of Agriculture.
- (2) "Agricultural Operation" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by ~~the~~ raising and ~~sale of~~ selling livestock or poultry, or the produce thereof, which activity is necessary to serve that purpose; Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does

- not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.
- (3) "Agricultural Open Burning" means the open burning of any agricultural waste, except as provided in OAR 340-264-0040(5).
- (4) "Agricultural Waste" means any waste material ~~actually~~ generated or used by an agricultural operation, excluding those materials described in OAR 340-264-0060(23).
- (5) "Animal Disease Emergency" means the occurrence of a disease that the Oregon Department of Agriculture determines has potentially serious economic implications for the livestock industries of this state.
- (56) "Auxiliary Combustion Equipment" includes, but is not limited to, fans or air curtain incinerators.
- (67) "Combustion Promoting Materials" include, but are not limited to, propane, diesel oil, or jellied diesel.
- (78) "Commercial Open Burning" means the open burning of any commercial waste.
- (89) "Commercial Waste" means:
- (a) Any material except:
 - (A) Agricultural waste;
 - (B) Construction waste;
 - (C) Demolition waste;
 - (D) Domestic waste;
 - (E) Industrial waste; and
 - (F) Slash.
 - (b) Examples of commercial waste are waste material from offices, wholesale or retail yards and outlets, warehouses, restaurants, mobile home parks, domestic waste removed from the property of origin, and dwellings containing more than four family living units, such as apartments, condominiums, hotels, motels or dormitories.
- (910) "Commission" means the Environmental Quality Commission.
- (4011) "Construction Open Burning" means the open burning of any construction waste.
- (412) "Construction Waste" means any waste material ~~actually~~ generally used for, resulting from or produced by a building or construction project. Examples of construction waste are wood, lumber, paper, crating and packing materials processed for or used during construction, materials left after completion of construction, and materials collected during cleanup of a construction site.
- (13) "Daylight hours" means the time between 7:30 a.m. and two hours before sunset.
- (4214) "Demolition Open Burning" means the open burning of demolition waste.
- (4315) "Demolition Waste" means any material ~~actually~~ resulting from or produced by the complete or partial destruction or tearing down of any man-made structure, or the clearing of any site for land improvement or cleanup, excluding yard debris (domestic waste) and agricultural waste.
- (4416) "Department" means the Department of Environmental Quality.
- (4517) "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).
- (4618) "Domestic Open Burning" means the open burning of any domestic waste.
- (4719) "Domestic Waste" means household waste material, which includes paper, cardboard, clothing, yard debris, or other material, ~~actually~~ generated in or around a dwelling of ~~four-four-or-or-fewer~~ fewer-family-family-living units, or on the real property appurtenant to the dwelling. Such waste materials ~~actually~~ generated in or around a dwelling of more than ~~four-four-family-family~~-living units are commercial wastes. Once domestic waste is removed from the property of origin, it becomes commercial waste.

- (1820) "Fire Hazard" means the presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or to adjacent lands.
- (1921) "Forced-Air Pit Incineration" means any method or device by which burning is accomplished in a subsurface pit or above-ground enclosure using:
- (a) Combustion air supplied under positive draft by an air curtain; and
 - (b) Combustion air controlled ~~in such a manner as~~ in order to optimize combustion efficiency and minimize the emission of air contaminants.
- (22) "Hazard to public safety" means fires that burn prohibited materials or result in smoke that substantially impairs visibility on a roadway.
- (2023) "Industrial Open Burning" means the open burning of any industrial waste.
- (2124) "Industrial Waste" means any waste material, including process waste, produced as the direct result of any manufacturing or industrial process.
- (2225) "Land Clearing" means the removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation. All waste material generated by land clearing is demolition waste except those materials ~~which~~ included in the definitions of agricultural wastes, yard debris (domestic waste), and slash.
- (2326) "Letter Permit" means an ~~Air Contaminant Discharge Permit~~ authorization issued pursuant to OAR 340-264-0180 ~~to burn select materials, at a defined site and under certain conditions.~~
- (2427) "Local Jurisdiction" means:
- (a) The local fire permit issuing authority; or
 - (b) The ~~Local~~ governmental entity ~~with~~ having authority to regulate by law or ordinance.
- (28) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.
- (2529) "Open Burning" means:
- (a) Burning in open, outdoor fires;
 - (b) Burning in burn barrels;
 - (c) Burning in incinerators ~~which~~ that do not meet the emission limitations specified for solid and infectious waste incinerators in OAR 340-230-0100 through 340-230-0150; and
 - (d) Any other outdoor burning ~~which occurs in such a manner that~~ when combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.
- (2630) "Open Burning Control Area" means an area established to control specific open burning practices or to maintain specific open burning standards ~~which~~ that may be more stringent than those established for other areas of the state. Open burning control areas in the state are described in OAR 340-264-02000078. ~~The open burning control areas in the state are:~~
- (a) ~~All areas in or within three miles of the corporate city limits of cities having a population of 4,000 or more, as further described in OAR 340-264-0200(1) and generally shown in Figure 2 thereof;~~
 - (b) ~~The Coos Bay open burning control area, as described in OAR 340-264-0200(2) and generally shown in Figure 3 thereof;~~
 - (c) ~~The Rogue Basin open burning control area, as described in OAR 340-264-0200(3) and generally shown in Figure 4 thereof;~~
 - (d) ~~The Umpqua Basin open burning control area, as described in OAR 340-264-0200(4) and generally shown in Figure 5 thereof;~~
 - (e) ~~The Willamette Valley open burning control area as described in OAR 340-264-0200(5) and generally shown in Figure 2 thereof.~~

- (2731) "Person" means any individual, corporation, association, firm, partnership, joint stock company, public or municipal corporation, political subdivision, the state or any agency thereof, or the federal government or any agency thereof.
- (2832) "Population" means the annual population estimate of incorporated cities within the State of Oregon issued by the Center for Population Research and Census, Portland State University, Portland, Oregon.
- (2933) "Slash" means forest debris or woody vegetation to be burned ~~under the Oregon Smoke Management Plan administered by the Oregon Department of Forestry pursuant to ORS 477.515. The burning of slash must be~~ that is related to the management of forest land used for growing and harvesting timber.
- (34) "Special Open Burning Control Area" means an area in the Willamette Valley where the Department restricts the practice of open burning. These areas are described in OAR 340-264-0078(6).
- (3035) "Ventilation Index" means a number calculated by the Department relating to the ability of the atmosphere to disperse pollutants. The ventilation index is the product of the measured or estimated meteorological mixing depth in hundreds of feet and the measured or estimated average wind speed in knots through the mixed layer.
- (3136) "Waste" includes any useless or discarded materials. Each waste is categorized in this Division as one ~~and only one~~ of the following types:
- (a) Agricultural;
 - (b) Commercial;
 - (c) Construction;
 - (d) Demolition;
 - (e) Domestic;
 - (f) Industrial; or
 - (g) Slash.
- (3237) "Yard Debris" means wood, needle or leaf materials from trees, shrubs or plants from the real property appurtenant to a dwelling of not more than four family living units so long as such debris remains on the property of origin. Once yard debris is removed from the property of origin, it becomes commercial waste. Yard debris is included in the definition of domestic waste.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[ED. NOTE: The Figures referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468, ORS 468A & ORS 477

Stats. Implemented: ORS 468A.555

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0030

340-264-0040

Exemptions, Statewide

Except for the provisions contained in OAR 340-264-0050 and 340-264-0060, this Division shall does not apply to:

- (1) Fires set for traditional recreational purposes and traditional ceremonial occasions Recreational fires and ceremonial fires, for which a fire is appropriate, ~~provided that no materials which may emit dense smoke or noxious odors as prohibited in OAR 340-264-0060(2) are burned.~~
- (2) The operation of any barbecue equipment.
- (3) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety, or for instruction of employees in the methods of fire fighting, which in the opinion of the public agency is necessary. Open burning fires otherwise exempt from

the requirements of this division are still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshall.

- (4) Agricultural open burning pursuant to ORS 468A.020 conducted east of the crest of the Cascade Mountains including all of Hood River and Klamath Counties. Agricultural open burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Open field burning, propane flaming, and stack and pile burning in the Willamette Valley between the crests of the Cascade and Coast Ranges pursuant to OAR Chapter 340, Division 266, Rules for Field Burning.
- (6) Open Slash burning on forest land or within one-eighth mile of forest land permitted under the forest practices Oregon Smoke Management Program Plan filed with the Secretary of State regulated by the Department of Forestry pursuant to ORS 477.515, provided that no materials that emit dense smoke or noxious odors as prohibited in OAR 340-264-0060 (2) are burned.
- (7) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.
- (8) Fires set for the purpose of disposal of dry tumbleweed plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.
- (9) Agricultural burning for disease or pest control when the fire is set or authorized in writing by the Department of Agriculture.
- (10) When caused by an authorized representative of the Department of Agriculture, open burning of carcasses of animals that have died or been destroyed because of an animal disease emergency.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468, ORS 468A & ORS 477

Stats. Implemented: ORS 468A.555

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0035

340-264-0050

General Requirements Statewide

~~This rule applies to all open burning within the purview of this Division whether authorized, permitted or prohibited by this Division, unless expressly limited therein, or by any other rule, regulation, permit, ordinance, order or decree of the Commission or other agency having jurisdiction:~~

- (1) ~~All open burning shall be constantly attended by a responsible person or an expressly authorized agent until extinguished. The following persons are considered a responsible person for open burning in violation of this rule:~~
 - (a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;
 - (b) Each person who is in ownership, control or custody of the material that is burned; and
 - (c) Any person who causes or allows open burning to be initiated or maintained.
 - (d) For purposes of this rule, a public agency in its official capacity that has issued the permit for burning is not considered a responsible person.
- (2) ~~Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, shall be considered a responsible person for the open burning. Any person who causes or allows open burning to be initiated or maintained shall also be considered a responsible person. A responsible person, or an expressly authorized agent, must constantly attend all open burning. This person must be capable of and have the necessary equipment for extinguishing the fire. This person also must completely extinguish the fire before leaving it.~~
- (3) ~~It shall be the duty of each~~ A responsible person to must promptly extinguish any burning which that is in violation of any rule of the Commission or of any permit issued by the Department, unless the

Department has given written approval to such responsible person to use auxiliary combustion equipment or combustion promoting materials to minimize smoke production, and the responsible person complies with the requirements in the written approval. However, nothing in this section ~~shall be construed to authorize~~ any violation of OAR 340-264-0060(12) or (23).

- (4) To promote efficient burning and prevent excessive emissions of smoke, ~~each a~~ responsible person ~~shall must, except where inappropriate to agricultural open burning:~~
- (a) Assure that all combustible material is dried to the extent practicable. This ~~action shall~~ includes covering the combustible material when practicable to protect the material from ~~deposition of~~ moisture in any form, including precipitation or dew. However, nothing in this section ~~shall be construed to authorize~~ any violation of OAR 340-264-0060(12) or (23);
 - (b) Loosely stack or windrow the combustible material ~~in such a manner as~~ to eliminate dirt, rocks and other noncombustible material and promote an adequate air supply to the burning pile, and provide the necessary tools and equipment ~~for the purpose to accomplish this;~~
 - (c) Periodically re-stack or feed the burning pile, ~~and~~ insure that combustion is essentially completed and smoldering fires are prevented, and provide the necessary tools and equipment ~~for the purpose to accomplish this.~~
- (5) Notwithstanding OAR 340-264-0040(4), each person sanitizing perennial or annual grass seed crops by open burning, in counties outside the Willamette Valley, ~~shall must~~ pay the Department \$4 for each acre burned:
- (a) The Department may contract with counties, rural fire protection districts, or other responsible individuals for the collection of the fees;
 - (b) All fees collected under this section ~~shall must~~ be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.
- (6) Open burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order, or decree of this or any other governmental entity having jurisdiction.
- (7) If any commercial, construction, or demolition debris burning allowed in OAR 340-264-0100 through OAR 340-264-0170 violates OAR 340-264-0060(12), the open burning must be immediately extinguished. Any future burning of this material or similar material by the responsible person is prohibited unless the Department issues a letter permit pursuant to OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 27-1981, f. & ef. 9-8-81; DEQ6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0040

340-264-0060

General Prohibitions Statewide

This rule applies to all open burning ~~within the purview of this Division whether authorized, permitted or prohibited by this Division,~~ unless expressly limited ~~therein, or~~ by any other rule, regulation, permit, ordinance, or order or decree of the Commission or other agency having jurisdiction:

- (1) The following persons are strictly liable for open burning in violation of this rule:
- (a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;
 - (b) Each person who is in ownership, control or custody of the material that is burned; and
 - (c) Any person who causes or allows open burning to be initiated or maintained.

- (12) No person ~~shall~~ may cause or allow to be initiated or maintained any open burning ~~that which interferes unreasonably with enjoyment of life or property or which creates any of the following:~~ a nuisance or a hazard to public safety.
- (a) ~~A private nuisance, except as created by agricultural open burning;~~
(b) ~~A public nuisance, except as created by agricultural open burning; or~~
(c) ~~A hazard to public safety.~~
- (23) No person ~~shall~~ may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors.
- (34) No person ~~shall~~ may cause or allow to be initiated or maintained any open burning of any material in any part of the state on any day or at any time if the Department has notified the State Fire Marshal that such open burning is prohibited because of meteorological or air quality conditions pursuant to OAR 340-264-0070.
- (45) No ~~fire permit issuing agency shall~~ may issue any fire permit ~~which purports to authorize~~ ing any open burning of any material at any location on any day or at any time if the Department has notified the State Fire Marshal that such open burning is prohibited because of meteorological or air quality conditions. ~~However, the failure of If any fire permit issuing agency to comply shall not issues a permit in violation of this rule, the permit does not excuse any person from complying with this section.~~
- (56) No person ~~shall~~ may cause or allow to be initiated or maintained any open burning authorized by this Division during hours other than specified by the Department.
- (67) No person ~~shall~~ may cause or allow to be initiated or maintained any open burning at any solid waste disposal site unless authorized by a Solid Waste Permit issued pursuant to OAR 340-093-0050.
- (78) No person may cause or allow to be initiated or maintained any open burning of debris removed from the property of origin unless the person receives a letter permit pursuant to OAR 340-264-0180. A letter permit is not required to burn agricultural waste removed from the property of origin provided the waste remains under control of the same responsible person.
- [NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468A & ORS 468.020
Stats. Implemented: ORS 459.205
Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0042

340-264-0070

Open Burning Schedule Conditions

Pursuant to ORS 468A.570, 476.380, 477.520 and 478.960, the following open burning ~~schedule conditions shall apply~~ be administered by the Department:

(1) Mandatory Prohibition Based on Adverse Air Quality Conditions:

- (a) The Department ~~shall~~ will notify the State Fire Marshal that all open burning ~~shall be~~ is prohibited in all or a specified part of the state ~~for the times and locations which~~ when the Department ~~has declared~~ s:
- (A) A particulate or sulfur dioxide alert pursuant to OAR 340-206-0030(2);
(B) A particulate or sulfur dioxide warning pursuant to OAR 340-206-0030(3); or
(C) An emergency for any air contaminant pursuant to OAR 340-206-0030(4).
- (b) All open burning ~~shall be~~ is prohibited until the Department notifies the State Fire Marshal that the episode and prohibition ~~have been declared to have~~ are terminated.

- (2) Discretionary Prohibition or Limitation Based on Meteorological Conditions:
- (a) The Department may notify the State Fire Marshal that all or specified types of open burning ~~shall be~~ prohibited or limited in all or any specified parts of the state based on any one or more of the following criteria affecting that part of the state:
 - (A) ~~An Air Stagnation Advisory issued by the National Weather Service event as determined by the Department;~~
 - (B) The daily maximum ventilation index calculated by the Department for ~~the~~ Willamette Valley Open Burning Control Areas or Umpqua Basin Open Burning Control Area is less than 200;
 - (C) The daily maximum ventilation index calculated by the Department for the Rogue Basin Open Burning Control Area is less than:
 - (i) ~~200 for burning of orchard prunings during February 1992 and February 1993 on days with a green woodburning advisory;~~
 - (ii) ~~200 for agricultural burning for disease or pest control on days with a green woodburning advisory;~~
 - (iii) 400 for all ~~other regulated~~ open burning.
 - (D) ~~The daily maximum ventilation index calculated by the Department for any area outside the Willamette Valley, Rogue Basin and Umpqua Basin open burning control areas is less than 150~~The Department determines there is poor ventilation;
 - (E) For regulation of burning of yard debris in urban areas, ~~consideration of~~ the amount of precipitation, expected during the day; or
 - (F) Any other relevant factor.
 - (b) ~~Such prohibitions or limits remain in effect. All open burning so prohibited or limited shall be prohibited or limited until the Department notifies the State Fire Marshal that the prohibition or limitation has been terminated;~~
 - (c) ~~In making the determination of deciding whether or not to prohibit or limit open burning pursuant to this section, the Department shall will consider:~~
 - (A) The policy of the state set forth in ORS 468A.010;
 - (B) The relevant criteria set forth in ORS 468A.025(2);
 - (C) The extent and types of materials available to be ~~open~~ burned;
 - (D) In the case of Agricultural open burning, the recommendations received from any local agricultural smoke management organization; and
 - (E) Any other relevant factor.
 - (d) ~~In making the determination of deciding whether or not to prohibit or limit any open burning pursuant to this section the Department shall must give first priority to the burning of perennial grass seed crop used for grass seed production, second priority for annual grass seed crop used for grass seed production, third priority to grain crop burning, and fourth priority to all other burning.~~
- (3) ~~Unless and until~~ prohibited or limited pursuant to section (1) or (2) of this rule, open burning ~~shall~~ will be allowed only during a day daylight hours, so long as it is not prohibited by, and is must be conducted consistent with the other rules in this Division and the requirements and prohibitions of local jurisdiction and the State Fire Marshal.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468, ORS 468A & ORS 477

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0043

340-264-0075

Delegation of Authority

Whenever the department finds that any city, county, fire protection district, forest protection district or state agency is capable of effectively administering the issuance and/or enforcement of permits under any or all of the open burning authority outlined within this division and is desirous of doing so, the department may delegate powers necessary for the issuance and/or enforcement of open burning permits to that entity. The department, upon finding that the entity is not effectively administering the program, may withdraw such delegation. -

340-264-0200078

Open Burning Control Areas

Generally, areas around the more densely populated locations in the state and valleys or basins that restrict atmospheric ventilation are designated "Open Burning Control Areas". The practice of open burning may be more restrictive in open burning control areas than in other areas of the state. The specific open burning restrictions associated with these Open Burning Control Areas are listed in OAR 340-264-0100 through 340-264-0170 by county. The general locations of Open Burning Control Areas are depicted in **Figures 2** through **5**. The Open Burning Control Areas of the state are defined as follows:

- (1) All areas in or within three miles of the incorporated city limit of all cities with a population of 4,000 or more.
- (2) The Coos Bay Open Burning Control Area is located in Coos County with boundaries as generally depicted in **Figure 3** of this rule. The area is enclosed by a line beginning at a point approximately 4-1/2 miles WNW of the City of North Bend, at the intersection of the north boundary of T25S, R13W, and the coastline of the Pacific Ocean; thence east to the NE corner of T25S, R12W; thence south to the SE corner of T26S, R12W; thence west to the intersection of the south boundary of T26S, R14W and the coastline of the Pacific Ocean, thence northerly and easterly along the coastline of the Pacific Ocean to its intersection with the north boundary of T25S, R13W, the point of beginning.
- (3) The Rogue Basin Open Burning Control Area is located in Jackson and Josephine Counties with boundaries as generally depicted in Figure 4. The area is enclosed by a line beginning at a point approximately 4-1/2 miles NE of the City of Shady Cove at the NE corner of T34S, R1W, Willamette Meridian, thence south along the Willamette Meridian to the SW corner of T37S, R1W; thence east to the NE corner of T38S, R1E; thence south to the SE corner of T38S, R1E; thence east to the NE corner of T39S, R2E; thence south to the SE corner of T39S, R2E; thence west to the SW corner of T39S, R1E; thence NW along a line to the NW corner of T39S, R1W; thence west to the SW corner of T38S, R2W; thence north to the SW corner of T36S, R2W; thence west to the SW corner of T36S, R4W; thence south to the SE corner of T37S, R5W; thence west to the SW corner of T37S, R6W; thence north to the NW corner of T36S, R6W; thence east to the SW corner of T35S, R1W; thence north to the NW corner of T34S, R1W; thence east to the point of beginning.
- (4) The Umpqua Basin Open Burning Control Area is located in Douglas County with boundaries as generally depicted in **Figure 5**. The area is enclosed by a line beginning at a point approximately four miles ENE of the City of Oakland, Douglas County, at the NE corner of T25S, R5W, Willamette Meridian, thence south to the SE corner of T25S, R5W; thence east to the NE Corner of T26S, R4W; thence south to the SE corner of T27S, R4W; thence west to the SE corner of T27S, R5W; thence south to the SE corner of T30S, R5W; thence west to the SW corner of T30S, R6W; thence north to the NW corner of T29S, R6W; thence west to the SW corner of T28S, R7W thence north to the NW corner of T27S, R7W; thence east to the NE corner of T27S, R7W; thence

north to the NW corner of T26, R6W; thence east to the NE corner of T26S, R6W; thence north to the NW corner of T25S, R5W; thence east to the point of beginning.

- (5) The boundaries of the Willamette Valley Open Burning Control Area are generally depicted in **Figures 1 and 2**. The area includes all of Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County east of Range 7 West.
- (6) "Special Open Burning eControl aAreas" are established around cities within the Willamette Valley Open Burning Control Area. The boundaries of these special open burning control areas are determined as follows:
 - (a) Any area in or within three miles of the boundary of any city of more than 1,000 but less than 45,000 population;
 - (b) Any area in or within six miles of the boundary of any city of 45,000 or more population;
 - (c) Any area between areas established by this rule where the boundaries are separated by three miles or less;
 - (d) Whenever two or more cities have a common boundary, the total population of these cities will determine the applicability of subsection (a) or (b) of this section and the municipal boundaries of each of the cities must be used to determine the limit of the special open burning control area.
- (7) A domestic burning ban area around the Portland metropolitan area is generally depicted in **Figure 1A**. This area encompasses parts of the special control area in Clackamas, Multnomah and Washington Counties. Specific boundaries are listed in OAR 340-264-0120(5), 340-264-0130(5) and 340-264-0140(5). Domestic burning is prohibited in this area except as allowed pursuant to OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0115, Renumbered from 340-264-0200.

340-264-0080

County Listing of Specific Open Burning Rules

Except as otherwise provided, in addition to the general requirements and prohibitions listed in OAR 340-264-0050 and 340-264-0060, specific prohibitions of Agricultural, Commercial, Construction, Demolition, Domestic, and Industrial open burning are listed in separate rules for each county. The following list identifies the rule ~~where~~ containing prohibitions of specific types of open burning applicable to a given county ~~may be found~~:

- (1) Baker County — OAR 340-264-0100.
- (2) Benton County — OAR 340-264-0110.
- (3) Clackamas County — OAR 340-264-0120.
- (4) Clatsop County — OAR 340-264-0100.
- (5) Columbia County — OAR 340-264-0150.
- (6) Coos County — OAR 340-264-0170.
- (7) Crook County — OAR 340-264-0100.
- (8) Curry County — OAR 340-264-0100.
- (9) Deschutes County — OAR 340-264-0100.
- (10) Douglas County — OAR 340-264-0170.
- (11) Gilliam County — OAR 340-264-0100.
- (12) Grant County — OAR 340-264-0100.
- (13) Harney County — OAR 340-264-0100.

- (14) Hood River County — OAR 340-264-0100.
- (15) Jackson County — OAR 340-264-0170.
- (16) Jefferson County — OAR 340-264-0100.
- (17) Josephine County — OAR 340-264-0170.
- (18) Klamath County — OAR 340-264-0100.
- (19) Lake County — OAR 340-264-0100.
- (20) Lane County — OAR 340-264-0160.
- (21) Lincoln County — OAR 340-264-0100.
- (22) Linn County — OAR 340-264-0110.
- (23) Malheur County — OAR 340-264-0100.
- (24) Marion County — OAR 340-264-0110.
- (25) Morrow County — OAR 340-264-0100.
- (26) Multnomah County — OAR 340-264-0130.
- (27) Polk County — OAR 340-264-0110.
- (28) Sherman County — OAR 340-264-0100.
- (29) Tillamook County — OAR 340-264-0100.
- (30) Umatilla County — OAR 340-264-0100.
- (31) Union County — OAR 340-264-0100.
- (32) Wallowa County — OAR 340-264-0100.
- (33) Wasco County — OAR 340-264-0100.
- (34) Washington County — OAR 340-264-0140.
- (35) Wheeler County — OAR 340-264-0100.
- (36) Yamhill County — OAR 340-264-0110.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented ORS 468A, 555

Hist.: DEQ 123, f. & ef. 10-20-76; DEQ 23-1979, f. & ef. 7-5-79; DEQ 1-1981(Temp), f. & ef. 1-9-81; DEQ 7-1981(Temp), f. & ef. 2-17-81; DEQ 8-1981(Temp), f. & ef. 3-13-81; DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0045

Open Burning ~~Prohibitions~~ Requirements

340-264-0100

Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties

Open burning ~~prohibitions~~ requirements for the counties of Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning:
 - (a) ~~In Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties, agricultural open burning is allowed under this Division subject to OAR 340-264-0050(5);~~
 - (b) ~~In Clatsop, Curry, Lincoln and Tillamook Counties agricultural open burning is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.~~
- (3) Commercial open burning:
 - (a) Commercial open burning is prohibited within Lincoln County except as provided in OAR 340-264-0180.

- (b) Commercial open burning is allowed outside of open burning control areas subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal, except that, unless authorized pursuant to OAR 340-264-0180, all eCommercial open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in or within three miles of the corporate city limits of the following open burning control areasities. In addition, commercial open burning is prohibited in any area meeting the test in OAR 340-264-0078 (1):
- (a) In Baker County, the City of Baker City;
 - (b) In Clatsop County, the Cities of Astoria, ~~and Seaside and Warrenton~~;
 - (c) In Crook County, the City of Prineville;
 - (d) In Curry County, the City of Brookings;
 - (e) In Deschutes County, the Cities of Bend and Redmond;
 - (f) In Hood River County, the City of Hood River;
 - (g) In Jefferson County, the City of Madras;
 - (gh) In Klamath County, the City of Klamath Falls;
 - (h) In Lincoln County, the Cities of Lincoln City and Newport;
 - (i) In Malheur County, the City of Ontario;
 - (j) In Tillamook County, the City of Tillamook;
 - (jk) In Umatilla County, the Cities of Hermiston, Milton-Freewater and Pendleton;
 - (kl) In Union County, the City of La Grande;
 - (lm) In Wasco County, the City of The Dalles.
- (4) Construction and Demolition open burning outside of an open burning control area is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060, and 340-264-0070, except that, unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in or within three miles of the corporate city limits of the following open burning control areasities. In addition, construction and demolition burning is prohibited in any area meeting the standard in OAR 340-264-0078 (1):
- (a) In Baker County, the City of Baker City;
 - (b) In Clatsop County, the City-Cities of Astoria, Seaside and Warrenton;
 - (c) In Crook County, the City of Prineville;
 - (d) In Curry County, the City of Brookings;
 - (e) In Deschutes County, the Cities of Bend and Redmond;
 - (f) In Hood River County, the City of Hood River;
 - (g) In Jefferson County, the City of Madras;
 - (gh) In Klamath County, the City of Klamath Falls;
 - (i) In Lincoln County, the Cities of Lincoln City and Newport;
 - (hj) In Malheur County, the City of Ontario;
 - (ik) In Tillamook County, the City of Tillamook;
 - (l) In Umatilla County, the Cities of Hermiston, Milton-Freewater and Pendleton;
 - (jm) In Union County, the City of La Grande;
 - (kn) In Wasco County, the City of The Dalles.
- (5) Domestic open burning is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, and OAR 340-264-0050, 340-264-0060 and 340-264-0070.
- (6) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Plan is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.555
Hist.: DEQ 27-1981, f. & cf. 9-8-81; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0055

340-264-0110

Benton, Linn, Marion, Polk, and Yamhill Counties

Open burning ~~prohibitions~~ requirements for Benton, Linn, Marion, Polk, and Yamhill Counties ~~which~~ that form a part of the Willamette Valley ~~Open Burning Control Area~~ described in OAR 340-264-~~02000078~~:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed, subject to ~~OAR 340-264-0050, 340-264-0060 and 340-264-0070,~~ and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:
 - (a) ~~Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day;~~
 - (b) ~~Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-264-0050(4)(c) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.~~
- (3) Commercial open burning is prohibited, except as provided in OAR 340-264-0180.
- (4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070. Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within special open burning control areas, including the following:
 - (a) Areas in or within six miles of the corporate city limit of:
 - (A) In Benton County, the City of Corvallis;
 - (B) In Marion County, the Cities of Salem and Keiszer;
 - (C) In Polk County, the City of Salem.
 - (b) Areas in or within three miles of the corporate city limit of:
 - (A) In Benton County, the Cities of Albany, ~~Corvallis~~ and Philomath;
 - (B) In Linn County, the Cities of Albany, Brownsville, Harrisburg, Lebanon, Lyons, Mill City, Tangent and Sweet Home;
 - (C) In Marion County the Cities of Aumsville, Gervais, Hubbard, Jefferson, Mill City, Mt. Angel, Silverton, Stayton, Sublimity, Turner and Woodburn;
 - (D) In Polk County, the Cities of Dallas, Falls City, Independence, Monmouth and Willamina;
 - (E) In Yamhill County, the Cities of Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan and Willamina.
 - (c) Any areas that meet the test in OAR 340-264-0078(6).
- (5) Domestic open burning:
 - (a) As generally depicted in **Figure 1** of OAR 340-264-~~02000078~~, domestic open burning is prohibited in the special open burning control areas named in section (4) of this rule, except ~~that~~ open burning of yard debris is allowed beginning March first and ending June 15th, inclusive, and beginning October 1st and ending December 15th, inclusive, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

- (b) Domestic open burning is allowed outside of special open burning control areas named in section (4) of this rule, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;
- (c) No person ~~shall~~ may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours, ~~between 7:30 a.m. and two hours before sunset unless otherwise specified by the Department pursuant to OAR 340-264-0070.~~
- (6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0060

340-264-0120

Clackamas County

Open burning ~~prohibitions~~ requirements for Clackamas County:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed, subject to ~~OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.~~
- (a) ~~Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day;~~
- (b) ~~Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land-clearing debris or stumps shall be handled in accordance with OAR 340-264-0050(4)(e) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.~~
- (3) Commercial open burning is prohibited, except as may be provided by OAR 340-264-0180.
- (4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within ~~special control areas including~~ the following:
- (a) Areas in or within six miles of the corporate city limits of Gladstone, Gresham, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Rivergrove, Tualatin, West Linn and Wilsonville;
- (b) Areas in or within three miles of the corporate city limits of Canby, Estacada, ~~Gresham~~, Molalla and Sandy.
- (c) Any areas that meet the test in OAR 340-264-0078(6).
- (5) Domestic open burning:
- (a) Those areas where domestic burning is always prohibited (unless authorized under 340-264-0180): Beginning at the trisection of the Clackamas-Multnomah-Washington County Line; thence east and then northerly and then east following the Clackamas-Multnomah County Line to the intersection with the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence south to the southern boundary of Section 3, T2S, R2E and the corner of Camp Withycombe (Oregon National Guard); thence west approximately 1/4 mile to the midpoint of the southern boundary of Section 3, T2S, R2E; thence on a line south to the

Clackamas River and the Metro Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the Metro Boundary first southerly and then westerly to the intersection with the Willamette River, excepting that portion listed in subsection (b)(2); thence northeasterly along the Willamette River to the confluence with the Tualatin River; thence northwesterly along the Tualatin River to the intersection with U.S. Interstate Highway 205 (I-205); thence westerly along I-205 to the intersection with the Clackamas-Washington County Line; thence north along the Clackamas-Washington County Line to the trisection of the Clackamas-Multnomah-Washington County Line, the point of beginning.

(b) Those areas where domestic open burning is prohibited except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-264-0050 through OAR 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas that lie within both Clackamas County and the Metro Boundary and are not included in paragraph (a) of this section. Specifically, those areas are listed as follows:

(A) The area beginning at the point on the Clackamas-Washington County Line where it is intersected by I-205; thence easterly along I-205 to the intersection with the Tualatin River; thence southeasterly along the Tualatin River to the confluence with the Willamette River; thence southerly along the Willamette River to the intersection with the northern boundary of Section 15, T3S, R1E; thence west to the northwest corner of Section 15, T3S, R1E; thence north to the northwest corner of section 10, T3S, R1E; thence west to the northwest corner of Section 9, T3S, R1E; thence north to the northwest corner of Section 4, T3S, R1E; thence west to the intersection with the Clackamas-Washington County Line; thence north to the intersection with I-205, the point of beginning.

(B) The area bounded by Henrici Road on the south; Highway 213 on the west; Beaver Creek Road on the east; and the southern boundary of Clackamas Community College on the north.

(C) The area beginning at the point where the Clackamas-Multnomah County Line intersects the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence south to the southern boundary of Section 3, T2S, R2E and the corner of Camp Withycombe; thence west 1/4 mile to the midpoint of the southern boundary of Section 3, T2S, R2E; thence on a line south to the Clackamas River; thence easterly along the Clackamas River to the intersection with the western boundary of Section 18, T2S, R3E; thence north to the northwest corner of Section 18, T2S, R3E; thence east to the northwest corner of Section 14, T2S, R3E; thence north to the northwest corner of Section 11, T2S, R3E; thence east to the intersection with Epperson Road; thence north-northwesterly along Epperson Road to the intersection with the Clackamas-Multnomah County Line at the northern boundary of Section 29, T1S, R2E; thence west along the county line to the northwest corner of Section 27, T1S, R2E, the point of beginning.

(c) Domestic open burning is allowed in all other areas of Clackamas County, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(d) No person ~~shall~~ may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours ~~between 7:30 a.m. and two hours before sunset~~ unless ~~otherwise~~ specified by the Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
 Stat. Auth.: ORS 468 & ORS 468A
 Stats. Implemented: ORS 468A.555
 Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0065

340-264-0130

Multnomah County

Open burning ~~prohibitions requirements~~ for Multnomah County:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed, subject to ~~OAR 340-264-0050, 340-264-0060 and 340-264-0070,~~ and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
 - ~~(a) Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day;~~
 - ~~(b) Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-264-0050(4)(c) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.~~
- (3) Commercial open burning is prohibited, except as provided in OAR 340-264-0180.
- (4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited west of the Sandy River but is allowed east of the Sandy River, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning:
 - (a) Those areas where open burning is always prohibited (unless authorized by 340-264-0180):
 - (A) The area encompassed by the line beginning at the point where the Multnomah, Clackamas, and Washington County lines meet at a trisection; thence east and then north and then east along the Multnomah-Clackamas County Line to the intersection with SE 172nd Avenue; thence north along SE 172nd Avenue to the intersection with SE Foster Road; thence southeasterly along SE Foster Road to the intersection with Jenne Road; thence northeasterly along Jenne Road to the intersection with SE 174th Avenue; thence north along SE 174th Avenue to the intersection with SE Marie Street; thence east along SE Marie Street to the intersection with SE 182nd Avenue; thence north along SE 182nd Avenue and continuing north as SE 182nd Avenue merges into SE181st Avenue and then turns into NE 181st Avenue to the intersection with NE Sandy Boulevard; thence easterly along NE Sandy Boulevard to the intersection with NE 185th Drive; thence north along NE 185th Drive to the intersection with Marine Drive; thence continuing on a line due north to the Columbia River and the state line; thence following the Columbia River and the state line; thence following the Columbia River and the state line to the confluence of the Columbia and the Willamette Rivers; thence along the Willamette River to the Confluence with the Multnomah Channel and the Portland City Limits; thence following the Portland City Limits generally southerly to the intersection with Section 27, T1N, R1W and the Multnomah-Washington County Line; thence following the Multnomah-Washington County Line southwesterly and then south to the trisection of the Multnomah-Clackamas-Washington County Line, the point of beginning.
 - (B) All areas in northwest Multnomah County that are not contained within a ~~known~~ Fire Protection District.
 - (C) The Burlington Water District.

- (b) Those areas where domestic open burning is prohibited, except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, and subject to OAR 340-264-0050 through OAR 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas within Multnomah County that lie west of the Sandy River and are not included in OAR 340-264-0130(5)(a).
- (c) Domestic open burning is allowed east of the Sandy River, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;
- (d) No person shall ~~may~~ cause or allow to be initiated or maintained any domestic open burning other than during daylight hours ~~between 7:30 a.m. and two hours before sunset~~ unless otherwise specified by Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0070

340-264-0140

Washington County

Open burning ~~prohibitions-requirements~~ for Washington County:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed, subject to ~~OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.~~
 - (a) ~~Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day;~~
 - (b) ~~Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-264-0050(4)(e) and may be allowed, without addition of new waste material, to burn after hours into prohibition condition days.~~
- (3) Commercial open burning is prohibited, except as may be provided by OAR 340-264-0180.
- (4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in all incorporated areas and areas within rural fire protection districts. Construction and demolition open burning is allowed in all other areas subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning:
 - (a) The area where open burning is always prohibited (unless authorized by 340-264-0180): Beginning at the point where U.S. Interstate Highway 205 (I-205) intersects the Washington-Clackamas County Line; thence west along I-205 to the Tualatin City Limits; thence following along the Tualatin City Limits westerly, southerly, westerly and northerly to the intersection with U.S. Highway 99; thence northerly along U.S. Highway 99 to the intersection with the Metro Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the Metro Boundary generally northerly and westerly to the intersection with the Tualatin Valley Highway; thence westerly along the Tualatin Valley Highway to the intersection with the western boundary of Section 11, T1S, R2W; thence north to the northwest corner of Section 2, T1S, R2W; thence east to the northwest corner of Section 2, T1S, R2W;

thence north to the intersection with U.S. Highway 26; thence northwesterly along U.S. Highway 26 to the intersection with Cornelius Pass Road; thence northeasterly along Cornelius Pass Road to the intersection with the northern boundary of Section 23, T1N, R2W; thence east approximately 1/5 mile along the northern boundary of section 23, T1N, R2W to the southernmost point of the Orchard; thence north following the eastern boundary of the Orchard to the intersection with West Union Road; thence southeasterly and then easterly along West Union Road approximately 1.1 miles to a point approximately 1/4 mile west of the eastern boundary of Section 24, T1N, R2W; thence north on a line approximately 1000 feet; thence northeasterly on a line approximately 1/4 mile to the intersection of NW 185th Avenue and NW Springville Road; thence northeasterly along NW Springville Road approximately 1/4 mile to the one-quarter point of the northern boundary of Section 19, T1N, R1W; thence north approximately 400 feet; thence east to the intersection with NW 185th Avenue; thence north along 185th Avenue approximately 800 feet to the one-quarter point of the western boundary of Section 18, T1N, R1W; thence gradually northeasterly such that the Rock Creek Campus of Portland Community College is within the boundary approximately 1/2 mile to the midpoint of Section 18, T1N, R1W; thence south following the eastern boundary of the Rock Creek Campus of Portland Community College and continuing on a line due south to the intersection with NW Springville Road and the southern boundary of Section 18, T1N, R1W; thence northeasterly along NW Springville Road to the intersection with the Washington-Multnomah County Line; thence following the Washington County line southeasterly and then southerly to the point where the Washington-Clackamas County Line intersects I-205, the point of beginning.

- (b) Those areas where domestic open burning is prohibited, except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-264-0050 through OAR 340-262-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:
 - (A) All incorporated areas in Washington County not listed in OAR 340-264-0140(5)(a) or OAR 340-264-0140(5)(c).
 - (B) All unincorporated areas within ~~known~~ municipal or rural fire districts.
- (c) Those areas where domestic burning is allowed, subject to OAR 340-264-0050, and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:
 - (A) The area enclosed by a line beginning at the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W; thence north to the northwest corner of Section 13, T2N, R4W; thence east to the midpoint of the northern boundary of Section 16, T2N, R3W; thence on a line south to the middle of Section 21, T2N, R3W; thence east to the intersection with the midpoint of the western boundary of Section 22, T2N, R3W; thence south to the southwest corner of Section 22, T2N, R3W; thence continuing south to the northern boundary of Washington County Donation Land Claim (DLC) #44; thence southeast and east following the northern boundary of Washington County DLC #44 to the eastern boundary of Washington County DLC #44; thence southwesterly along the eastern boundary of DLC #44 to the intersection with DLC Plot #76; thence continuing southwesterly along the eastern boundary of DLC #76 to the intersection with the Burlington Northern Railroad Line; thence northwesterly along the Burlington Northern Railroad Line to the intersection with the southern boundary of Section 32, T2N, R4W; thence west to the southwest corner of Section 36, T2N, R4W; thence north to the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W, the point of beginning.
 - (B) All unincorporated areas of Washington County outside of municipal or rural fire districts.

(d) No person ~~shall~~may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours between 7:30 a.m. and two hours before sunset unless otherwise specified by Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.555
Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0075

340-264-0150 Columbia County

Open burning ~~prohibitions-requirements~~ for Columbia County:

- (1) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.
- (2) Agricultural open burning is allowed subject to OAR 340-264-0050~~(5)~~, ~~340-264-0060~~ and ~~340-264-0070~~, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (3) Commercial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.
- (4) Construction and demolition open burning:
 - (a) Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited ~~in and~~ within three miles of the open burning control areas ~~city limits~~ of Clatskanie, Rainier, St. Helens, Scappoose, and Vernonia and any other area that meets the standard in OAR 340-264-0078(1);
 - (b) Construction and Demolition open burning is allowed in all other parts of Columbia County subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (6) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]
Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.555
Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0080

340-264-0160 Lane County

Open burning ~~prohibitions-requirements~~ for Lane County. That portion of Lane County east of Range 7 West, Willamette Meridian, forms a part of the Willamette Valley ~~eOpen bBurning eControl aArea~~ as generally described in OAR 340-264-0200~~0078~~(5) and depicted in **Figure 2**:

- (1) The rules and regulations of the Lane Regional Air Pollution authority ~~shall~~ apply to all open burning in Lane County, provided such rules are no less stringent than the provisions of this Division, ~~except that t~~The Lane Regional Air Pollution Authority may not regulate agricultural open burning.
- (2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.
- (3) Agricultural open burning is allowed subject to ~~OAR 340-264-0050, 340-264-0060 and 340-264-0070~~, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:

- ~~(a) Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day;~~
- ~~(b) Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-264-0050(4)(e) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.~~
- (4) Commercial open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in Lane County east of Range 7 West Willamette Meridian and in or within three miles of the city limit of Florence on the coast. Commercial open burning is allowed in the remaining areas of Lane County, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited within all fire districts and other areas specified in this section but is allowed elsewhere in Lane County, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Areas where open burning of construction and demolition waste is prohibited include:
- (a) Bailey-Spencer RFPD;
- (b) Coburg RFPD;
- (c) Cottage Grove/South Lane Fire District;
- (d) Creswell RFPD;
- (e) ~~Crow Valley RFPD;~~
- ~~(f) Dexter RFPD except that portion east of the Willamette Meridian;~~
- ~~(g) Elmira Noti RFPD except that portion west of the line between Range 6 West and Range 7 West;~~
- ~~(h) Eugene Fire District;~~
- ~~(if) Eugene RFPD No. 1;~~
- ~~(jg) Goshen RFPD;~~
- ~~(kh) Junction City Fire District;~~
- ~~(hi) Junction City RFPD;~~
- ~~(j) Lane County Fire District #1;~~
- ~~(mk) Lane RFPD No. 1 outside the Eugene-Springfield Urban Growth Boundary;~~
- ~~(nl) Lowell RFPD;~~
- ~~(om) Marcola RFPD;~~
- ~~(pn) McKenzie RFPD except that portion east of the Willamette Meridian outside the Eugene-Springfield Urban Growth Boundary;~~
- ~~(qo) Monroe RFPD that portion within Lane County;~~
- ~~(rp) Oakridge RFPD;~~
- ~~(sq) Pleasant Hill RFPD;~~
- ~~(tr) South Lane RFPD Santa Clara RFPD outside the Eugene-Springfield Urban Growth Boundary;~~
- ~~(u) Springfield Fire Department and those areas protected by the Springfield Fire Department;~~
- ~~(v) That portion of Western Lane Forest Protection District north of Section 11, T19S, R4W and bordering the City of Eugene and/or Crow Valley, Eugene #1, Goshen and Creswell RFPDs;~~
- ~~(s) Westfir RFPD;~~
- ~~(wt) Willakenzie RFPD;~~
- ~~(xu) Zumwalt RFPD;~~
- ~~(y) Those unprotected areas which are surrounded by or are bordered on all sides by any of the above listed fire protection districts or by Eastern Lane Forest Protection District.~~
- (6) Domestic open burning:

- (a) Domestic open burning outside the fire districts listed in section (5) of this rule is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;
- (b) Domestic open burning is prohibited within all fire districts listed in section (5) of this rule except that open burning of yard debris is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;
- (c) Refer to Lane Regional Air Pollution Authority open burning rules for specific seasons and hours for domestic open burning.

(7) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 6-1992, f. & cert. ef. 3-11-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0085

340-264-0170

Coos, Douglas, Jackson and Josephine Counties

Open burning ~~prohibitions-requirements~~ for Coos, Douglas, Jackson and Josephine Counties:

(1) Open burning control areas:

- (a) The Coos Bay open burning control area as generally described in OAR 340-264-~~02000078~~(2) and depicted in **Figure 3** is located in Coos County;
- (b) The Umpqua Basin open burning control area as generally described in OAR 340-264-~~02000078~~(4), and depicted in **Figure 5**, is located in Douglas County;
- (c) The Rogue Basin open burning control area as generally described in OAR 340-264-~~02000078~~(3) and depicted in **Figure 4**, is located in Jackson and Josephine Counties.

(2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(3) Agricultural open burning is allowed subject to OAR 340-264-0050(5), ~~340-264-0060, 340-264-0070 and section (7) of this rule~~, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(4) Commercial open burning is prohibited within the Coos Bay, Umpqua Basin and Rogue Basin open burning control areas and ~~in or~~ within three miles of the corporate city limits of Coquille, ~~and Reedsport and other areas that meet the standard in OAR 340-264-0078(1)~~, unless authorized pursuant to OAR 340-264-0180. Commercial open burning is allowed in all other areas of these counties subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Construction and Demolition open burning is prohibited within the Coos Bay, Umpqua Basin and Rogue Basin open burning control areas and within three miles of the corporate city limits of Coquille, Reedsport and other areas that meet the standard within OAR 340-264-0078(1), unless authorized pursuant to OAR 340-264-0180. Construction and Demolition open burning is allowed in other areas of these counties subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(6) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060, 340-264-0070 and section (7) of this rule, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

~~(7) Upon publication by EPA of notice in the Federal Register that the Medford Ashland Air Quality Maintenance Area or the Grants Pass Urban Growth Area has failed to attain the National Ambient Air Quality Standard for PM₁₀ by the attainment date required in the Clean Air Act, all open burning is prohibited within the Rogue Basin open burning control area during November, December, January, and February unless authorized pursuant to OAR 340-264-0180.~~

(7) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[ED. NOTE: The Figures referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0090

340-264-0180

Letter Permits

- (1) Open Burning of commercial, industrial, slash, construction or demolition waste on a singly occurring or infrequent basis or the open burning of yard debris ~~which~~that is otherwise prohibited, may be permitted by a letter permit issued by the Department in accordance with this rule and subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. OAR 340-014-0025 and division 216 ~~shall do~~ not apply.
- (2) A letter permit may only be issued on the basis of a written application for disposal of material by burning ~~which~~that has been approved by the Department. Each application for a letter permit ~~shall~~ must contain the following items:
 - (a) The quantity and type of material proposed to be burned;
 - (b) A listing of all alternative disposal methods and potential costs ~~which~~that have been identified or investigated;
 - (c) The expected amount of time ~~which~~that will be required to complete the burning (not required for yard debris);
 - (d) The methods proposed to be used to insure complete and efficient combustion of the material;
 - (e) The location of the proposed burning site;
 - (f) A diagram showing the proposed burning site and the structures and facilities inhabited or used in the vicinity including distances thereto;
 - (g) The expected frequency of the need to dispose of similar materials by burning in the future;
 - (h) If the application is for prescribed burning of standing vegetation for the purpose of creating or restoring wetlands or for promoting or enhancing habitat for indigenous species of plants or animals, the application must also include a citation to the federal or state law or program requiring or authorizing such conversion or enhancement. The application must also include a statement from the appropriate agency responsible for implementing the law or program that open burning is the most practicable alternative for the conversion or enhancement.
 - (i) Any other information ~~which~~that the applicant considers relevant or ~~which~~ the Department may require;
 - (j) For open burning of yard debris:
 - (A) A "Hardship Permit Application" completed on a form supplied by the Department; and
 - (B) Either payment of the appropriate fee pursuant to section ~~(4410)~~ of this rule or a "waiver request" completed on a form supplied by the Department.

- (3) Upon receipt of a written application, the Department may approve the application if it is satisfied that:
- (a) The applicant has demonstrated that all reasonable alternatives have been explored and no practicable alternative method for disposal of the materials exists; and
 - (b) The proposed burning will not cause or contribute to significant degradation of air quality.
 - (c) For locations within Clackamas, Columbia, Multnomah and Washington counties, where open burning is otherwise prohibited, the following conditions must also be met. Letter permits may be issued only for disposing of:
 - (A) Material resulting from emergency occurrences, including but not limited to, floods, storms or oil spills;
 - (B) Material originating as yard debris that has been collected and stored by governmental jurisdictions, provided that no other reasonable means of disposal are available;
 - (C) Yard debris excluding grass clippings and leaf piles, on the property of a private residence where the inability to burn creates a significant hardship due to:
 - (i) An economic burden because the estimated cost of alternative means of yard debris disposal presents a financial hardship in relation to household income and expenses of the applicant;
 - (ii) A physical handicap, personal disability, chronic illness, substantial infirmity or other physical limitation substantially inhibiting the ability of the applicant to process or transport yard debris; or
 - (iii) Inaccessibility of yard debris, where steepness of terrain or remoteness of the debris site makes access by processing or transportation equipment unreasonable.
- (4) The Department may deny an application for a letter permit or revoke or suspend an issued letter permit on any of the following grounds:
- (a) Any material misstatement or omission in the application or a history of such misstatements or omissions by the applicant;
 - (b) Any actual or projected violation of any statute, rule, regulation, order, permit, ordinance, judgment or decree.
- (5) In making its determination under section (3) of this rule, the Department may consider:
- (a) The conditions of the airshed of the proposed burning;
 - (b) The other air pollution sources in the vicinity of the proposed burning;
 - (c) The availability of other methods of disposal, and special circumstances or conditions ~~which~~that may impose a hardship on an applicant;
 - (d) The frequency of the need to dispose of similar materials in the past and expected in the future;
 - (e) The applicant's prior violations, if any;
 - (f) The projected effect upon persons and property in the vicinity; and
 - (g) Any other relevant factor.
- (6) Each letter permit issued by the Department pursuant to section (2) of this rule ~~shall~~must contain at least the following elements:
- (a) The location ~~at which the~~where burning is permitted to take place~~;~~.
 - (b) The number of actual calendar days on which burning is permitted to take place, not to exceed seven. Burning pursuant to a permit for yard debris ~~shall~~must be limited to three days per season unless satisfactory justification for more burning is provided by the applicant~~;~~.
 - (c) The period during which the permit is valid, not to exceed a period of 30 consecutive days, except a permit for yard debris. The actual period in the permit ~~shall~~must be specific to the needs of the applicant~~;~~ The Department may issue specific letter permits for shorter periods.
 - (d) A letter permit for yard debris ~~shall be~~is valid for a single burning season or for both the spring and fall burning seasons during a calendar year, as appropriate to the application and the fee

- paid pursuant to the schedule in section (4+10) of this rule. The spring burning is from March 1 to June 15, inclusive, and the fall burning season is from October 1 to December 15, inclusive;.
- (e) Equipment and methods required to be used by the applicant to insure that the burning is accomplished in the most efficient manner over the shortest period of time to minimize smoke production;.
- (f) The limitations, if any, based on meteorological conditions required before burning may occur. Open burning under permits for yard debris ~~shall~~must be limited to the hours and times ~~which that~~ limit seasonal domestic yard debris burning permitted in the county where the burning under the letter permit is to occur;.
- (g) Reporting requirements for both starting the fire each day and completion of the requested burning, (optional for permits for yard debris);.
- (h) A statement that OAR 340-264-0050 and 340-264-0060 are fully applicable to all burning under the permit;.
- (i) Such other conditions as the Department considers to be desirable.
- (7) Regardless of the conditions contained in any letter permit, each letter permit, except permits for yard debris, ~~shall will not~~ be valid for ~~not~~ more than 30 consecutive calendar days of which a maximum of seven can be used for burning. The Department may issue specific letter permits for shorter periods.
- (8) Letter permits ~~shall are~~ not be renewable. Any requests to conduct additional burning ~~shall requires~~ a new application and a new permit.
- (9) ~~For locations within Clackamas, Columbia, Multnomah and Washington Counties, letter permits may be issued only for the purpose of disposal of:~~
- (a) ~~Material resulting from emergency occurrences including, but not limited to floods, storms or oil spills;~~
- (b) ~~Material originating as yard debris which has been collected and stored by governmental jurisdictions provided that no other reasonable means of disposal are available;~~
- (c) ~~Yard debris excluding grass clippings and leaf piles, on the property of a private residence where the inability to burn creates a significant hardship due to:~~
- (A) ~~An economic burden when the estimated cost of alternative means of yard debris disposal presents a financial hardship in relation to household income and expenses of the applicant;~~
- (B) ~~A physical handicap, personal disability, chronic illness, substantial infirmity or other physical limitation substantially inhibiting the ability of the applicant to process or transport yard debris; or~~
- (C) ~~Inaccessibility of yard debris, where steepness of terrain or remoteness of the debris site makes access by processing or transportation equipment unreasonable.~~
- (10) No person ~~shall may~~ violate any condition, limitation, or term of a letter permit.
- (11) All applications for a letter permit for yard debris ~~shall must~~ be accompanied by a permit fee ~~which shall be~~ payable to the Department, or approved delegated authority, and become non-refundable upon issuance of the permit. The fee to be submitted is:
- (a) For a single burning season, spring or fall — \$20;
- (b) For a calendar year — \$30.
- (12) The Department may waive the single season permit fee if the applicant shows that the cost of the ~~hardship yard debris~~ permit presents an extreme financial hardship in relation to the household income and expenses of the applicant.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0100

340-264-0190

Forced-Air Pit Incinerators

Forced-air pit incineration may be approved as an alternative to open burning prohibited by this Division, provided that the following conditions ~~shall be~~ met:

- (1) The person requesting approval of forced-air pit incineration ~~shall~~ must demonstrate to the satisfaction of the Department that no feasible or practicable alternative to forced-air pit incineration exists.
- (2) The forced-air pit incineration facility ~~shall~~ must be designed, installed, and operated in such a manner that visible emissions do not exceed 40 percent opacity, as measured by EPA Method 9, for more than three minutes out of any one hour of operation following the initial 30 minute startup period.
- (3) The person requesting approval of a forced-air pit incineration facility ~~shall be granted an approval of the facility only after~~ must submit a Notice of Construction and Application for Approval is ~~submitted pursuant to OAR 340-210-0200 through 340-210-0220 before the department will approve any facility.~~
- (4) A forced-air pit permit for operation of a forced-air pit incineration facility ~~shall be~~ is required, ~~and shall be based on the same conditions and requirements stipulated for letter permits in OAR 340-264-0180, which is included here by reference, except that the term of the permit shall not be limited to 30 days and the operation of the facility shall not be limited to seven days, but both the term of the permit and the operation limit of the facility shall~~ will be specified in the permit and ~~shall~~ must be appropriate to the purpose of the facility.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.575

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-023-0105

~~340-264-0200~~

Open Burning Control Areas

Renumbered to 340-264-0078

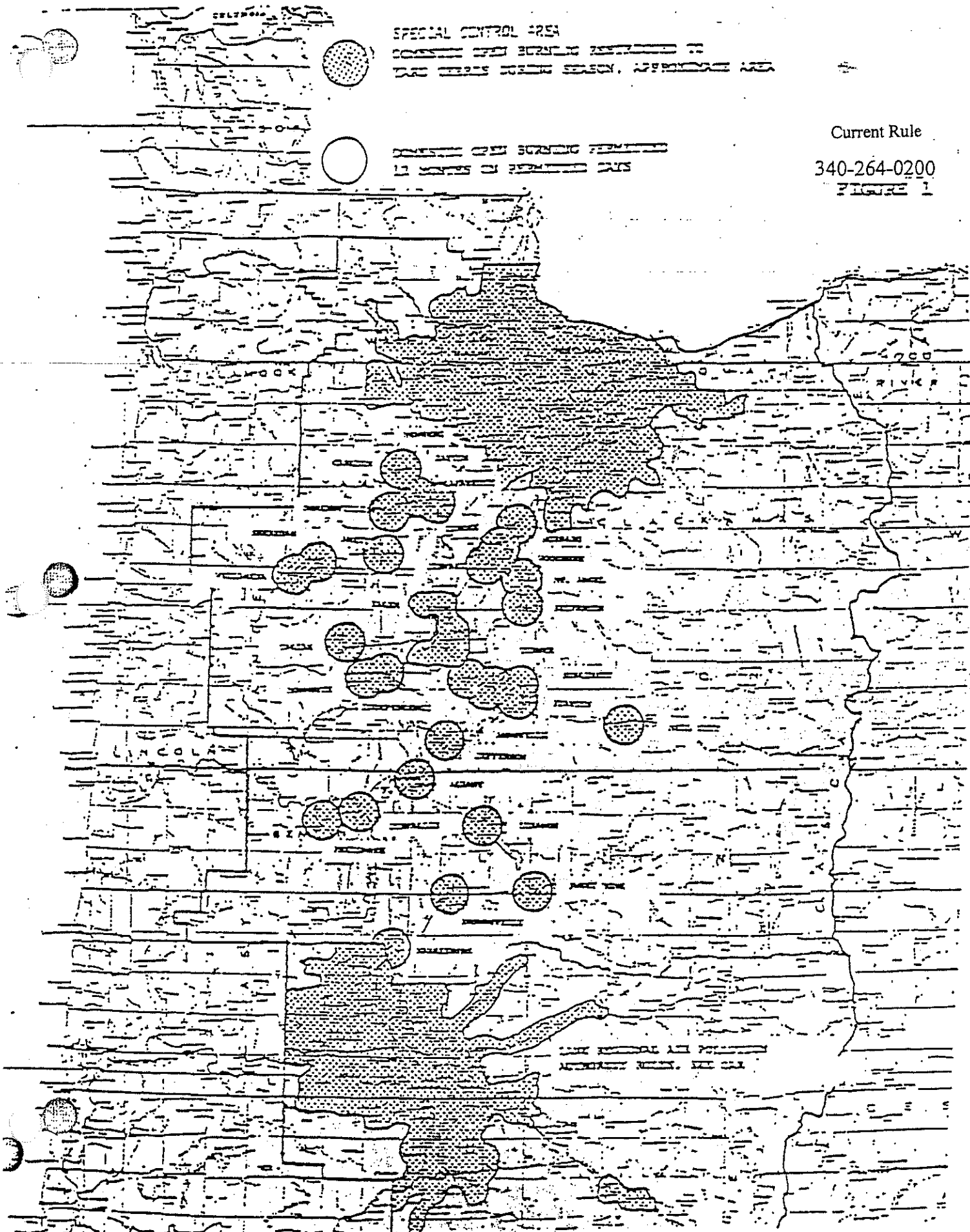
SPECIAL CONTROL AREA
DURING OPEN BURNING RESTRICTED TO
WARM WEATHER DURING SEASON, APPROXIMATELY

DURING OPEN BURNING PERMITTED
IN MONTHS OF PERMITTED DAYS

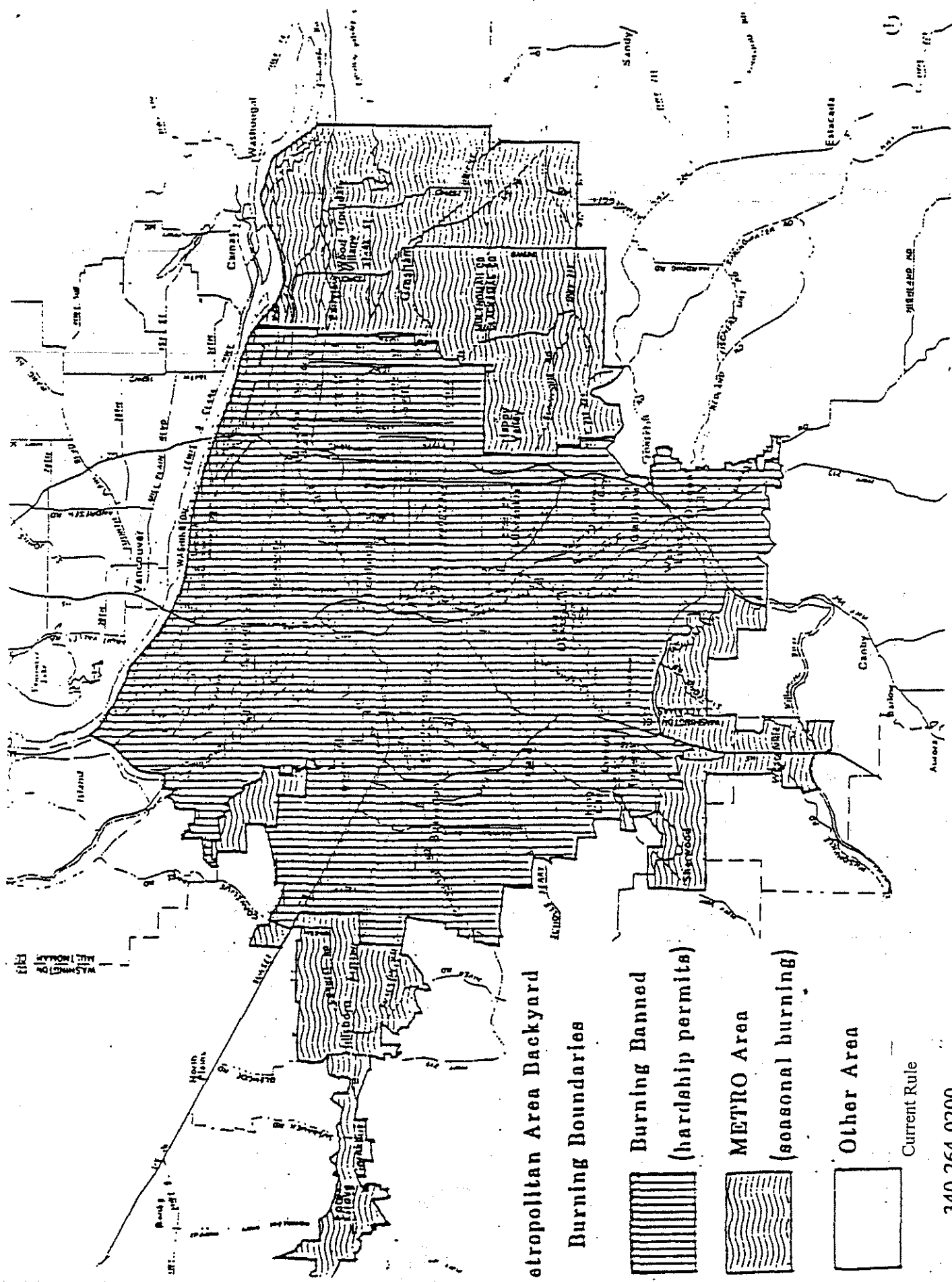
Current Rule

340-264-0200



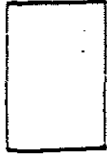
FIGURE 1



WILLAMETTE VALLEY OPEN BURNING CONTROL AREA



**Metropolitan Area Backyard
 Burning Boundaries**

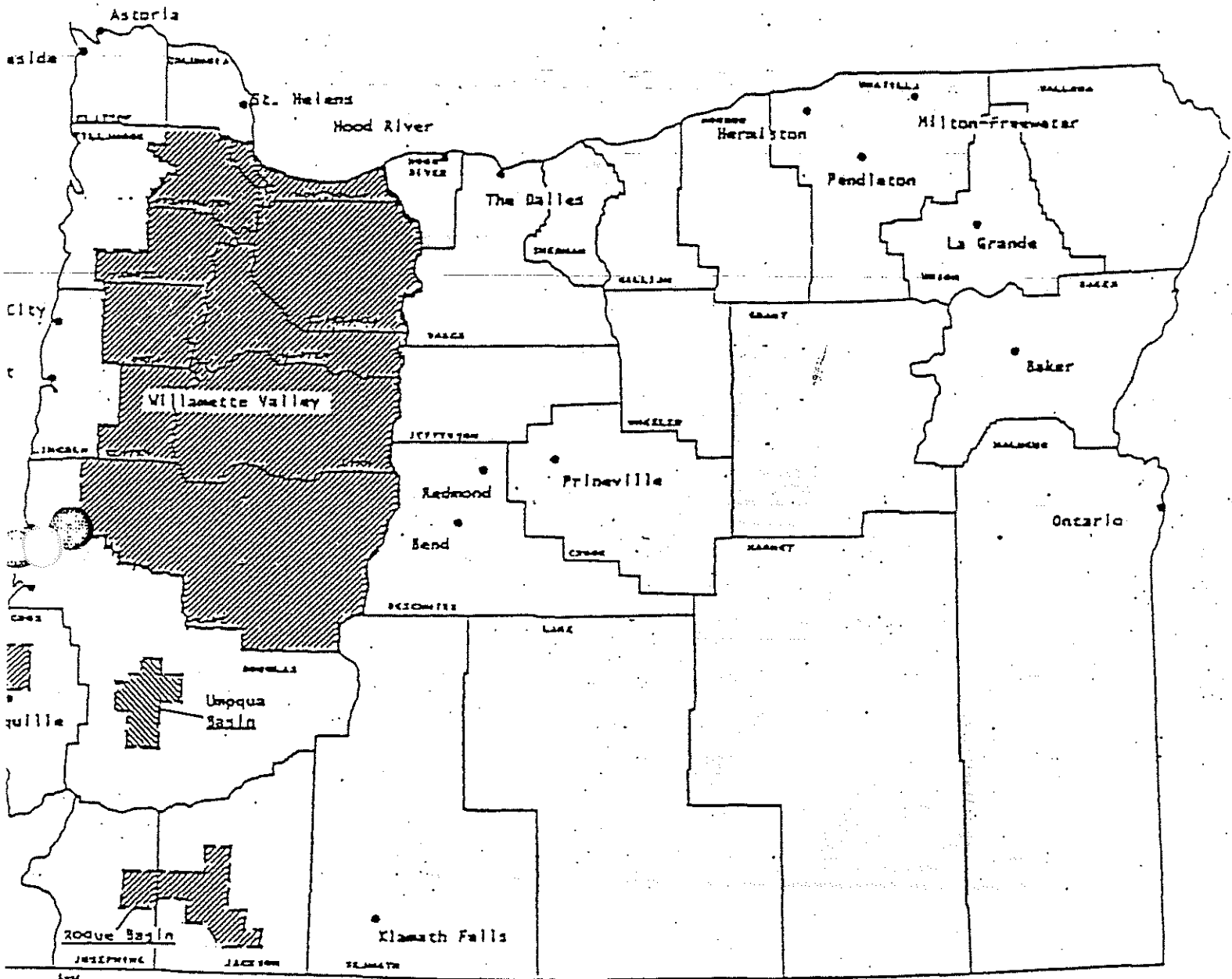
-  Burning Banned
(hardship permits)
-  METRO Area
(seasonal burning)
-  Other Area

Current Rule

340-264-0200

FIGURE 1A

OPEN BURNING CONTROL AREAS



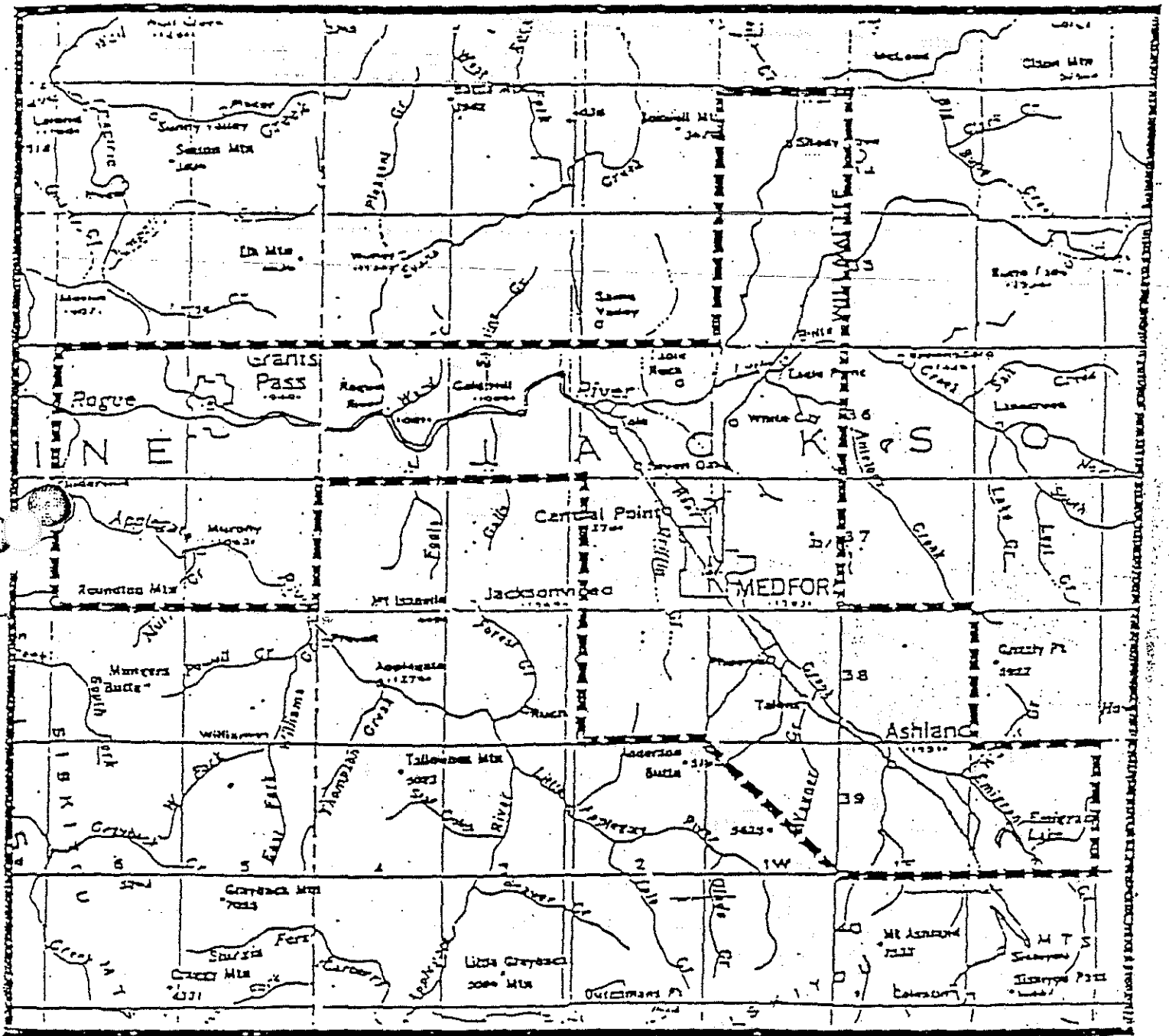
▨ OPEN BURNING CONTROL AREAS

• CITIES EXCEEDING POPULATION OF 4,000

340-264-0200
FIGURE 2
Current Rule

(November, 1984)

ROGUE BASIN OPEN BURNING CONTROL AREA



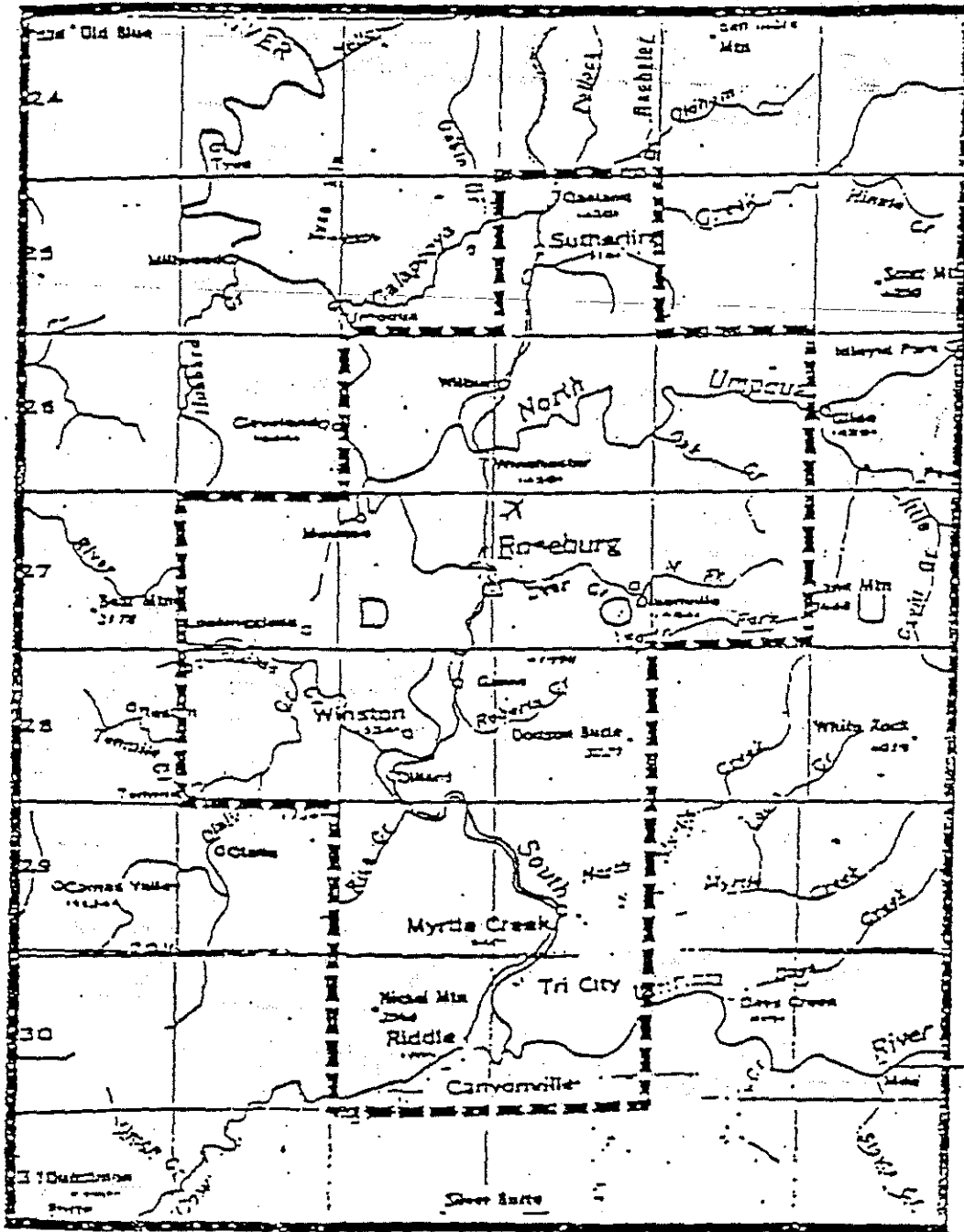
Current Rule

340-264-0200

FIGURE 4

(November, 1984)

UMPQUA BASIN OPEN BURNING CONTROL AREA



Current Rule

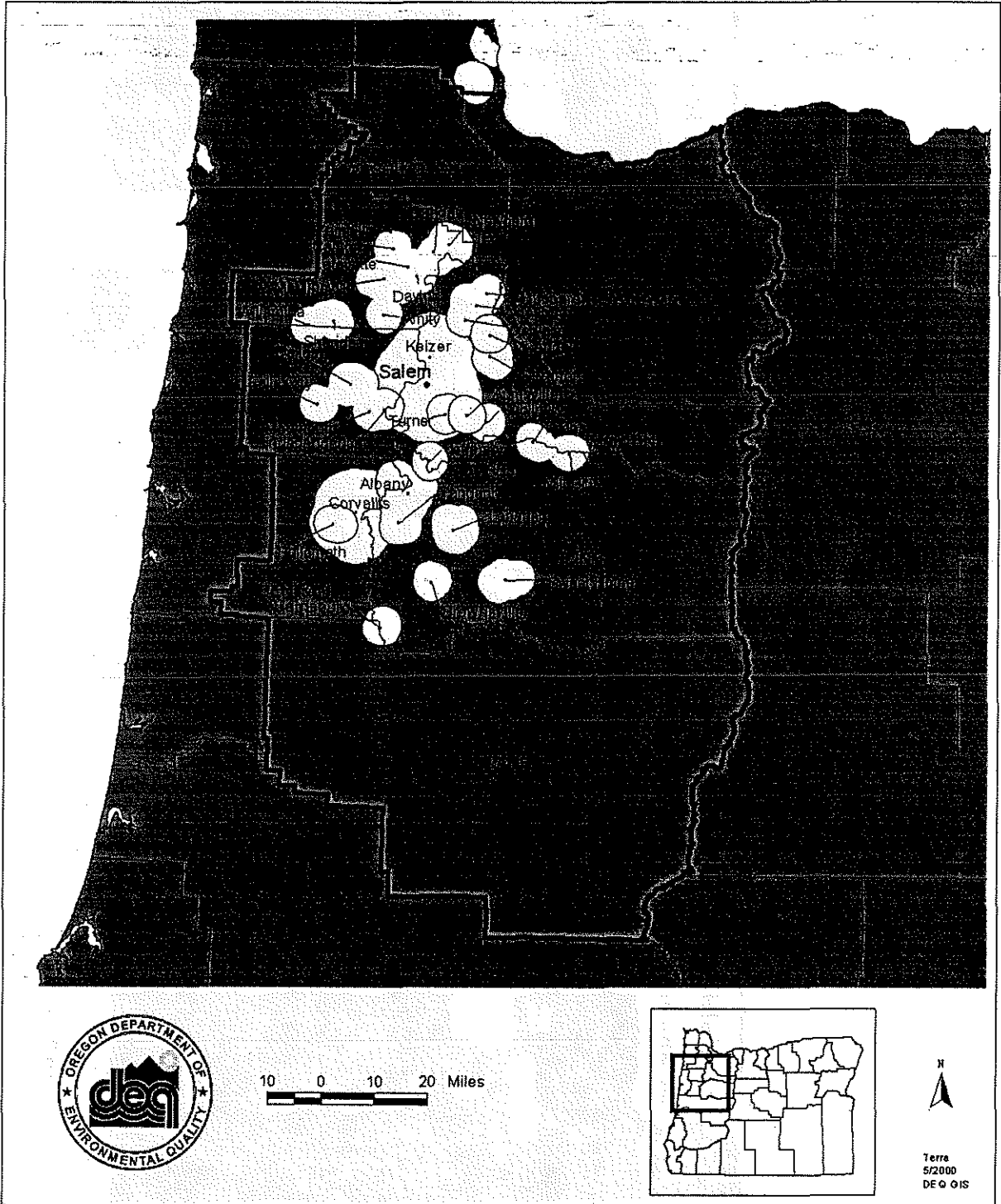
340-264-0200

FIGURE 5

340-264-0080

Figure 1
Proposed Rule

WILLAMETTE VALLEY OPEN BURNING CONTROL AREA

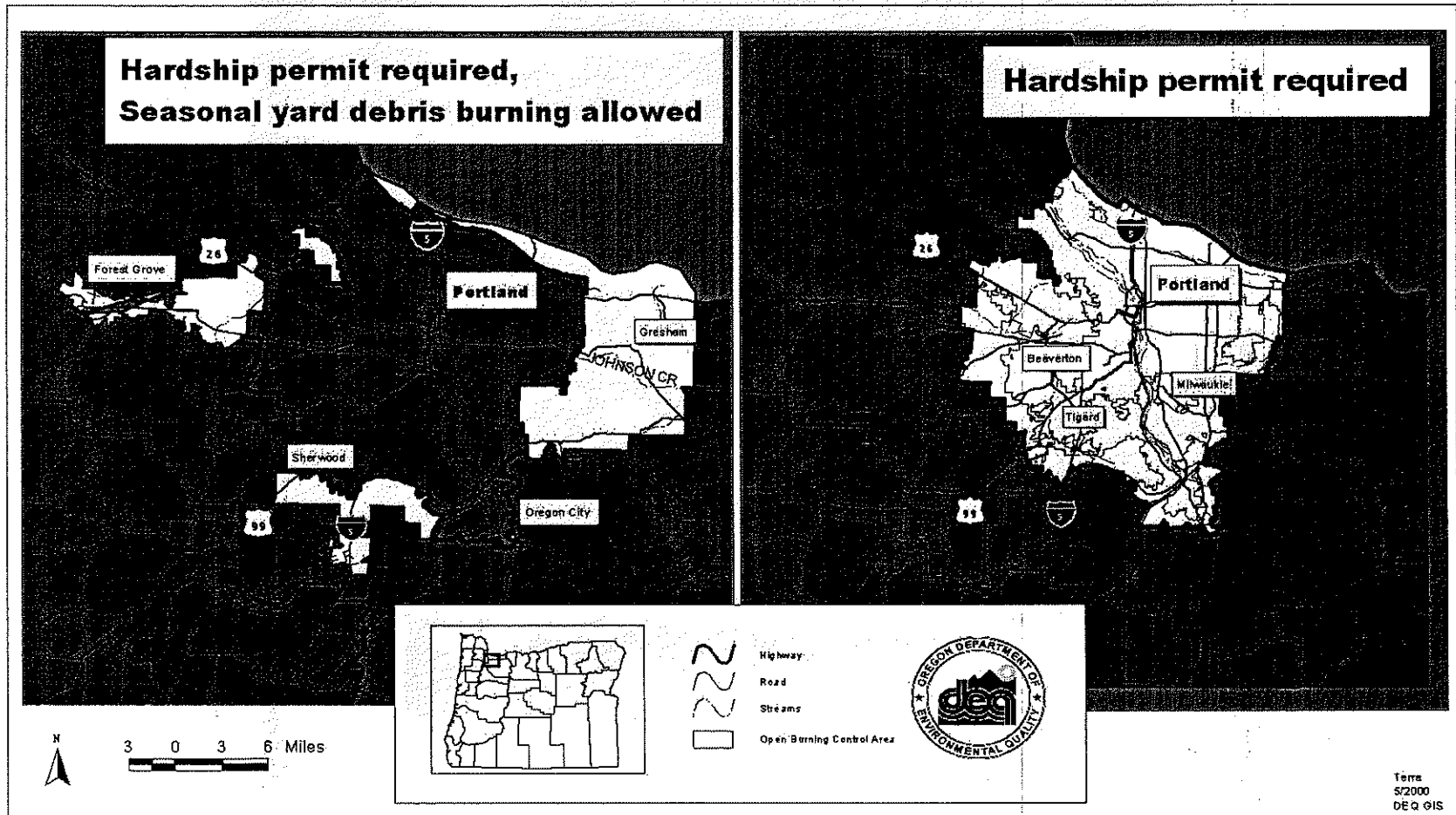


340-264-0080

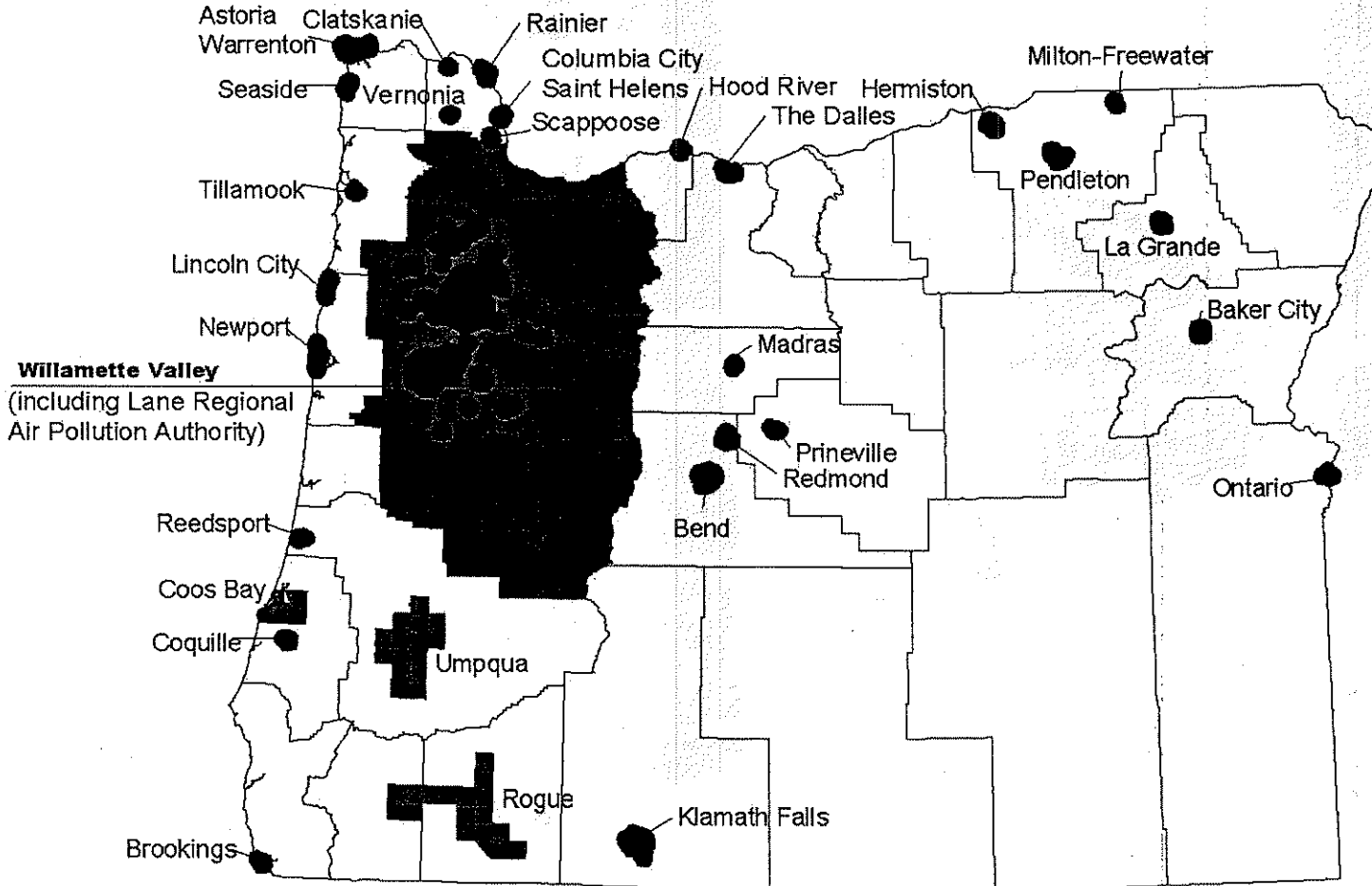
Figure 1A

Proposed Rule

METROPOLITAN AREA BACKYARD BURNING BOUNDARIES



Open Burning Control Areas



Willamette Valley
(including Lane Regional
Air Pollution Authority)

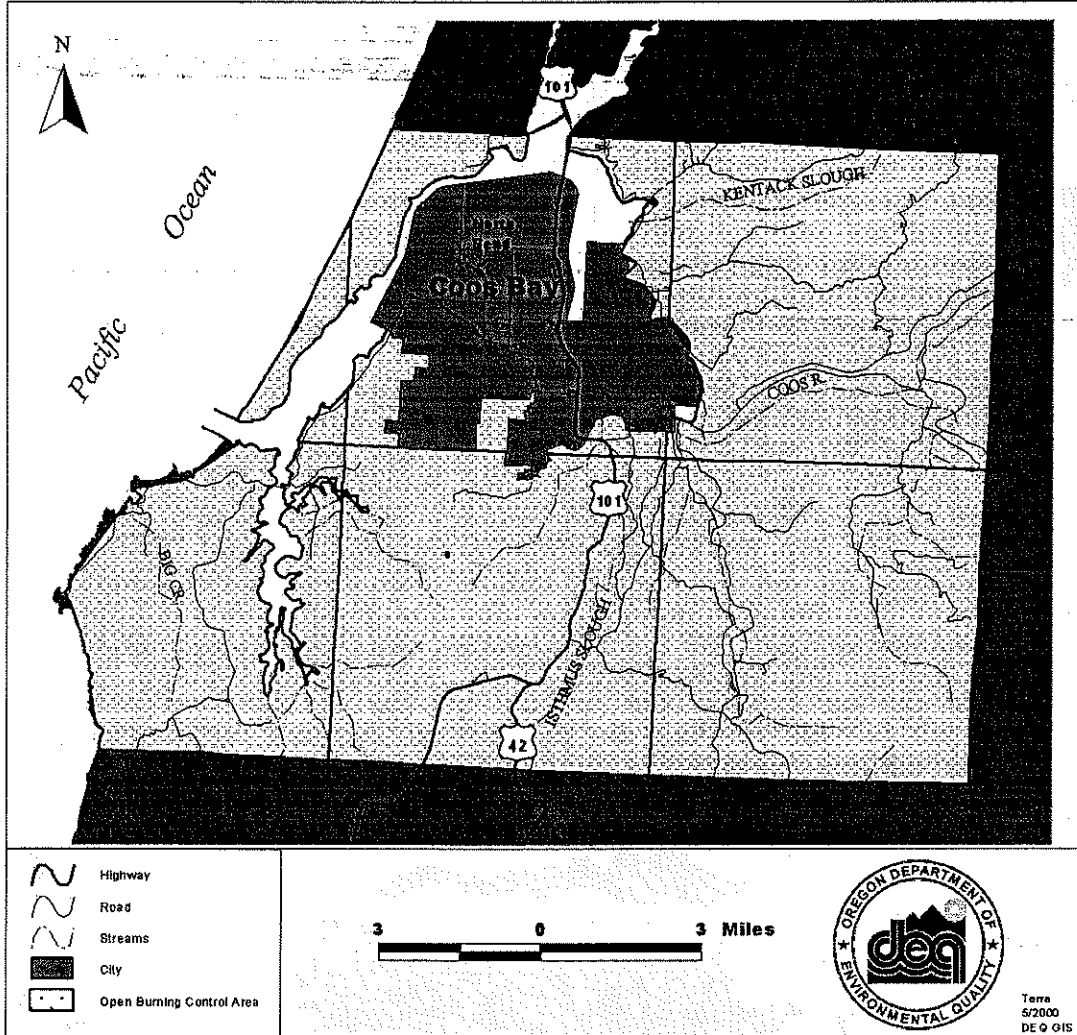
■ OPEN BURNING
CONTROL AREAS

● OUTSIDE OF WILLAMETTE VALLEY,
CITIES EXCEEDING POPULATION OF 4,000

Temé
5/2000
DEQ GIS

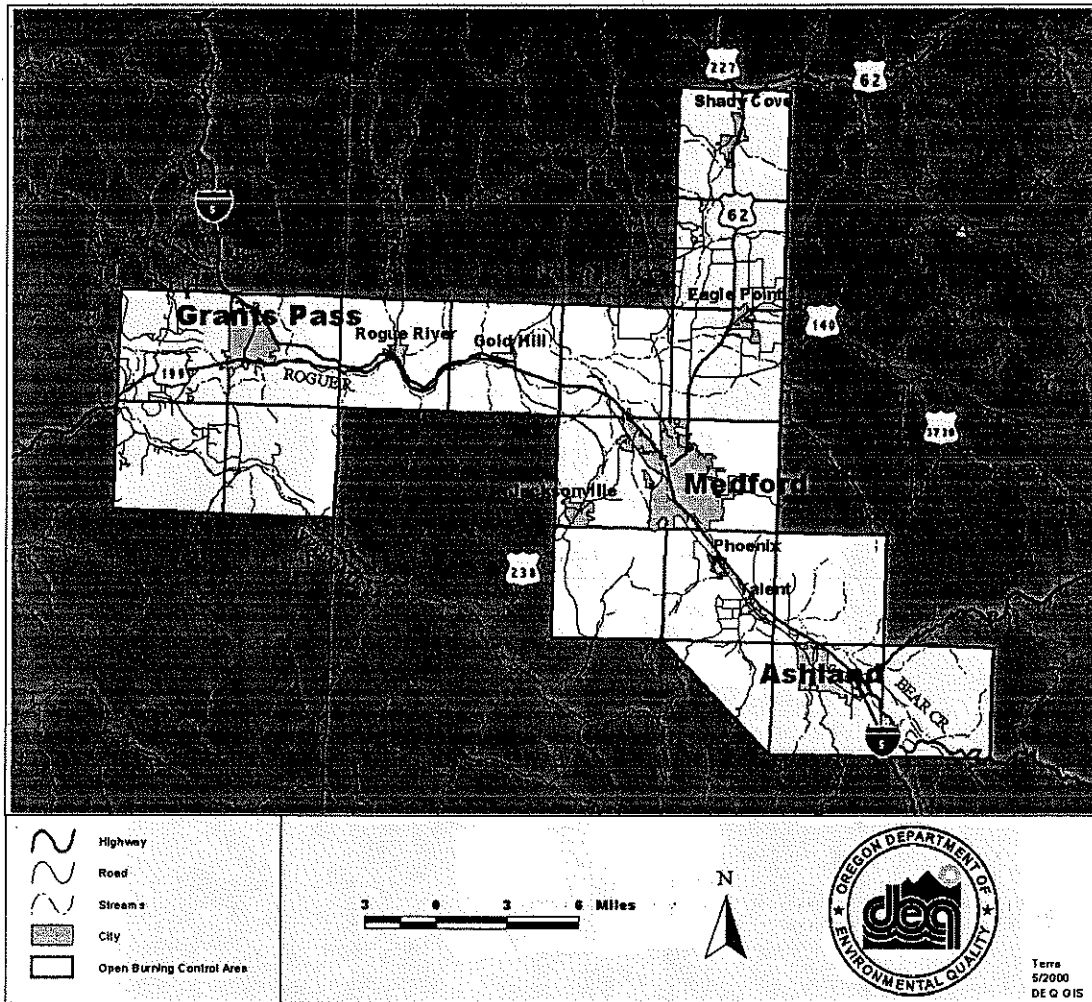
340-264-0080
Figure 2
Proposed Rule

COOS BAY OPEN BURNING CONTROL AREA



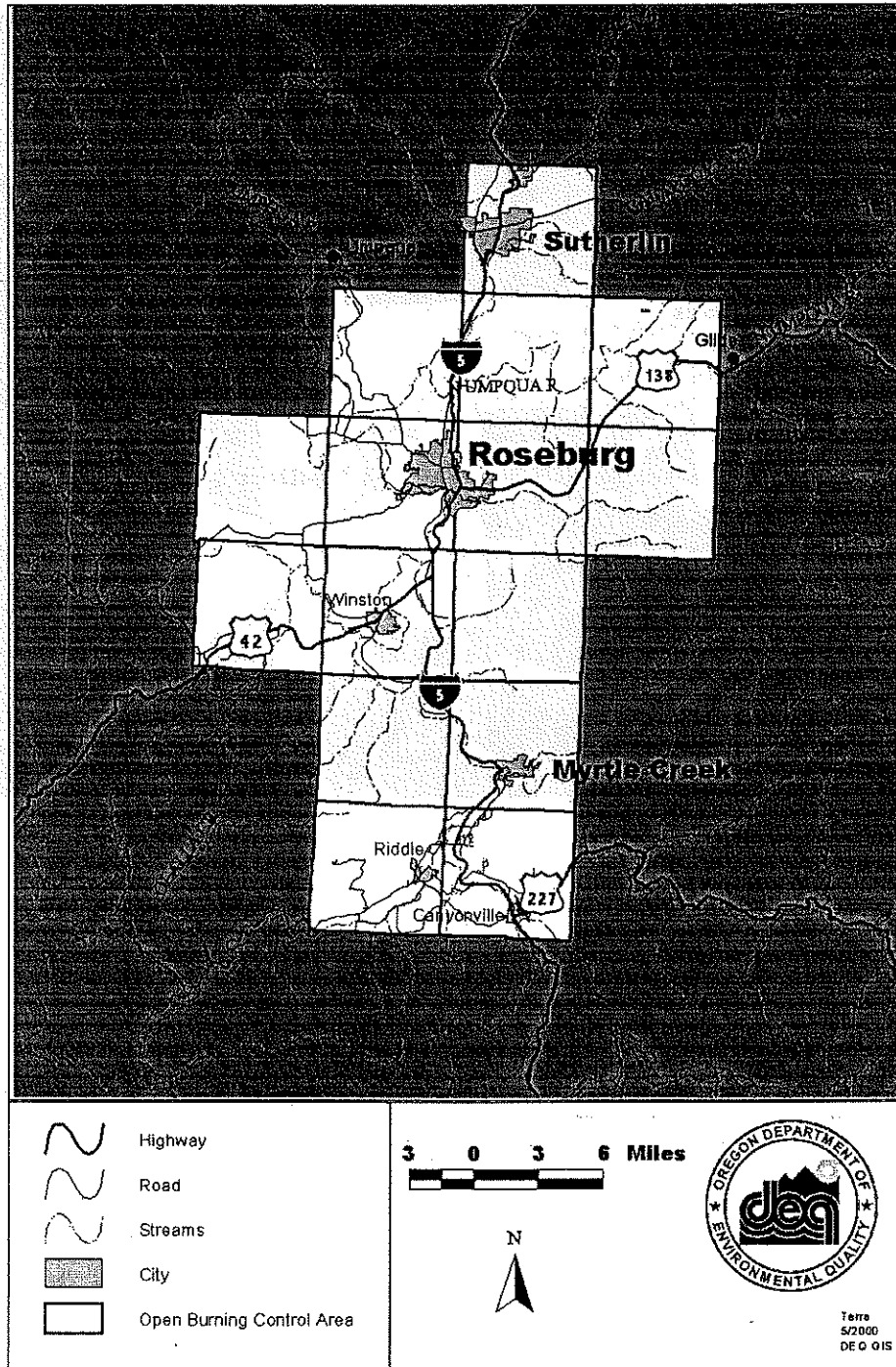
340-264-0080
Figure 4
Proposed Rule

ROGUE BASIN OPEN BURNING CONTROL AREA



340-264-0080
Figure 5
Proposed Rule

UMPQUA BASIN OPEN BURNING CONTROL AREA



340-200-0040**State of Oregon Clean Air Act Implementation Plan**

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

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

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

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

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

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
 A Statement of Need and Fiscal Impact accompanies this form.

DEQ – 200 & 264
 Agency and Division

Susan M. Greco
 Rules Coordinator

Chapter 340
 Administrative Rules Chapter Number

(503) 229-5213
 Telephone

811 S.W. 6th Avenue, Portland, OR 97213
 Address

<u>Hearing Date</u>	<u>Time</u>	<u>Location</u>	<u>Hearings Officer</u>
July 18, 2000	7:00 PM	Newmark Center Building (across from Walmart) Room 228 1988 Newmark Avenue Coos Bay	Martin Abts
July 18, 2000	7:00 PM	La Sells Stewart Center – OSU Agricultural Production Room 875 SW 26 th Street Corvallis	Kevin Downing
July 18, 2000	7:00 PM	Madras Fire Station Main Hall 765 S. Adams Drive Madras	Larry Calkins
July 19, 2000	7:00 PM	Tillamook County Courthouse Commissioners' Meeting Room 201 Laurel Avenue Tillamook	Duane Altig
July 20, 2000	7:00 PM	Gresham City Hall Springwater Trail Room 1333 NW Eastman Parkway Gresham	Kevin Downing
July 20, 2000	7:00 PM	Pendleton City Hall Community Room 500 SW Dorion Pendleton	

Are auxiliary aids for persons with disabilities available upon advance request?

Yes No

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

340-264-0075

AMEND:

340-200-0040; 340-264-0010; 340-264-0030; 340-264-0040; 340-264-0050; 340-264-0060;
340-264-0070; 340-264-0100; 340-264-0110; 340-264-0120; 340-264-0130; 340-264-0140;
340-264-0150; 340-264-0160; 340-264-0170; 340-264-0180; 340-264-0190

REPEAL:

RENUMBER:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

340-264-0200 to 340-264-0080; 340-264-0080 to 340-264-0090

Stat. Auth.: ORS 468A.025

Stats. Implemented: ORS 468A.020; 468A.040; 468A.085

RULE SUMMARY

This proposal would make several changes to the Department's open burning rules to improve environmental protection, update the list of open burning control areas, clarify authority to regulate burning under applicable laws, particularly agricultural burning, and streamline the administrative rules. These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

July 27, 2000

Last Day for Public Comment



Authorized Signer and Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rules for Open Burning

Fiscal and Economic Impact Statement

Introduction

The proposed rulemaking makes several changes to the existing open burning control program. Some of these changes reflect housekeeping and efforts to harmonize the regulations to current statutory authority and do not have any identifiable fiscal or economic impact. Other proposed changes would establish restrictions on select classes of burning in additional areas of the state. Individuals or organizations subject to the changes are expected to spend up to 2 hours researching and preparing materials in support of a permit request and would otherwise face increased waste management costs if the permit to burn was denied. Some of these costs are estimated below.

General Public

Under the proposed changes about 1,250 additional households in the mid-Willamette Valley would face prohibitions on domestic burning. Most of these households already have regularly scheduled garbage service available. Curbside garbage service in selected mid-Willamette Valley communities costs range from \$121 to \$178 per year. Households already with garbage service and that also open burned some of their domestic waste will experience a lesser net impact from the proposed change in the rule than those that had no garbage service before.

In another scenario, assuming that all household waste was taken to a landfill instead of being burned, the increased costs for landfill disposal would amount to about \$35 per year. This estimate reflects the cost per ton for waste generated annually by a typical household. However, many landfills and transfer stations charge a minimum dump fee, between \$10 and \$15. Most people self-hauling will typically pay the minimum fee rather than the tip fee. Annual costs will then be reflective of the number of trips to the dump site. In addition, costs would be incurred in preparing and transporting this waste to the landfill. These costs are difficult to determine, as they would vary from household to household depending upon the distance to the landfill, the volume transported in each trip, the type of vehicle used for transport and any costs associated with storage prior to transport.

Small Business

Businesses will generate waste that may fall into either construction, demolition and commercial waste. The annual volume of construction and demolition waste generated will vary from site to site, so an annual estimate of financial impact is not available. Disposal costs for construction and demolition waste, providing it is clean wood waste, range from \$0 to \$19 per cubic yard in the affected communities. Disposal costs for mixed commercial waste range from \$15 to \$19 per cubic yard for scheduled garbage service. The waste can be self-hauled to a transfer station or landfill for a disposal cost of \$25 to \$66 per ton. Additional costs would be incurred in hauling the waste to the drop off site. These costs cannot be readily determined because they depend upon a number of variables such as the distance traveled, the vehicles used, the volume transported and any costs associated with storage prior to transport.

Large Business

Industrial burning is already prohibited in the state and this rulemaking proposes no change. Additionally restrictions are also in place in air quality permits for sources needing to have an air quality permit. Sources not covered by permit would be subject to the same fiscal impact identified above if they were to otherwise engage in other classes of open burning activity.

Local Governments

Local governments engaging in open burning activity would be subject to the fiscal impacts as outlined above. Local governments interested in adopting the Department's open burning regulations would incur additional costs in operating such a program. The costs are indeterminate at this point, as a reliable estimate would depend upon the extent of the Department's open burning regulatory effort that the local government chose to adopt as its responsibility.

State Agencies

- DEQ
 - FTEs 0.15
 - Revenues \$0
 - Expenses \$30,160

The Department does not expect an increase in staffing to administer this proposal, if adopted.

- Other Agencies No impact, except as outlined above

Assumptions

Assumptions have been noted above.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking may add \$500 to \$600 to 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 in those areas of the state where restrictions are proposed for construction and demolition burning.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rules for Open Burning

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This proposal would make several changes to the Department's open burning rules to improve environmental protection, clarify authority to regulate burning under applicable laws and streamline the administrative 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? Yes No

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

NA

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

NA

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

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

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

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.

Attachment B

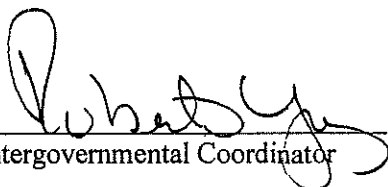
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

In applying the above criteria, the Department has determined, through its Land Use Coordination Program process, that the Open Burning Program is not a program that significantly affects land use.

- 3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

NA


Intergovernmental Coordinator

5/16/00
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rules for Open Burning

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

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

There are no specific federal requirements that apply to open burning. However the open burning rules have been incorporated into the state of Oregon's State Implementation Plan. This plan represents the commitment by the state as to how it will comply with the requirements and meet the goals of the federal Clean Air Act. The plan has been reviewed and approved by the U.S. Environmental Protection Agency and is enforceable as a federal requirement. The proposed changes to the open burning rules are in keeping with the policy (OAR 340-264-0020) outlined for this federally approved program.

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

Not applicable

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

Not applicable

- 4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**

Yes. Open burning is a means of waste disposal. Despite the aesthetic and health impacts associated with the relatively inefficient process of open burning it is sometimes the best available means of handling waste. As communities grow, the opportunities to comply with more environmentally protective waste disposal practices, as identified in Oregon statute and administrative rules, also increases. Imposing restrictions on open burning, a relatively inexpensive but environmentally costly waste disposal approach, improves the harmonization of air quality and solid waste management goals.

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

Not applicable

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

Yes. As communities grow, activities that were once tolerable can become more oppressive as in the case of open burning. People living even in small cities face a close proximity to each other and the impacts from open burning sources would be more intense and less subject to dilution. In a community where open burning would be a common practice the density of open burning sources constitutes a reduced opportunity to avoid exposure to the particulate, smoke and toxic contaminants associated with the practice. Restricting open burning as communities grow is a reasonable step towards managing air pollution impacts that might otherwise trigger more intensive and extensive regulation as represented when an area violates the national air quality standards.

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

Yes. The proposed requirement does maintain reasonable equity for sources, including residents and businesses, in those cities of similar size throughout the state.

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

Open burning generates many of the same type of pollutants that have led to exceedances of the PM_{10} in many areas of this state and around the country. Adopting the requirements in the proposed rule will help prevent exceedances of the federal health based air quality standards. Violating the health standards triggers requirements under the federal Clean Air Act to identify and control all sources of

that pollutant. The problem, should this happen, becomes serious enough that a consideration of economic feasibility of controls becomes secondary to the primary issue of reducing pollution levels. It is more proactive and less expensive for a community to avoid this heightened level of regulatory scrutiny and the increased costs associated with this level of pollution control by implementing pollution prevention measures such as the proposed open burning regulations.

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

Not applicable

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

Yes. Restricting open burning means that the responsible party must turn to other waste disposal methods. Demonstrated technology is available to manage the waste in a more environmentally responsible manner. Some communities may have lacked the infrastructure to support these alternative approaches such as composting and recycling in part because the opportunity to open burn represents a relatively inexpensive method of waste disposal. In other communities where these restrictions have been adopted these alternatives have been developed.

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

Yes. As noted previously, open burning is a relatively inefficient method of waste disposal that generates many of the same types of air pollutants otherwise identified as problematic. A growing community faces increasing and unavoidable exposure to the air contaminants associated with open burning if not controlled. Once the federal health based standards for air pollution have been exceeded all sources emitting the pollutant face increasing restriction. A community in which open burning restrictions are in place faces a reduced likelihood of triggering this air quality review, which can be a very expensive and involving process for the state and the city to resolve.

**State of Oregon
Department of Environmental Quality**

Memorandum

Date: May 16, 2000
To: Interested and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements - Rules for Open Burning, OAR 340 Division 264; State Implementation Plan, OAR 340-200-0040

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding open burning. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would make several changes to the Department's open burning rules to improve environmental protection, clarify authority to regulate burning under applicable laws and streamline the administrative rules.

The Department has the statutory authority to address this issue under ORS 468A.025. These rules implement ORS 468A.020, 468A.040 and 468A.085. If adopted, these rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

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-1 The actual language of the proposed rule (amendments).
- Attachment D-2 State Implementation Plan rule

Hearing Process Details

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

Date	Time	Place
July 18	7:00 PM	Coos Bay Newmark Center Building (across from Walmart) 1988 Newmark Avenue Room 228
July 18	7:00 PM	Corvallis Agricultural Production Room LaSells Stewart Center - OSU 875 SW 26 th Street
July 18	7:00 PM	Madras Main Hall Madras Fire Station 765 S. Adams Drive
July 19	7:00 PM	Tillamook Commissioner's Meeting Room Tillamook County Courthouse 201 Laurel Avenue
July 20	7:00 PM	Gresham Springwater Trail Room Gresham City Hall 1333 NW Eastman Parkway
July 20	7:00 PM	Pendleton Pendleton City Hall Community Room 500 SW Dorion

An overview of this proposal and a question and answer period from 6:30 PM to 7:00 PM will precede each hearing.

Deadline for submittal of Written Comments: 5:00 p.m., July 27, 2000

Department staff will be the Presiding Officer at the hearings.

Written comments can be presented at the hearings or to the Department any time prior to the

date above. Comments should be sent to: Department of Environmental Quality, Attn: Kevin Downing, 811 S.W. 6th Avenue, Portland, Oregon 97204; fax 503 229-5675; email downing.kevin@deq.state.or.us .

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Presiding Officer will prepare a report that 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?

This rulemaking is driven by a number of factors. First, the Legislature has amended the statutes governing authority to regulate agricultural burning since the Department's open burning rules were first adopted. These amendments have clarified that outside of field burning in the Willamette Valley, the Department is not authorized to regulate agricultural burning. The

affected open burning requirements now need to be repealed to conform with statutory authority.

Second, Oregon's open burning regulations have traditionally restricted the various classes of open burning, industrial, commercial, construction, demolition and domestic, based on proximity to population centers. The rules have established several population thresholds at which growing cities would face increasing restrictions on open burning activities. The restrictions for Willamette Valley cities typically have been triggered at population levels of 1,000 (restricted within three miles of a city's limits) and 45,000 (restricted within six miles of a city's limits). Outside the Willamette Valley, open burning restrictions have been triggered at population levels of 4,000 (restricted within three miles). Several cities in the state have grown beyond these population thresholds, and the rules are being updated to reflect those changes in growth. These include:

- Commercial burning prohibited except by permit:
Lincoln County, Madras, Tangent, Tillamook, Warrenton and adjoining areas within three miles of these cities' limits.
- Construction, demolition burning prohibited except by permit:
Coquille, Falls City, Lincoln City, Lyons, Madras, Newport, Reedsport, Seaside, Tangent, Tillamook, Warrenton, and adjoining areas within three miles of these cities' limits; Corvallis, Gresham and the adjoining areas within six miles of these cities' limits (previously a three mile limit).
- Domestic burning is prohibited except yard debris burning allowed between March 1st and June 15th and between October 1st and December 15th:
Falls City, Lyons, Tangent and adjoining areas within three miles of these cities' limits; Corvallis and the adjoining areas within six miles of the city limits (previously a three-mile limit).

Restrictions on some classes of open burning may already exist in these areas. In addition, restrictions on open burning may otherwise be adopted and enforced by various cities, counties and fire districts outside of the Department's requirements for open burning.

The proposed rules also clarify that the persons responsible for open burning, as defined in the rule, are also strictly liable for violations of the rule. The rule has typically defined a responsible person as one who owns, controls or is in custody of the property where the burning is occurring, including tenants, or as a person who owns, controls or is in custody of the material burned or any person who causes or allows the burning to be initiated or maintained. The rule listing open burning prohibitions, OAR 340-264-0060, did not precisely mirror the definition of a person responsible for open burning violations. This discrepancy has led to difficulties in enforcing the standards and expectations for responsible open burning as outlined in the rule.

Several other changes are proposed to improve environmental protection in keeping with the policy goals adopted by the Environmental Quality Commission in OAR 340-264-0020. These include harmonizing the definition of nuisance associated with open burning with the

Department's proposed changes to the nuisance control rules; clarifying the authority to extinguish illegal fires; requiring a permit for slash burning within open burning control areas not otherwise regulated by the Department of Forestry; and requiring a permit to burn any waste moved off the property of origin. Regarding this latter point, open burning as a waste disposal practice is often undertaken because it is inexpensive relative to other, more environmentally responsible methods of waste management. Hauling waste represents a significant portion of the total effort and cost of waste disposal. Requiring a permit before burning will encourage a more thorough consideration of environmentally protective waste disposal options that are available since the waste is already being prepared for transport.

The rulemaking is also proposing to clarify the ability for the Department to delegate open burning authority to local jurisdictions, including cities, counties and fire districts. This change provides the regulatory mechanism for local jurisdictions to fold the Department's environmental protection requirements for open burning into local open burning management requirements. This change would provide for more local and direct supervision, management and enforcement of open burning regulations than is currently possible and improve service to the citizen by issuing all permits at one location.

Finally, several other changes reflect housekeeping such as improving the readability of the rule or, in the case of the Lane County rule, updating the list of fire districts where open burning requirements apply. The Lane Regional Air Pollution Control Authority has responsibility for adopting and enforcing requirements for air contaminant sources in Lane County and previously updated its rules to reflect the merging and dissolution of fire districts within the county. Their open burning rules were modified to reflect this change, and the Department of Environmental Quality's proposed changes in OAR 340-264-0160 follow suit.

How was the rule developed?

Department staff from throughout the state met over the course of several months to identify the issues associated with the Department's role in implementing open burning controls and to recommend solutions to those problems. Staff consulted with the Department of Justice to resolve legal issues identified. During this time, staff also made inquiries and presentations before potentially affected parties, such as fire districts and local governments, to determine the impact and feasibility of various approaches to develop these proposed amendments.

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 Kevin Downing (phone and email address noted below) for times when the documents are available for review.

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

This proposal will generally prohibit classes of burning in select areas of the state and add additional requirements to any person wanting to open burn within these areas. Additional restrictions will apply to persons within the defined open burning control areas wanting to burn forest slash that is not covered under the Oregon Department of Forestry's smoke management program. Permits will also be required to burn waste that has been moved from the property of origin. Persons affected in these ways will be required to explore other reasonable alternatives to decrease actions that cause or contribute to a significant degradation of air quality.

This rule proposal will also provide an opportunity for local governments and fire districts to incorporate environmental protection from the impacts of open burning into their own open burning management programs. Certain jurisdictions may find this an attractive way to provide more streamlined services to their citizenry as well as to provide more localized control of open burning activity.

How will the rule be implemented?

The effective date of the rule will be December 16th, 2000. This date represents the end of the burning season for this year and will allow time to advise local fire districts and cities of the changes adopted by the EQC at their meeting in late September. Air quality staff in the regional offices has been heavily involved in the development of this rule proposal but will be briefed on any subsequent amendments to the proposal approved by the Commission. In the time leading up to the public hearings and consideration by the Commission, Department staff will participate in an outreach program to communities and groups affected by the proposed changes to the rule. This effort will identify concerns people may have, direct them toward appropriate opportunities for comment on the proposed open burning rules, and ultimately foster public acceptance and understanding of the open burning program.

Are there time constraints?

As previously noted, the existing rules need to be amended to reflect recent changes to state statute as well as to update population information. Of considerable importance, the Air Quality Division has also identified open burning rule amendments as a priority in its process improvement program identified within the Air Quality Strategic Plan. Successful implementation of this program will help streamline program operations and allow resources, both inside and outside the agency, to address more environmentally protective issues.

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:

Kevin Downing
DEQ - Air Quality Division
811 SW 6th Avenue
Portland, Oregon 97204

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downing.kevin@deq.state.or.us

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 11, 2000

To: Environmental Quality Commission

From: Kevin Downing, DEQ Air Quality Planning
 Larry Calkins, DEQ Bend
 Martin Abts, DEQ Coos Bay
 Duane Altig, DEQ Portland

Subject: Presiding Officer's Report for Rulemaking Hearing
 Rules for Open Burning

Hearing Date	Time	Place
July 18, 2000	7:00 PM	Coos Bay Newmark Center Building (across from Walmart) 1988 Newmark Avenue Room 228
July 18	7:00 PM	Corvallis Agricultural Production Room LaSells Stewart Center - OSU 875 SW 26th Street
July 18	7:00 PM	Madras Main Hall Madras Fire Station 765 S. Adams Drive
July 19	7:00 PM	Tillamook Commissioner's Meeting Room Tillamook County Courthouse 201 Laurel Avenue
July 20	7:00 PM	Gresham Springwater Trail Room Gresham City Hall 1333 NW Eastman Parkway
July 20	7:00 PM	Pendleton Pendleton City Hall Community Room 500 SW Dorion

In addition, information meetings on the open burning rules were held in Lyons on June 26th, Falls City on June 28th and Corvallis on July 6th. Persons attending these meetings were briefed on the rules by staff and any questions they had about the proposal were answered at that time. They were also encouraged to either attend the scheduled public hearings or submit written

Attachment C
Hearings Officer Report

comments to ensure that comments could be included in the public record. At the hearings people were asked to sign registration forms if they wished to provide comments. People were also advised that the hearing was being recorded. Prior to receiving comments, staff briefly explained the specific rulemaking proposal and the procedures to be followed during the hearing.

In Coos Bay, 8 people were in attendance and no one signed up to provide testimony. In Corvallis, 15 people were in attendance and 4 people signed up to testify. In Madras, 2 people were in attendance and no one signed up to provide testimony. In Tillamook and Gresham no one attended the hearing. In Pendleton, 3 people were in attendance and one person signed up to testify. Nineteen persons submitted additional written testimony outside of the public hearings.

The public comment period was extended until August 10th at the request of several individuals and groups who felt they did not have enough time to adequately review the proposal.

The following report provides a summary of written and oral comments received, including written comments received outside of the public hearings. The Department's response to the comments is provided in a separate document. Comments are grouped by similar subject areas. Comments are grouped by similar subject areas. The persons who made the comment are identified by a code, which is keyed to the entries in the Testimony Reference table.

Testimony References

Corvallis Hearing

<u>No.</u>	<u>Oral Testimony</u>	<u>Written Testimony</u>	<u>Name and Affiliation</u>
C1	YES	NO	Thomas Pederson 1475 NE Seavy Ave Corvallis
C2	YES	NO	Adrian McBroom 4105 Fair Acres St. Corvallis
C3	YES	NO	Todd Pynch 5110 NE Elliott Circle Corvallis
C4	YES	YES	Laurie Gordon 565 NW Rivendell Ln Corvallis

Pendleton Hearing

<u>No.</u>	<u>Oral Testimony</u>	<u>Written Testimony</u>	<u>Name and Affiliation</u>
P1	YES	NO	Patty Perry Umatilla County Planning 216 SE 4 th St Pendleton

Written Testimony Received

<u>No.</u>	<u>Written Testimony</u>	<u>Name and Affiliation</u>
W1	YES	Carol Fiscus J & K Warehousing P.O. Box 168 Hermiston
W2	YES	Amy Verley J.R. Simplot Company P.O. Box 850 Hermiston
W3	YES	Hilary White 4050 NE Fair Acres Drive Corvallis
W4	YES	Keta Tom 2650 NE Asbahr Corvallis
W5	YES	William Albright Corvallis Rural Fire Protection District 962 NW Highland Terrace Ave Corvallis
W6	YES	Kim & Axel Deininger 1244 NW Kainui Dr Corvallis
W7	YES	Ray & Floy Costello 490 NW Rivendell Ln Corvallis
W8	YES	Brent Nicolas 565 Rivendell Ln Corvallis

W9	YES	George Mears 1540 NW Lewisburg Ave Corvallis
W10	YES	Christine Hagerbaumer Oregon Environmental Council 520 SW 6 th Ave Suite 940 Portland
W11	YES	Randall Tinney P.O. Box 242 Mehama
W12	YES	Janet Caprini P.O. Box 64 Coquille
W13	YES	John H. Poland 29258 Lakeside Drive Corvallis
W14	YES	Charley Potter 5380 NW Shasta Pl Corvallis
W15	YES	Mike Ziolk Oregon Department of Forestry 2600 State Street Salem
W16	YES	Melvin Thornton Douglas Forest Protection Association 1758 NE Airport Rd Roseburg
W17	YES	Chuck Craig Oregon Department of Agriculture 635 Capitol Street NE Salem

W18 YES

Allan Huffaker
1245 NW Kainui Drive
Corvallis

W19 YES

Linda & Garry Williams
25697 Taylor Park Road
Lyons

Testimony Summary/Issues

Whose Comment

GENERAL COMMENTS ABOUT THE RULE

1.

W6, W13

Why have these changes been proposed? No complaints have been received nor is air quality getting worse. There has been no increased growth within the area proposed for open burning restrictions.

2.

C2

Commentor's wife is a nurse and in forty years has never treated anybody in the hospital for smoke inhalation. Why doesn't DEQ work on more important environmental problems like cleaning up auto junkyards?

3.

W12

Requiring a permit to burn household waste would add extra time, money and frustration to an area that is already economically depressed. People here are caretakers of the land and have the sense to know when the best days to burn are.

4.

W15, W16

"Responsible person" is defined in 340-264-0050 (1) to include agencies. Then in 340-264-0060 (1) and (2) "persons" are strictly liable for violations of the rule. There is an apparent conflict also with 340-264-0060 (5), which says "If any agency issues a [fire] permit in violation of this rule, the permit does not excuse any person from complying with this section." This language casts the role of the permit issuing agency in a different light in that the person burning, not the fire permit issuing agency, is responsible for ensuring that burning occurs on burn days.

5.

W19

The county required a driveway permit prior to approving a garage building permit. As a condition for approving the driveway permit the county required the landowner to clear several hundred feet along the right of way. Chipping and/or hauling would prove to be expensive, between \$1500 and \$3000 leaving burning as the only option. However, the

fire department would not issue a burn permit until burning season began again in 6 or 7 months. We don't have any problem with a regulated burning season but a person should be able to get a special burn permit to get rid of debris that is required to be cleared in order to get a building permit. It is sad not to have all of these regulated requirements in sync with each other.

6. W5
The rules should be simplified so that the average person can easily understand them.

SEASONAL, TIME OF DAY RESTRICTIONS

7. W4, W6, W7
Change the start of the fall burning season to during the first rain. The start of the fall yard debris burn season should depend on the weather. It would make more sense to base the burning on meteorological conditions such as air quality and fire danger. Many states, counties and municipalities have burn days throughout the year based on current meteorological conditions and fire danger. This would improve air quality by not forcing people to burn during times when the piles are wet producing significant amounts of smoke.

8. W9
Consider adding a supplemental burn period in the middle of winter when there is often a dryer period that leaves and brush will not smoke as much but surrounding areas are damp enough to reduce the chance of fire.

9. W16
Many times the only appropriate time to burn is at night due to fire safety and control. Restricting burning to daylight hours doesn't allow any flexibility for conducting a safer controlled burn.

EXEMPTIONS

10. W1, W2
Provide exemption from open burning restrictions for tumbleweeds. Tumbleweeds are an ongoing problem and the wind is unpredictable so that continual permit issuance is not feasible.
11. C1
Commentor doesn't want the hassle of trying to start an agricultural operation to qualify for a burning exemption under the proposed rules but can't understand why 5 acre plots like his can't burn orchard and tree trimmings while larger agricultural operations can

burn similar materials without a permit.

DEFINITIONS

12. W16
If anyone's personal use and enjoyment is impacted, any burning could be considered a nuisance under the proposed broad definition of a nuisance.
13. W6
A lot of yard debris is larger than needles and leaves. Trees are always self-pruning and limbs are dying. It is too dangerous to leave branches on the ground because of the risk of forest fires.
14. C4, W4, W7, W8
Redefine yard debris to include tree stumps and trees cut because of hazard and disease. Many of the large branches on my property are infested with pathogens. Disposal by landfilling, chipping or composting will spread the still viable pathogens to other landscapes as well as public lands, commercial timber operations and the nursery industry.
15. W9
Add a "storm debris" provision, allowing property owners a legal way to burn large fallen limbs that are not otherwise considered yard debris.
16. W5
Provision should be made for special circumstances, i.e., dead trees, storm damage and/or dangerous trees and a permitting process for these special circumstances be designed for local authority.
17. C3, C4, W7, W8
Mechanical stump removal and transport is cost prohibitive, at a cost of \$150 to \$1000 per stump. Landowner is trying to manage land responsibly but must clean up storm damage. While fallen trees can be cut up for firewood, the remaining stumps present a costly disposal dilemma. Estimates have been received for anywhere from \$150 to \$200 per stump. The rules should differentiate cleaning up storm damage from typical land clearing practices and allow burning in the former case.
18. C4, W7
Add exclusive definitions that would allow rural landowners to burn yard debris in the event of :
 Storm damage,

Fire Protection,
Wildlife habitat enhancement,
Riparian and wetland area restoration,
Land conservation, preservation and restoration
Protection
Scenic Area

19.

W11

Commentor opposes open burning restrictions in the lands northeast of the junction of Hwy 22 and North Fork Road. Prevailing winds in the North Fork canyon are from the southwest and away from nearby population centers like Lyons. On east wind days burning is not permitted. On the few days that very little wind is present the smoke is contained by the ridgelines of the canyon and is dispersed by the river breeze that blows through daily. A scientific approach should be used to establish boundaries using recognizable geographic landmarks rather than imaginary lines that wander off wooded hillsides.

20.

W12

Some of their acreage is in a floodplain that requires continual management of the collected debris. To leave it until the 10 week burning season would be unsightly, a fire hazard and contribute to the creation of a health hazard. We are otherwise very busy and may not be able to fit

21.

W12

Domestic burning should be allowed because the cost of garbage service here, in an economically depressed area, is unaffordable. Self-hauling requires a pickup truck, the gas to run it and a place to store increasingly larger piles of household waste. This will attract rodents, insects, stray cats and dogs, smell and be an eyesore.

22.

W17

The Department of Agriculture requests that agricultural waste remain defined as agricultural waste even when it is removed from the property of origin. Many farm operations consists of multiple parcels. The waste does not change in character simply because it has been moved. Applying for a commercial burning permit would be a burden.

OPPOSED TO FURTHER RESTRICTIONS

23.

C4, W7, W8

Commentors do not see the necessity of increasing the open burning control area solely because of the increase in population when there has not been an accompanying increase

in complaints. The proposal seems even more unnecessary in light of the improvement of air quality even with current burn practices.

24. W13
Population growth has occurred primarily within the urban growth boundaries. The proposed regulations impose a hardship on one group of people because of the growth of another, without accomplishing any real improvement of air quality for either group.
25. W9
The expansion of the open burn control area to six miles should be justified on the basis of air quality data taken before, during and after permissible burn periods.
26. C4, W7, W8
A prohibition on burning may interfere with other agricultural protection programs. If nut and fruit trees on the property were found to contain pests and ordered destroyed by the Department of Agriculture burning would typically be the only option. Removing the trees off the property and out of the quarantine area would put the property owner in violation of the quarantine.
27. W18
Property contains numerous large trees and dense brush. All of this vegetation generates large quantities of debris that must be removed to reduce the threat of fire.
28. C4, W6, W7, W8
If people are not allowed to burn they will resort to other control methods, including chemicals. The use of more chemicals will jeopardize other resources like groundwater. Burning helps us improve the overall health of our forest including getting rid of 25 to 30 years of blackberries, poison oak and other noxious and obnoxious weeds in order to restore native vegetation and improve wildlife habitat. By not burning we may end up engaging in practices which include increased pesticide use and the use of mechanized equipment for soil preparation leading to increased soil runoff.
29. W13
The Department's rules for managing open burning in the expansion area are already sufficient. It is illegal to burn anything that is toxic, produces dense smoke, creates a nuisance or is a hazard to public safety. It is also illegal to burn on days not approved by DEQ for air quality reasons, as administered by the fire districts.
30. W13, W18
The people affected by this proposal burn debris that is impractical or expensive to dispose of in any other way. They must burn in accordance with current restrictions or allow the brush to accumulate, creating a fire hazard. While small quantities of the

material generated on these larger acreages can be composted, the majority of it must be burned twice a year. Opposed to any restrictions on forest debris burning except relating to high fire danger.

31. W14
Commentor protests any further restrictions on burning. They are very restrictive now and are not needed. This seems to be nothing other than restrictions on the use of private property and the rights of ownership. A fundamental right that should only be restricted when there is an extremely dire need that does now exist.
32. C2
Outdoor burning occurs only two times a year and purchasing a chipper would be an expensive investment for such an infrequent need. Besides, what should be done with the chips?

CONSIDER ALTERNATIVES TO OPEN BURNING

33. W9
A balanced approach to all burning should be sought. Combine a safe and reasonable burn alternative with public service announcements that encourages recycling of yard debris and wood waste.
34. W13
Consider alternatives to the proposed regulation, for instance, offering monetary incentives for disposal of yard waste.

DELEGATION OF AUTHORITY, INTERACTION WITH OTHER AGENCIES

35. W6, W8
The proposed enforcement mechanism for these rules relies heavily on local fire districts, and some of them rely on volunteers. These rules place too strong a burden on these rural districts.
36. W9
Fire districts should not be saddled with a regulatory burden without funding from the department.
37. W15, 16
The department proposes in 340-264-0075 to allow a delegation of authority to local jurisdictions after ordinances are adopted reflecting requirements of the open burning rules. Assuming the Oregon Department of Forestry was interested in delegation, how

would this transfer take place when ODOF does not adopt ordinances?

38.

W15

The Department of Forestry would be willing to coordinate permit issuance to more effectively serve the public but the enforcement role should remain with DEQ. The proposal should be changed to reflect partial delegation of the program.

39.

W16

If a local fire district chose to accept delegation of the Department's open burning program, would this authority supersede the authority of forest protection districts on lands of joint responsibility?

SUPPORTS THE RULE OR RULE ELEMENT

40.

W10

Commentor supports the adoption of new rules regarding open burning, which will help protect the health of Oregonians by reducing air pollution and improving enforcement. In particular, the department should require permits in open burning control areas for slash burning not otherwise regulated by the Department of Forestry and for burning any waste moved off the property of origin.

41.

W5

The Corvallis Rural Fire Protection District supports the prohibition of domestic burning within the six-mile range as proposed.

42.

W15

We are in complete agreement with the rule proposal to maintain the exemption for fires that are set to prevent or eliminate a fire hazard. ODF is working on wildland-urban interface issues to prevent wildfires where the combination of homes and forests create conditions contributing to wildfires that destroy homes and forests.

43.

P1

Commentor appreciates the scheduling of a hearing in eastern Oregon because burning is used extensively in agricultural operations in the area. The county recently adopted an agricultural burning management program and wanted to make sure that it was in keeping with the proposed changes. The county's program appears to be in keeping with the department's proposed changes.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rules for Open Burning

Department's Evaluation of Public Comment

Testimony Summary/Issues

Whose Comment

GENERAL COMMENTS ABOUT THE RULE

1.

W6, W13

Why have these changes been proposed? No complaints have been received nor is air quality getting worse. There has been no increased growth within the area proposed for open burning restrictions.

The state of Oregon has a longstanding policy (ORS 468A.010) to restore and maintain air quality in a condition as free from air pollution as is practicable. This means that waiting for air quality problems to develop is not an acceptable approach if reasonable controls are available. A new industrial source, for instance, that locates in a "clean air area" is still expected to install and maintain air pollution controls even though other, historic efforts have brought the area into compliance with air quality standards. The proposed change in open burning control areas is in keeping with that policy.

The standard established in the rule for determining open burning control areas reflects a general availability of feasible, practical and more environmentally protective disposal alternatives to open burning, including composting and chipping. The Department recognizes that a primary advantage of open burning is that it is a relatively low cost waste disposal option. Even though the other options incur some additional financial cost relative to open burning, the costs are reasonable compared to other air pollution control strategies. For instance, chipping wood waste instead of open burning reduces air pollutants at a cost of \$400 per ton of pollution reduced. This compares very favorably to a standard of \$3,000 per ton for reasonably available control costs for industrial air pollution technologies.

2.

C2

Commentor's wife is a nurse and in forty years has never treated anybody in the hospital for smoke inhalation. Why doesn't DEQ work on more important environmental problems like cleaning up auto junkyards?

Exposure to smoke and other pollutants from open burning does result in health impacts that have been well documented. Smoke exposure causes a decrease in lung function and an increase in the severity of existing lung disease with increases in smoke concentrations or exposure time. The effects can be acute or chronic. Recent studies suggest that the particulate matter from burning may be more toxic than ozone pollution, commonly known as smog.

The Department periodically reviews priorities for environmental action and welcomes input from interested citizens. In this case, updating the open burning rules is part of our ongoing program to restore and maintain air quality and also ties into a current Department priority to reduce people's exposure to toxics. Burning vegetative materials results in smoke impacts but also releases a number of toxic air contaminants, including benzene. Benzene is a carcinogenic compound that has been modeled to be above health benchmark levels in every county in Oregon.

3.

W12

Requiring a permit to burn household waste would add extra time, money and frustration to an area that is already economically depressed. People here are caretakers of the land and have the sense to know when the best days to burn are.

The changes proposed do not include a prohibition on burning domestic waste on the south coast where the commentor lives. The Department encourages people in this area to continue to burn responsibly, maintaining hot fires, minimizing smoke and avoiding burning materials that create noxious odors. Even more importantly, the Department encourages people to consider other environmentally protective approaches to managing waste including not generating the waste in the first instance, reusing materials otherwise thrown away and recycling instead of landfilling.

4.

W15, W16

"Responsible person" is defined in 340-264-0050 (1) to include agencies. Then in 340-264-0060 (1) and (2) "persons" are strictly liable for violations of the rule. There is an apparent conflict also with 340-264-0060 (5), which says "If any agency issues a [fire] permit in violation of this rule, the permit does not excuse any person from complying with this section." This language casts the role of the permit issuing agency in a different light in that the person burning, not the fire permit issuing agency, is responsible for ensuring that burning occurs on burn days.

The Department agrees with this comment and will make the needed changes.

5.

W18

The county required a driveway permit prior to approving a garage building permit. As a condition for approving the driveway permit the county required the landowner to clear several hundred feet along the right of way. Chipping and/or hauling would prove to be expensive, between \$1500 and \$3000 leaving burning as the only option. However, the fire department would not issue a burn permit until burning season began again in 6 or 7 months. We don't have any problem with a regulated burning season but a person should be able to get a special burn permit to get rid of debris that is required to be cleared in order to get a building permit. It is sad not to have all of these regulated requirements in sync with each other.

Department field staff understands the challenge that can be presented when needing to dispose of materials. Open burning has often been the disposal option of choice due in large part to its low cost. Changing longstanding practice can be difficult in the interim and staff will work with property owners to identify options to facilitate the transition to alternative practices. Hauling wood waste, for instance, is an available service in the commentor's area, costing about \$300 for a 50 yard drop box.

The rules establish a burn season only for yard debris burning. The waste discussed here is demolition waste, the seasonal burning of which is regulated primarily by fire districts in consultation with DEQ. Fire safety is the primary concern as to why the burning restriction was applied in this particular case.

6.

W5

The rules should be simplified so that the average person can easily understand them.

The Department agrees with this observation. Many of the proposed changes to the rule are intended to improve readability and understanding. Even with these changes understanding the open burning rules remains a challenge. It will require more time that can be committed now in order to do a full rewrite of the rules to achieve better comprehension and still maintain standards for legal enforceability. The Department anticipates additional rulemaking on open burning and will undertake the rewrite then.

In the meantime, the Department publishes and distributes fact sheets and flyers that clearly lay out burning restrictions and suggestions for alternatives in various parts of the state.

SEASONAL, TIME OF DAY RESTRICTIONS

7. W4, W6, W7
- Change the start of the fall burning season to during the first rain. The start of the fall yard debris burn season should depend on the weather. It would make more sense to base the burning on meteorological conditions such as air quality and fire danger. Many states, counties and municipalities have burn days throughout the year based on current meteorological conditions and fire danger. This would improve air quality by not forcing people to burn during times when the piles are wet, producing significant amounts of smoke.

The establishment of a burning season reflects the combined interests of environmental protection and fire safety, i.e., adequate ventilation to prevent dangerous concentrations of air pollutants and adequate moisture in the surrounding vegetation to prevent catastrophic fire damage. In practice the Department and fire districts have found a fixed season to be most effective in educating and advising citizens of the time to burn. Because precipitation may occur during these times the Department strongly encourages people to keep the to-be-burned pile protected to ensure that it remains dry for the burn.

8. W9
- Consider adding a supplemental burn period in the middle of winter when there is often a dryer period that leaves and brush will not smoke as much but surrounding areas are damp enough to reduce the chance of fire.

See response to comment 7.

9. W16
- Many times the only appropriate time to burn is at night due to fire safety and control. Restricting burning to daylight hours doesn't allow any flexibility for conducting a safer controlled burn.

Conditions for dispersal of pollutants tend to deteriorate overnight. Inversion layers are created that trap smoke close to ground level creating pollutant concentrations that can be damaging to human health. It is more protective of air quality to continue the restriction of nighttime burning.

EXEMPTIONS

10. W1, W2
- Provide exemption from open burning restrictions for tumbleweeds. Tumbleweeds are an

ongoing problem and the wind is unpredictable so that continual permit issuance is not feasible.

The Department agrees with this comment. Tumbleweeds blown by the wind are a persistent problem in eastern Oregon. Disposal is a financial burden and the act of collecting also serves to distribute seeds, exacerbating the original problem. Burning tumbleweeds will not tend to result in adverse air quality impacts as it burns hot and tends to occur in low-density population areas.

11.

C1

Commentor doesn't want the hassle of trying to start an agricultural operation to qualify for a burning exemption under the proposed rules but can't understand why 5 acre plots like his can't burn orchard and tree trimmings while larger agricultural operations can burn similar materials without a permit.

The exemption for agricultural operations is established by statute. The standard established in the Department's rule, a demonstration of profitability or intent to make a profit, reflects the legislative intent. Even though there may not be a functional difference in the type of waste to be burned, persons seeking to make a living from agricultural operations are exempted from air quality requirements.

DEFINITIONS

12.

W16

If anyone's personal use and enjoyment is impacted, any burning could be considered a nuisance under the proposed broad definition of a nuisance.

The standard for nuisance is based on a long and extensively litigated case history of activities that constitute a nuisance. Nuisance determinations are based on a reasonable person's evaluation of what constitutes a substantial and unreasonable interference with one's property or enjoyment of life. A determination of nuisance also considers mitigating factors on behalf of the party creating the alleged nuisance, including the extent of the harm and the ability of the party to control the impact or to engage in alternative practices. Whether a burn is determined to be a nuisance will depend upon the weighing of these factors that have been identified through the development of common law.

13.

W6

A lot of yard debris is larger than needles and leaves. Trees are always self-pruning and limbs are dying. It is too dangerous to leave branches on the ground because of the risk

of forest fires.

Alternatives to burning this debris are readily available including chipping, composting and even disposal in a landfill. Diligent husbandry can manage this debris without resorting to open burning using the air as a disposal site.

14.

C4, W4, W7, W8

Redefine yard debris to include tree stumps and trees cut because of hazard and disease. Many of the large branches on my property are infested with pathogens. Disposal by landfilling, chipping or composting will spread the still viable pathogens to other landscapes as well as public lands, commercial timber operations and the nursery industry.

Disposal of tree stumps by burning is difficult to manage considering fire safety as well as environmental protection. This is because stumps tend to burn over a period longer than the course of a day making it unlikely that a responsible person will continuously monitor the fire or that it will burn hot enough to minimize smoke impacts.

There are alternatives to burning in dealing with pathogens. Composting "hot" has been shown to destroy a number of weed seeds and pests and has the advantage of returning organic matter necessary for maintaining vigor in healthy plants which, in turn, makes them more resistant to pests. If this approach were not deemed effective the material could be hauled to either a hog fuel boiler or a landfill. Either one of these practices would have appropriate controls and safeguards to prevent the spread of pathogens.

15.

W9

Add a "storm debris" provision, allowing property owners a legal way to burn large fallen limbs that are not otherwise considered yard debris.

The Department does consider any relevant information in an application for a letter permit that it or the applicant deems relevant to the request, including the need to dispose of storm debris. A determination to issue a permit will still depend upon a conclusion that all reasonable alternatives have been explored and that no practical alternative exists and that the burning will not cause or contribute to a significant degradation of air quality. The Department does not believe there is a need to highlight a special exemption for storm debris from this review.

16.

W5

Provision should be made for special circumstances, i.e., dead trees, storm damage and/or dangerous trees and a permitting process for these special circumstances be designed for local authority.

See response to comment 15 regarding storm debris. In addition, the rules exempt from permitting requirements any fires set or permitted by any agency in the performance of its official duty that eliminates a fire hazard or a hazard to public health or safety. The Department has provided for the opportunity in this rulemaking to delegate all or portions of its open burning authority to local jurisdictions. Special circumstances that may arise in specific locales can be addressed in the agreement reached between the Department and the local authority when a delegation agreement is drafted and approved.

17.

C3, C4, W7, W8

Mechanical stump removal and transport is cost prohibitive, at a cost of \$150 to \$1000 per stump. Landowner is trying to manage land responsibly but must clean up storm damage. While fallen trees can be cut up for firewood, the remaining stumps present a costly disposal dilemma. Estimates have been received for anywhere from \$150 to \$200 per stump. The rules should differentiate cleaning up storm damage from typical land clearing practices and allow burning in the former case.

Stump removal can be expensive but it is not a recommended practice for woodland management. Instead stumps can be cut low if needed to accommodate mechanical replanting but otherwise left in place and replanting occurs around them. The property owner may still desire the stumps removed for other reasons but burning will not become a viable option for both fire safety and air quality reasons. Because of the density of stumps it is difficult to sustain a hot enough fire to minimize smoke impacts and burning the stumps in place represents bad burning practice.

18.

C4, W7

Add exclusive definitions that would allow rural landowners to burn yard debris in the event of :

- Storm damage,
- Fire Protection,
- Wildlife habitat enhancement,
- Riparian and wetland area restoration,
- Land conservation, preservation and restoration
- Protection
- Scenic Area

- *See response to comment 15 relating to storm damage.*
- *The rules currently provide an exemption (340-264-0040 (3)) for fires set or permitted by a public agency for the purpose of prevention or elimination of a fire hazard.*

Attachment D
Response to Comments

- *The Department agrees that fire may be a necessary tool for certain land management activities such as wetland area restoration and wildlife habitat enhancement. These activities are outlined and prescribed in federal and state law and under these circumstances the Department can extend letter permits for this burning to occur. The Department will recommend the rules be modified to reflect this consideration.*
- *The other conditions proposed by the commentor are too vague and thus allowing burning under these circumstances would easily lead to abuse of any exemption based on these considerations.*

19.

W11

Commentor opposes open burning restrictions in the lands northeast of the junction of Hwy 22 and North Fork Road. Prevailing winds in the North Fork canyon are from the southwest and away from nearby population centers like Lyons. On east wind days burning is not permitted. On the few days that very little wind is present the smoke is contained by the ridgelines of the canyon and is dispersed by the river breeze that blows through daily. A scientific approach should be used to establish boundaries using recognizable geographic landmarks rather than imaginary lines that wander off wooded hillsides.

Researching and developing an airshed map for each jurisdiction in the state where open burning rules apply would be an enormous undertaking and very costly. A fixed distance from a city limit is a somewhat arbitrary boundary compared to a description based on years of meteorological data and modeling but is effective at generally describing the impact area, and also where alternatives are readily available.

20.

W12

Some of their acreage is in a floodplain that requires continual management of the collected debris. To leave it until the 10 week burning season would be unsightly, a fire hazard and contribute to the creation of a health hazard. We are otherwise very busy and may not be able to fit it into this short season.

In the area where the commentor lives, the type of burning at issue here is restricted under the proposed changes in the Department rules but the rules do not establish a seasonal limitation. The local fire district in issuing its burn permit may have additional requirements as to burning season.

21.

W12

Domestic burning should be allowed because the cost of garbage service here, in an economically depressed area, is unaffordable. Self-hauling requires a pickup truck, the gas to run it and a place to store increasingly larger piles of household waste. This will attract rodents, insects, stray cats and dogs, smell and be an eyesore.

The rules do not prohibit domestic burning in this area (south coast). It is important to point out, however, that much of what constitutes domestic waste often consists of prohibited materials like synthetic polymers (plastic, foams, etc.) that comprise a significant portion of packaging materials. The plastic garbage sack used to contain the garbage, for instance, cannot be burned domestically anywhere in the state at any time. On the south coast newspapers, cardboard, magazines, cans, plastic milk/water containers and glass containers can all be recycled for free. The Department encourages people to use responsible garbage disposal practices such as reduce, reuse and recycle well before the decision must be made to throw away or burn.

22.

W17

The Department of Agriculture requests that agricultural waste remain defined as agricultural waste even when it is removed from the property of origin. Many farm operations consists of multiple parcels. The waste does not change in character simply because it has been moved. Applying for a commercial burning permit would be a burden.

The Department agrees with this comment and will modify the rules to allow agricultural waste removed from the property of origin but remaining under the control of the original responsible party to be still considered agricultural waste.

OPPOSED TO FURTHER RESTRICTIONS

23.

C4, W7, W8

Commentors do not see the necessity of increasing the open burning control area solely because of the increase in population when there has not been an accompanying increase in complaints. The proposal seems even more unnecessary in light of the improvement of air quality even with current burn practices.

As noted in the response to comment 1, it is the policy of the state to restore and maintain air quality in a condition as free from air pollution as is practicable. Open burning alternatives compare very favorably on a cost-per-ton-of-pollution-reduced to other air pollution control efforts generally regarded as reasonable and practicable.

That air quality has improved in the state is the result of the concerted effort of many individuals and organizations over the past thirty years. The understanding of what it means to have healthy air quality has evolved along our success in managing impacts from the six major pollutants of sulfur oxides, lead, ozone, carbon monoxide, nitrogen oxides, and particulate matter. There are other compounds, air toxics, contributing to

adverse health impacts of air contamination. Some of these toxic air contaminants, like benzene, 1,3 butadiene and formaldehyde, are created in significant proportions when burning vegetative debris. For instance, a pound of benzene, a potent carcinogen, is produced driving a car 7500 miles or when burning 3.4 cubic yards of land clearing debris. Recent modeling of toxic impacts by EPA that identified every county in the state as exceeding a health benchmark.

Management of open burning is also warranted because open burning contributes to degradation of visibility, another air quality value.

24.

W13

Population growth has occurred primarily within the urban growth boundaries. The proposed regulations impose a hardship on one group of people because of the growth of another, without accomplishing any real improvement of air quality for either group.

Growth has occurred in the outlying areas around the city of Corvallis where the open burning restrictions are proposed to extend in the commentor's area. Population growth in the city of Corvallis has increased at a slightly greater rate than the county as a whole. The 2000 census data is not yet available but the 1990 census reveals a sizeable area in the northern portion of the control area where population density exceeds 1000 persons per square mile.

25.

W9

The expansion of the open burn control area to six miles should be justified on the basis of air quality data taken before, during and after permissible burn periods.

The Department does maintain air monitoring stations around the state. On some occasions the Department has recommended changes in open burning practices based on those observations. The open burning program is a proactive effort to restore and maintain air quality in the state in addition to efforts to reduce air quality impacts in those areas exceeding federal health standards. The driving policy behind the open burning program is to reduce the use of open burning as a waste disposal option in those areas where reasonable alternatives exist. These alternatives exist for these areas. As a result, one can expect reduced ambient levels of particulate matter, carbon monoxide and toxics like benzene and 1,3 butadiene and improvements in visibility.

26.

C4, W7, W8

A prohibition on burning may interfere with other agricultural protection programs. If nut and fruit trees on the property were found to contain pests and ordered destroyed by the Department of Agriculture burning would typically be the only option. Removing the trees off the property and out of the quarantine area would put the property owner in

violation of the quarantine.

The Department agrees with this observation, recognizing that burning may be used for other purposes than waste disposal. The Department will recommend changes to the rule to accommodate burning under a Department of Agriculture declared quarantine in order to destroy identified pests or diseases.

27.

W18

Property contains numerous large trees and dense brush. All of this vegetation generates large quantities of debris that must be removed to reduce the threat of fire.

The rules recognize that there may be a need to burn for compelling reasons. Open burning for the purpose of elimination of fire hazards is allowed under the rule provided the fires are set or permitted by a public agency acting in its official capacity. If the forestland is subject to the smoke management plan, requirements for burning are established under rules of that program rather than the Department's open burning rules. Regardless of the exact applicable requirement, there are other management techniques besides burning that allow a landowner to responsibly manage his property including hauling and chipping.

28.

C4, W6, W7, W8

If people are not allowed to burn they will resort to other control methods, including chemicals. The use of more chemicals will jeopardize other resources like groundwater. Burning helps us improve the overall health of our forest including getting rid of 25 to 30 years of blackberries, poison oak and other noxious and obnoxious weeds in order to restore native vegetation and improve wildlife habitat. By not burning we may end up engaging in practices which include increased pesticide use and the use of mechanized equipment for soil preparation leading to increased soil runoff.

Judicious use of herbicides and pesticides can play a role in woodland management but composting has also been shown to be an effective tool in managing certain diseases and pests. This approach also has the advantage of returning organic matter to the soils rather than removing it as burning does.

29.

W13

The Department's rules for managing open burning in the expansion area are already sufficient. It is illegal to burn anything that is toxic, produces dense smoke, creates a nuisance or is a hazard to public safety. It is also illegal to burn on days not approved by DEQ for air quality reasons, as administered by the fire districts.

The Department's statewide rules for open burning are basic requirements to manage the impact of open burning and establish a minimum level of expectations for all Oregonians. Open burning even at these managed levels poses a problem for visibility and other air quality values. As population grows and alternatives become more readily available open burning is to be reduced as option for solid waste management.

30.

W13, W18

The people affected by this proposal burn debris that is impractical or expensive to dispose of in any other way. They must burn in accordance with current restrictions or allow the brush to accumulate, creating a fire hazard. While small quantities of the material generated on these larger acreages can be composted, the majority of it must be burned twice a year. Opposed to any restrictions on forest debris burning except relating to high fire danger.

Demonstrated fire hazards can be addressed under the rules and there are alternatives to managing woodland areas that do not require burning. Good forest management practice does not call for semiannual or even annual burning of understory growth. A growing body of information is available emphasizing composting as a valuable tool in reforestation, wetland restoration and habitat revitalization. Materials accumulated during clean up of a forest understory can also be chipped to facilitate decomposition or hauled offsite.

31.

W14

Commentor protests any further restrictions on burning. They are very restrictive now and are not needed. This seems to be nothing other than restrictions on the use of private property and the rights of ownership. A fundamental right should only be restricted when there is an extremely dire need that does now exist.

The right to full use and enjoyment of private property does not extend to activities that impact other neighboring private property or common spaces. Smoke and other pollutants from open burning do not remain on the property where the fire is set but instead travels through the common air to be breathed or viewed as haze by others.

32.

C2

Outdoor burning occurs only two times a year and purchasing a chipper would be an expensive investment for such an infrequent need. Besides, what should be done with the chips?

Wood chippers are available for rent at many locations in the Willamette Valley. A chipper can manage a debris pile quicker than burning and with coordination among nearby landowners the relative cost of chipping can be effectively reduced. The chips

then can be composted with the addition of typical fertilizers to provide a mixed nutrient base to begin decomposition. The resulting pile will return nutrients to the land where burning the pile ends up removing nutrients.

CONSIDER ALTERNATIVES TO OPEN BURNING

33.

W9

A balanced approach to all burning should be sought. Combine a safe and reasonable burn alternative with public service announcements that encourages recycling of yard debris and wood waste.

The Department supports public education efforts to improve waste management practices. For instance, Air Quality staff uses the interaction established when reviewing and issuing letter permits for burning as an opportunity to educate the public about best management practices for burning as well as more environmentally responsible ways to manage waste. Staff in the Solid Waste program also support alternative waste disposal practices through public outreach and through grants to local governments.

34.

W13

Consider alternatives to the proposed regulation, for instance, offering monetary incentives for disposal of yard waste.

As a stand alone alternative, an incentive program would be expensive and challenging to operate and would have to be very sizeable to achieve the same level of environmental protection provided by the open burning program. The Department does support incentive programs to the extent that funds are available and, in fact, offers them as an adjunct to regulatory programs. Several local governments, for instance, have taken advantage of solid waste grant funds to upgrade their ability to support more environmentally responsible waste disposal practices.

DELEGATION OF AUTHORITY, INTERACTION WITH OTHER AGENCIES

35.

W6, W8

The proposed enforcement mechanism for these rules relies heavily on local fire districts, and some of them rely on volunteers. These rules place too strong a burden on these rural districts.

The Department does depend upon reporting from local fire districts to ensure complete enforcement of the open burning rules. There is nothing that requires local districts to

participate in this activity however. Many fire districts find that it supports their efforts to educate people about appropriate burning practices and the notification of people burning outside the rules serves to educate and improve overall compliance with environmental and fire safety practices.

36.

W9

Fire districts should not be saddled with a regulatory burden without funding from DEQ.

The Department understands the constraints that these districts face. Many of them depend heavily on volunteers and have one or two paid positions. The Department is considering additional options for future rulemaking, like fees for burning permits, to support open burning education, control and management efforts.

37.

W15, 16

The department proposes in 340-264-0075 to allow a delegation of authority to local jurisdictions after ordinances are adopted reflecting requirements of the open burning rules. Assuming the Oregon Department of Forestry or local forest protection districts were interested in delegation, how would this transfer take place when these organizations do not adopt ordinances?

The Department agrees with this comment and will make changes to the rules to allow more flexible delegation agreements to be signed.

38.

W15

The Department of Forestry would be willing to coordinate permit issuance to more effectively serve the public but the enforcement role should remain with DEQ. The proposal should be changed to reflect partial delegation of the program.

The Department agrees with this comment and will make the appropriate changes.

39.

W16

If a local fire district chose to accept delegation of the Department's open burning program, would this authority supersede the authority of forest protection districts on lands of joint responsibility?

The Department intends with this provision to facilitate the coordination of open burning regulation among the many agencies with interest and authority to regulate this activity. While local fire districts within the geographic scope of forest protection districts may be interested in open burning, any agreement to approve this delegation would have to consider the interrelationship between these two organizations so that the public and each agency's program goals are effectively and efficiently served.

SUPPORTS THE RULE OR RULE ELEMENT

40.

W10

Commentor supports the adoption of new rules regarding open burning, which will help protect the health of Oregonians by reducing air pollution and improving enforcement. In particular, the department should require permits in open burning control areas for slash burning not otherwise regulated by the Department of Forestry and for burning any waste moved off the property of origin.

The Department appreciates the comments made in favor of the proposal.

41.

W5

The Corvallis Rural Fire Protection District supports the prohibition of domestic burning within the six-mile range as proposed.

The Department appreciates the comments made in favor of the proposal.

42.

W15

We are in complete agreement with the rule proposal to maintain the exemption for fires that are set to prevent or eliminate a fire hazard. ODF is working on wildland-urban interface issues to prevent wildfires where the combination of homes and forests create conditions contributing to wildfires that destroy homes and forests.

The Department appreciates the comments made in favor of the proposal.

43.

P1

Commentor appreciates the scheduling of a hearing in eastern Oregon because burning is used extensively in agricultural operations in the area. The county recently adopted an agricultural burning management program and wanted to make sure that it was in keeping with the proposed changes. The county's program appears to be in keeping with the department's proposed changes.

The Department appreciates the comments made in favor of the proposal. Especially considering that agricultural practices are largely exempt from air quality regulation, the Department appreciates Umatilla County's vision in understanding that a program establishing expectations and practices will go a long way towards ensuring protection of the air quality resources of the County in particular and eastern Oregon in general.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rules for Open Burning

Detailed Changes to the Original Rulemaking Proposal
Made in Response to Public Comment

340-264-0030

Definitions

(1) "Agricultural Burning for Disease or Pest Control" means open burning of ~~agricultural~~ waste infected or infested with a disease or pest for which the County Extension Service or Oregon Department of Agriculture identify as having no other practicable control exists. ~~Pests or diseases for which no practicable control alternative exists shall include only those pests and diseases identified by the County Extension Service or Oregon Department of Agriculture.~~

(2) "Agricultural Operation" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by raising and selling livestock or poultry, or the produce thereof, which activity is necessary to serve that purpose. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

(5) "Animal Disease Emergency" means the occurrence of a disease that the Oregon Department of Agriculture determines has potentially serious economic implications for the livestock industries of this state.

(28) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.

340-264-0040

Exemptions, Statewide

(3) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety, or for instruction of employees in the methods of fire fighting, which in the opinion of the public agency is necessary. Open burning fires otherwise exempt from the requirements of this division are still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshall.

(8) Fires set for the purpose of disposal of dry tumbleweed plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.

97

(9) Agricultural burning for disease or pest control when the fire is set or authorized in writing by the Department of Agriculture.

(10) When caused by an authorized representative of the Department of Agriculture, open burning of carcasses of animals that have died or been destroyed because of an animal disease emergency.

340-264-0050

General Requirements Statewide

- (1) The following persons are considered a responsible person for open burning in violation of this rule:
- (a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;
 - (b) Each person who is in ownership, control or custody of the material that is burned; and
 - (c) Any person who causes or allows open burning to be initiated or maintained.
 - (d) For purposes of this rule, a public agency in its official capacity that has issued the permit for burning is not considered a responsible person.

340-264-0060

General Prohibitions Statewide

(2) No person may cause or allow to be initiated or maintained any open burning that creates a nuisance or a hazard to public safety-hazard.

(8) No person may cause or allow to be initiated or maintained any open burning of debris removed from the property of origin unless the person receives a letter permit pursuant to OAR 340-264-0180. A letter permit is not required to burn agricultural waste removed from the property of origin provided the waste remains under control of the same responsible person.

340-264-0075

Delegation of Authority

The department may delegate some or all of its open burning authority outlined within this Division to a state agency or local jurisdiction when:

- (1) The state agency or local jurisdiction and the department sign a formal agreement; and
- (2) The state agency or local jurisdiction adopts an ordinance, administrative rule or other written guidelines that includes-including all applicable requirements from this Division.

340-264-0180

Letter Permits

(2) (h) If the application is for prescribed burning of standing vegetation for the purpose of creating or restoring wetlands, or for promoting or enhancing habitat for indigenous species of plants or animals, the application must also include a citation to the federal or state law or program requiring or authorizing such conversion or enhancement. The application must also include a statement from the appropriate agency responsible for implementing the law or program that open burning is the most practicable alternative for the conversion or enhancement.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Open Burning Rules

Rule Implementation Plan

Summary of the Proposed Rule

This proposal would make several changes to the Department's open burning rules to improve environmental protection, clarify authority to regulate burning under applicable laws and streamline the administration of the rules.

Proposed Effective Date of the Rule

January 2, 2001

Proposal for Notification of Affected Persons

Printed materials summarizing the requirements of the open burning program will be revised, posted on the Department's web page (www.deq.state.or.us) and distributed by Department field staff to interested individuals and groups. These materials, along with the text of the adopted rules will be mailed to all fire districts in the state. In consultation with Public Affairs staff other outreach efforts to key organizations and the news media will be identified and undertaken. News media will be informed of the changes in support of the public information effort.

Proposed Implementing Actions

Maps of the open burning control areas with sufficient detail to determine the extent of the area covered will be prepared and distributed to field staff and fire districts. This will complement the notification efforts outlined above. Implementation of the program will be ongoing following the initial notification process described earlier. Department field staff continues to work with local fire districts so that seasonal reminders of appropriate practices can be made.

9/1

Attachment F
Rule Implementation Plan

Proposed Training/Assistance Actions

Additional internal training needs are minimal, The amendments have been thoroughly discussed with field staff, minimizing the need for additional internal training. In addition to the educational outreach described above, field staff will also use the opportunity presented when requests for burning permits are made to provide further information about the program and the alternatives to open burning that are available.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item K
December 1, 2000 Meeting

Title:

Mediation Confidentiality Rules: OAR 340-11-0003. Confidentiality and Inadmissibility of Mediation Communications. OAR 340-11-0004. Simplified Workplace Interpersonal Dispute Rule Confidentiality and Inadmissibility of Mediation Communications

Summary:

These rules give the agency the option, as appropriate, to make mediation communications confidential and to limit the discovery and admissibility of mediation communications in subsequent proceedings. State statutes which authorize confidentiality as it affects mediation require agencies to adopt, with the Governor's approval, administrative rules on mediation confidentiality. These rules were developed by the State Department of Justice.

Department Recommendation:

The agency recommends these rules be adopted as written.

		
Dawn Jansen Report Author	Helen Lottridge Division Administrator	Lydia Taylor Interim Director

State of Oregon
Department of Environmental Quality Memorandum

Date: November 7, 2000
To: Environmental Quality Commission
From: Lydia Taylor *Lydia Taylor*
Subject: Agenda Item K, Mediation Confidentiality Rules, EQC Meeting December 1, 2000

Background

On June 27, 2000, the Director authorized the Management Services Division to proceed to a rulemaking hearing on proposed rules which would allow the agency to enter into confidentiality agreements relating to mediation communications, when appropriate. This includes the "Combined Rule – Confidentiality and Inadmissibility of Mediation Communications" which covers mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. It also includes the "Simplified Workplace Interpersonal Dispute Rule" which covers mediations used to resolve interpersonal workplace conflicts within the agency.

Pursuant to the authorization, Governor Kitzhaber's approval to adopt these rules, as required by ORS 36.224(4), was requested on June 28, 2000 and received July 25, 2000. Hearing notice was published in the Secretary of State's Bulletin on September 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 August 18, 2000.

A Public Hearing was held September 18, 2000 with Dawn Jansen serving as Presiding Officer. Written comment was received through September 22, 2000. No oral or written comments were received.

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

The agency was prepared to hire a mediator to work with two employees to resolve an interpersonal workplace dispute. Oregon Statutes authorize state agencies to make mediation communications confidential, but the provisions of these statutes are available only by adopting, with approval of the Governor, mediation confidentiality rules developed by the Attorney General. Because the agency had not adopted these rules, we could not assure confidentiality of the mediation communications. Neither employee was comfortable entering into mediation without that assurance, therefore we could not move forward with mediation to resolve this conflict. We anticipate using mediation for dispute resolution relating to issues such as labor agreements or in the Environmental Cleanup Program as part of their ADR program.

Relationship to Federal and Adjacent State Rules

These rules were drafted by the Department of Justice to be consistent with the state's laws and policies on open government. Nothing in the rules affect confidentiality created by any other law and nothing in the rule relieves the agency from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not mediation communications are confidential under this or other rules of the agency, they are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

Authority to Address the Issue

ORS 36.224 to 36.238 authorizes state agencies to make mediation communications confidential and to limit the discoverability and admissibility of mediation communications in subsequent proceedings. The confidentiality and inadmissibility provisions of these statutes are available to state agencies only by adopting, with the approval of the Governor, mediation confidentiality rules developed by the Attorney General. The EQC is authorized by ORS 468.020 to address this issue through rule adoption.

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

These rules were written by the Department of Justice with the intent of maintaining balance between use of confidential mediation and Oregon's "Open Government" ethic. The rules are not allowed to be modified, other than to add additional exceptions to confidentiality. Division Administrators and managers reviewed the rules to determine whether any allowed modifications should be made and they determined the rules should be adopted without any additional exceptions. The Governor must provide authorization to an agency in order for the rule to be adopted. Governor Kitzhaber's authorization was received July 25, 2000.

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

Mediation is a process in which a third party assists two or more parties to a controversy in reaching a mutually acceptable resolution of the dispute. Mediation depends largely on the voluntary disclosure of information by the parties as part of the negotiation process. This voluntary disclosure is often essential to get to the root of a problem, and yet such disclosure may be forthcoming only if the parties have some assurance that the information will not be used against them later.

Without mediation confidentiality rules, if DEQ is a party to a mediation or is mediating a dispute in which we have regulatory authority, mediation communications in that mediation generally are not confidential and may be disclosed or admitted as evidence in subsequent adjudicatory proceedings. Adoption of these rules will ensure that DEQ will be able to engage in confidential mediations for issues such as tort claims, litigation, labor agreements, certain environmental disputes (e.g. risk assessment disputes or cost allocations for an environmental cleanup) and interpersonal workplace disputes. If DEQ is party to a mediation that involves a private party and more than one state agency, confidentiality can only occur if all the mediating agencies' rules provide for it. In some situations, protection against discovery and admissibility of mediation communications in subsequent proceedings may be needed whether or not the mediation is "confidential". Without an agency rule that limits discovery and admissibility, parties to a mediation may not be fully candid in their discussion of the controversy and of acceptable resolutions. Confidentiality can cover either:

1. all communications related to a mediation;
2. only those communications between the mediator and a party to the mediation that are not in the presence of any other party; or
3. only those communications in mediations in which the mediator is an employee or agent of the agency.

These rules were drafted by the Department of Justice to be consistent with the state's laws and policies on open government. Nothing in the rule affects confidentiality created by any other law and nothing in the rule relieves the agency from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not mediation communications are confidential under this or other rules of the agency, they are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505. Both the Department of Justice (DOJ) and the Department of Administrative Services (DAS) recommend that all agencies adopt at least the "combined rule." Both the Governor and the Legislature have been supportive of agencies employing Alternate Dispute Resolution (ADR).

Without adopting the Mediation Confidentiality Rules, all communications in any mediations in which the agency is a party or has an interest would be discoverable and admissible in subsequent proceedings. This includes mediations for tort claims, litigation, labor agreements and any other type of mediated alternate dispute resolution proceedings. Communications between the mediator and one party during a private caucus would also be discoverable and admissible

The ability of the public to monitor the decision-making processes of public agencies is essential to open government and the public's confidence in its government. Confidentiality in mediations involving state agencies could adversely impact the public access and oversight. Mediation confidentiality may also raise concerns if the public perceives the mediation process as "secretive" or "back room"; if persons in disputes with the agency believe that their situations are being handled differently from those of other persons in similar situations; or if the public is excluded from observing how the agency is handling issues in which the public has an interest. However, mediation can be an inclusive process and durable, final agreements are more likely if the mediation process can be confidential. These issues must be balanced for each mediation to ensure that confidentiality is implemented in ways that do not harm open government. The rules do not require confidentiality or inadmissibility of mediation communications; they give the agency the option of providing confidentiality in mediation.

Summary of Significant Public Comment and Changes Proposed in Response

There were no oral or written comments received and no proposed changes to the rules.

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

Having the rules in place does not mean that all mediations or mediation communications should be or will be confidential. All parties to the mediation must agree, in writing, to the need for and extent of confidentiality. Confidentiality may be desirable and appropriate for mediation of interpersonal workplace disputes, but may not be desirable or appropriate for mediation involving an enforcement action where additional violations may be disclosed. The need for confidentiality in mediations will need to be determined on a case-by-case basis, balancing the principles of open government and the ability of the agency to fulfill its mission. The rules for mediation confidentiality provide the critical flexibility to agree to confidentiality when it is appropriate.

Recommendation for Commission Action

It is recommended that the Commission adopt the two sets of rules; "Combined Rule – Confidentiality and Inadmissibility of Mediation Communications" and the "Simplified Workplace Interpersonal Dispute Rule" 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. Rule Implementation Plan
E. Department of Justice Dispute Resolution Bulletin #2

Reference Documents (available upon request)

- ORS 36.220 – 36.238
- 7/24/98 letter from DOJ and DAS recommending all agencies adopt these rules
- 7/18/00 letter from Kitzhaber granting approval to proceed with rulemaking

Approved:

Section:

Hale Miller

Division:

Debra Lottiger

Report Prepared By: Dawn Jansen

Phone: 503-229-6661

Date Prepared: 10/18/00

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340, Division 011

**CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION
COMMUNICATIONS**

OAR 340-011-0003. Confidentiality and Inadmissibility of Mediation Communications

- (1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
- (2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.
- (3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.
- (4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
- (5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:
 - (a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or
 - (b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;
 - (c) Mediation in which the only parties are public bodies;
 - (d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or
 - (e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless

(a) all the parties to the mediation and the mediator agree in writing to the disclosure;
or

(b) the mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 340-011-0003 (7) and this agreement. This agreement relates to the following mediation:

a) _____
(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 340-011-0003, mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any

subsequent administrative proceeding

_____ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c)

Name of Agency

Signature of Agency's authorized representative (when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

Date

d)

Name of party to the mediation

Signature of party's authorized representative

Date

e)

Name of party to the mediation

Signature of party's authorized representative

Date

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or

arbitration proceeding:

- (A) a request for mediation, or
- (B) a communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or
- (C) a final offer submitted by the parties to the mediator pursuant to ORS 243.712, or
- (D) a strike notice submitted to the Employment Relations Board.

(I) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A) attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or
- (B) attorney work product prepared in anticipation of litigation or for trial, or
- (C) prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or
- (D) prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or
- (E) settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230, 36.232

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340, Division 011

SIMPLIFIED WORKPLACE INTERPERSONAL DISPUTE RULE
CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION
COMMUNICATIONS

OAR 340-011-0004. Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless

(a) all the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) the mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation, and;

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) is neither a party to the dispute nor the mediator, and

(B) is designated by the agency to authorize confidentiality for the mediation, and

(C) is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation

communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.230(4)

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

DEQ - Management Services Division
Agency and Division

Chapter 340
Administrative Rules Chapter Number

Susan M. Greco
Rules Coordinator

(503) 229-5213
Telephone

811 S.W. 6th Avenue, Portland, OR 97213
Address

<u>September 18, 2000</u>	<u>9:00 a.m.</u>	<u>DEQ, Conf Room 4</u>	<u>Dawn Jansen</u>
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?
X Yes No

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
OAR 340-011-0003 and OAR 340-011-0004

AMEND:

REPEAL:

RENUMBER:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER:


Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 36.224

RULE SUMMARY

These rules allow the agency to provide confidentiality and limit admissibility of mediation communications as appropriate.

September 22, 2000
Last Day for Public Comment


Authorized Signer and Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Mediation Confidentiality Rules

Fiscal and Economic Impact Statement

Introduction

These rules are not expected to have any material direct fiscal or economic impact on either the agency or the regulated community.

There may be minimal indirect fiscal or economic impact. Adopting these rules may result in the agency entering into more mediations where confidentiality is appropriate and where parties may not have been comfortable pursuing mediation when confidentiality could not be offered (e.g. workplace interpersonal disputes). Resolving disputes through mediation could save the agency the cost of litigation.

General Public

There is no direct fiscal impact to the General Public.

Small Business

There is no direct fiscal impact to Small Business.

Large Business

There is no direct fiscal impact to Large Business.

Local Governments

There is no direct fiscal impact to Local Governments.

State Agencies

- DEQ: There is no direct fiscal impact to DEQ. There may be possible cost savings if mediation is used to resolve a dispute rather than litigation. There may be expenditures related to use of mediation to resolve disputes.

- FTE's – these rules will be implemented using existing employees and resources
- Revenues - no impact
- Expenses – no impact other than what has previously been mentioned.

- Other Agencies – There is no direct fiscal impact to other agencies.

Assumptions

N/A

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
Mediation Confidentiality Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules will allow the agency to provide confidentiality to mediation communications as appropriate.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes ___ No **X**___

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

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes ___ No ___ (if no, explain):

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

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

1. Specifically referenced in the statewide planning goals; or

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

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

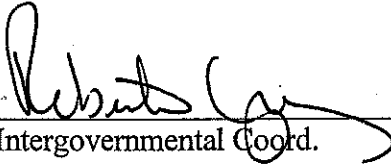
- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

The proposed rules are not considered programs affecting land use.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Division


Intergovernmental Coord.

8/10/00
Date

**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?

None

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

N/A

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)

N/A

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

N/A

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

N/A

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

N/A

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

N/A

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 14, 2000
To: Interested and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements - Mediation Confidentiality Rules

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules regarding confidentiality and inadmissibility of mediation communication. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would ensure that the Department will be able to take part in confidential mediations to resolve issues including, but not limited to tort claims, litigation, labor agreements, interpersonal workplace disputes, portions of negotiated rulemaking or environmental disputes which do not give rise to a contested case (e.g., resolving a dispute regarding a risk assessment or cost allocation in an environmental cleanup) when appropriate. Confidentiality or inadmissibility of mediation communications may be useful in the successful resolution of many of these matters.

The Department has the statutory authority to address this issue under ORS 468.020. These rules implement ORS 36.224.

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: September 18, 2000

Time: 9:00 a.m

Place: DEQ, 811 S.W. Sixth, Portland; Fourth Floor Conference Room

Deadline for submittal of Written Comments: 5:00 p.m. Friday, September 22, 2000.

Dawn Jansen will be the Presiding Officer at the hearing.

* PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ'S TDD NUMBER AT 503-229-6993.

THIS PUBLICATION IS AVAILABLE IN ALTERNATE FORMAT (E.G. LARGE PRINT, BRAILLE) UPON REQUEST. PLEASE CONTACT DEQ'S PUBLIC AFFAIRS AT 503-229-5317 TO REQUEST AN ALTERNATE FORMAT.

Memo To: Interested and Affected Public

August 14, 2000

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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: Dawn Jansen, 811 S.W. 6th Avenue, Portland, Oregon 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What'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 OAR 340-011-0003 and OAR 340-011-0004 The actual language of the proposed rule (amendments).

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 November 30, 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?

Mediation is a process in which a third party assists two or more parties to a controversy in reaching a mutually acceptable resolution of the dispute. Mediation depends largely on the voluntary disclosure of information by the parties as part of the negotiation process. This voluntary disclosure is often essential to get to the root of a problem, and yet such disclosure may be forthcoming only if the parties have some assurance that the information will not be used against them later.

ORS 36.220 to 36.238 authorizes state agencies to make mediation communications confidential. The statutes also allow agencies to limit the discovery and admissibility of mediation communications in subsequent proceedings. Except for certain mediations conducted by the Workers Compensation Board, the confidentiality and admissibility provisions of these statutes are available to state agencies only by adopting, with the approval of the Governor, mediation confidentiality rules developed by the Attorney General. Confidentiality can cover either:

1. all communications related to a mediation;
2. only those communications between the mediator and a party to the mediation that are not in the presence of any other party; or
3. only those communications in mediations in which the mediator is an employee or agent of the agency.

How was the rule developed

These rules were drafted by the Department of Justice in consultation with the Dispute Resolution Commission as provided in ORS 36.224(2), to be consistent with the state's laws and policies on open government. Nothing in the rule affects confidentiality created by any other law and nothing in the rule relieves the agency from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not mediation communications are confidential under these or other rules of the agency, they are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

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 Dawn Jansen at (503) 229-6661 for times when the documents are available for review. These documents include ORS 36.220 to 36.238; July 18, 2000 letter from

Memo To: Interested and Affected Public
August 14, 2000
Page 4

Department of Justice and Department of Administrative Services, recommending that all agencies adopt these rules; Department of Justice Dispute Resolution Bulletin #2, Revised April 1999.

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

These rules may affect employees of the agency who wish to enter into mediation to resolve interpersonal workplace disputes. They may affect parties involved in tort claims or litigation against the department who wish to enter into mediation to resolve the issue, and the American Federation of State, County and Municipal Employees Local 3336 if mediation is used to resolve collective bargaining issues. These rules will most likely be used most often for mediations relating to interpersonal workplace disputes, collective bargaining, or tort claims. However, the rules may also be considered for use during mediations with the regulated community and potentially members of the public who may wish to enter into mediation to resolve a dispute with the agency. If confidentiality or limitation of discovery or admissibility of mediation communications is deemed necessary to resolve the issue, and confidentiality is appropriate under the circumstances, these rules will allow the agency to enter into confidential mediation.

How will the rule be implemented

Having the rules in place does not mean that all mediations or mediation communications should be or will be confidential. All parties to the mediation must agree to the need for and extent of confidentiality. Confidentiality may be desirable and appropriate for mediation of interpersonal workplace disputes, but may not be desirable or appropriate for mediation involving an enforcement action where additional violations may be disclosed. The need for confidentiality in mediations will need to be determined on a case-by-case basis, balancing the principles of open government and the ability of the agency to fulfill its mission. The rules for mediation confidentiality provide the critical flexibility to agree to confidentiality when it is appropriate.

Are there time constraints

No.

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: Dawn Jansen at (503) 229-6661.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 22, 2000

To: Environmental Quality Commission

From: Dawn Jansen

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: September 18, 2000, 9:00 a.m.
Hearing Location: DEQ, 811 S.W. Sixth Ave., Portland, Conference Room 4
Title of Proposal: Mediation Confidentiality Rules

The rulemaking hearing on the above titled proposal was convened at 9:00 a.m. The hearing was closed at 9:25 a.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

There were no people were in attendance and no written comments were received.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
Mediation Confidentiality Rules

Rule Implementation Plan

Summary of the Proposed Rule

ORS 36.220 to 36.238 authorizes state agencies to make mediation communications confidential. The statutes also allow agencies to limit the discovery and admissibility of mediation communications in subsequent proceedings. Except for certain mediations conducted by the Workers Compensation Board, the confidentiality and admissibility provisions of these statutes are available to state agencies only by adopting, with the approval of the Governor, mediation confidentiality rules developed by the Attorney General.

Confidentiality can cover either:

1. all communications related to a mediation;
2. only those communications between the mediator and a party to the mediation that are not in the presence of any other party; or
3. only those communications in mediations in which the mediator is an employee or agent of the agency.

Adopting these rules will give the Department the option to take part in confidential mediations to resolve issues when appropriate. Appropriate instances where the parties may benefit from confidential mediation communications may include, but is not limited to tort claims, litigation, labor agreements, interpersonal workplace disputes, portions of negotiated rulemaking or environmental disputes which do not give rise to a contested case (e.g., resolving a dispute regarding a risk assessment or cost allocation in an environmental cleanup). Confidentiality or inadmissibility of mediation communications may be useful in the successful resolution of many of these matters.

Proposed Effective Date of the Rule

December 15, 2000

Proposal for Notification of Affected Persons

Parties wishing to enter into mediation will be informed of the rules at that time and will have a discussion of whether or not complete or partial confidentiality is appropriate. Mediation is a

mutual process and determining the degree or appropriateness of confidentiality should be a part of negotiating the "ground rules" for the mediation.

Proposed Implementing Actions

When it is decided that mediation would be an effective method of resolving a dispute, the confidentiality rules will be discussed and the level of appropriate confidentiality, if any, will be determined on a case-by-case basis. If some level of confidentiality is appropriate for a given mediation, both parties will sign an agreement to that effect prior to entering into mediation.

Proposed Training/Assistance Actions

Provided the EQC approves adoption of these rules, they will be presented and discussed with managers at the December 7 Quarterly Managers' Conference. Managers will be responsible for training and providing guidance and assistance to their staff in implementing these rules and determining when and to what degree confidentiality is appropriate on a case-by-case basis.



DISPUTE RESOLUTION

Resources and Information for State Agencies

Bulletin #2, Revised April 1999

Confidentiality In Mediation

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RELATED RESOURCES AVAILABLE FROM DOJ:

- ✓ ORS 36.224 Confidentiality Rules
- ✓ ADR Model Rules
- ✓ Sample Agreement to Mediate

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This is one in a series of bulletins on topics related to the practice of dispute resolution in Oregon state government. This document and other Bulletins and "appropriate dispute resolution" resources are available at www.doj.state.or.us/ADR/. A printed version of this document is available to state agencies upon request. For further information contact: ADR Coordinator, Dept. of Justice, 1162 Court St. NE, Salem, OR 97310 (503) 378-4620.

In accordance with ORS 183.502, the Department of Justice encourages the use of collaborative problem-solving processes, which enable decision-makers and affected parties to jointly engage in problem-solving procedures and which produce mutually beneficial agreements. The Department is committed to the design, development and implementation of innovative, flexible and accessible conflict resolution processes and to assisting staff and clients in the use of these processes.

Mediation Confidentiality under ORS 36.220-36.238

Oregon Revised Statutes 36.220 to 36.238 (Senate Bill 160, 1997) authorizes state agencies to make mediation communications confidential. The statutes also allow agencies to limit the discovery and admissibility of mediation communications in subsequent proceedings. Except for certain mediations conducted by the Workers Compensation Board, the confidentiality and inadmissibility provisions of these statutes are available to state agencies only by adopting, with the approval of the Governor, mediation confidentiality rules developed by the Attorney General. This Dispute Resolution (DR) Bulletin highlights important considerations for agencies that wish to participate in confidential mediations, provides step-by-step instructions for rule adoption and includes a sample "Agreement to Mediate" that will facilitate compliance with the notice requirement of the rules.

Advantages of Confidentiality in Mediation

Mediation is a process in which a third party assists two or more parties to a controversy in reaching a mutually acceptable resolution of the dispute. Unlike litigation, which relies on depositions and other forms of discovery, mediation depends largely on the voluntary disclosure of information by the parties as part of the negotiation process. This voluntary disclosure is often essential to get to the root of a problem, and yet such disclosure may be forthcoming only if the parties have some assurance that the information will not be used against them later.

Confidentiality in mediation may also:

- Provide for a more informal and candid discussion of a controversy.
- Allow the mediator and the parties to explore underlying issues and interests.
- Reduce the need for an attorney to guard the client's disclosure, enabling the principal parties to take a more direct and prominent role in the negotiations.
- Allow information to be given out selectively (e.g., a party in a caucus session may ask a mediator not to share information with the other party).
- Cover either (1) all mediation communications, (2) only those mediation communications in mediations in which the mediator is an employee or agent of the agency, or (3) only those mediation communications between the mediator and a party to the mediation that are not in the presence of any other party to the mediation

Some Concerns with Mediation Confidentiality

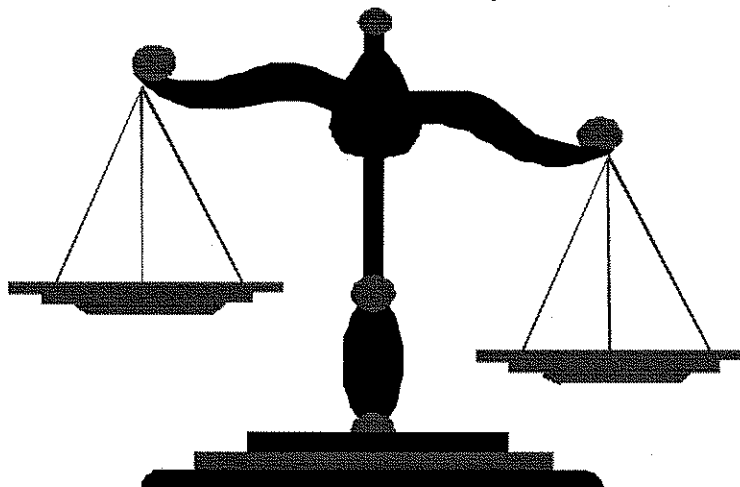
Under Oregon's Public Records Law and Public Meetings Law, any member of the public may inspect public records and attend public meetings in order to see and understand how government operates. This ability of the public to monitor the decision-making processes of public agencies is essential to open government and the public's confidence in its government. The public access and oversight that is the core of open government could be adversely impacted by confidentiality in mediations involving state agencies. Mediation confidentiality may also raise concerns:

- ◆ If the public perceives the mediation process as "secretive" or "back room."
- ◆ If a pattern of unlawful actions or behavior never comes to light because complaints are handled through individual, confidential mediations.
- ◆ If persons in disputes with the agency believe that their situations are being handled differently from those of other persons in similar situations.
- ◆ If the public is excluded from observing how the agency is handling issues in which the public has an interest.
- ◆ If the agency does not disclose a mediation communication that could have prevented a crime or injury.

The advantages and disadvantages of mediation confidentiality described in this section must be balanced for each mediation to ensure that confidentiality is implemented in ways that do not harm open government.

Balancing Inadmissibility in Subsequent Proceedings with Agency Responsibilities

Achieving a proper balance is also an issue with respect to the inadmissibility and non-discoverability of mediation communications. When mediation communications are non-discoverable and inadmissible in subsequent proceedings, that means the statements of mediation participants cannot be obtained through discovery and cannot be used as evidence in later proceedings. Protection against discovery and admissibility of mediation communications in



subsequent proceedings may be needed whether or not the mediation is "confidential." Without an agency rule that limits discovery and admissibility, parties to a mediation may not be fully candid in their discussion of the controversy and of acceptable resolutions. An agency may wish

to limit discovery and admissibility in all subsequent administrative, judicial and arbitration proceedings or only in subsequent administrative proceedings of the agency.

On the other hand, limiting discovery and admissibility in subsequent proceedings may hinder the agency's ability to effectively implement the law or agency policy. For example, when the action of a regulatory agency is necessary to protect the public, inadmissibility rules might prevent critical admissions of unlawful conduct that were made during mediation communications from being introduced into evidence in a subsequent proceeding. In other cases, the agency may find that inadmissibility rules are unnecessary as the agency is unlikely to conduct subsequent administrative proceedings involving the subject matter of the mediation and neither the parties nor the agency are concerned about the use of mediation communications in subsequent judicial or arbitration proceedings.

Is Confidentiality or Inadmissibility Necessary for the Agency's Mediation?

In implementing and administering their statutory programs, agencies often have authority over a wide variety of matters (e.g., denial of benefits, license revocation, overpayments, civil penalties, contracts) for which the agency may choose to offer mediation as a means of resolving disputes. Additionally, agencies may be a party in a matter over which another state agency or public body has authority and for which that other agency or body has offered a mediation. Because the need for confidentiality or inadmissibility may differ depending upon the type of matter, the agency should first attempt to identify the general types of matters in which the agency may be involved in a mediation either as a party as defined in ORS 36.234, or as the mediator of a dispute over which the agency has regulatory authority. (Note that for purposes of mediation confidentiality, the agency may be a party as defined in ORS 36.234, even though for purposes of the Administrative Procedures Act the agency is not a party as defined in ORS 183.310(6).) The agency should identify not only those matters that the agency itself might initiate, but also matters initiated by other state agencies, other public bodies or private parties in which the agency may be a party on a regular basis or even occasionally.

The agency should next determine if confidentiality or inadmissibility of mediation communications is necessary for each of the types of matters identified and, if so, to what degree.¹

If Confidentiality or Inadmissibility Is Needed, How Can it Best Be Achieved?

When confidentiality is necessary, the agency may draw on a variety of existing laws or procedures, as well as the rules developed by the Attorney General, to reach the appropriate balance between confidentiality and open government. Note that mediation communications *are* confidential without rule adoption when an agency is acting only as the mediator in a controversy so long as the agency does not have a direct interest in the controversy that is the subject of the mediation and does not have regulatory authority over the matter. ORS 36.220, 36.224. Also,

¹ If the agency decides, for example, to adopt the "Combined Rule" in order to have confidentiality available in most mediations, but also wishes to keep communications in certain mediations as admissible or non-confidential, the agency may wish to add an exception, as provided in paragraph (5) of the Combined Rule, excluding certain mediations from the scope of the rule.

ORS 36.220 to 36.238 do not affect any confidentiality created by other laws, and confidentiality that an agency has under its own substantive statutes still applies in mediation. Mediation communications are also confidential under ORS 36.220 to 36.238 when the mediation is regarding a claim for workers' compensation benefits conducted pursuant to rules adopted by the Workers' Compensation Board. ORS 36.224(6).

Before the enactment of ORS 36.220 to 36.238, the two most commonly cited laws affecting the confidentiality and inadmissibility of certain mediation communications in mediations involving state agencies were the Public Records Law and Rule 408 of the Oregon Rules of Evidence. The Public Records Law, which ensures that the public has access to records relating to the conduct of the public's business, includes exemptions from disclosure for certain records. Generally, these exemptions permit a public body not to disclose certain public records; however, the exemptions do not make the records confidential or prohibit their disclosure, but rely on other laws outside of the Public Records Law to do so. Oregon Evidence Code Rule 408 makes settlement offers inadmissible. Rule 408 applies only to admissibility in court proceedings, however, and provides no protection against discovery of mediation communications.

The agency should consider whether the exemptions from disclosure under the Public Records Law and existing confidentiality laws and the inadmissibility provided in Rule 408 for settlement offers are sufficient, or whether additional confidentiality and inadmissibility for mediation communications are necessary. If additional confidentiality or inadmissibility is needed, the agency may need to adopt mediation confidentiality rules pursuant to ORS 36.224.

If an Agency Needs to Adopt a Confidentiality Rule, Which Rule Is Best?

The Department of Justice (DOJ) and the Department of Administrative Services (DAS) recommend that all agencies adopt the "Combined Rule (7/16/98) - Confidentiality and Inadmissibility of Mediation Communications." The "Combined Rule" will cover all mediations involving an agency except those the rule expressly excludes. The rule limits what the mediator may disclose. It allows the parties to agree in writing to limit what they may later disclose or use in court from the mediation. Adoption of this rule also ensures that:

- A. The agency will be able to engage in confidential mediations for tort claims, litigation, and labor agreements. DOJ and DAS have found that it is often useful if the parties agree that what they tell each other in mediation will remain confidential or inadmissible.
- B. The agency's rule will match those of DAS and other agencies. If a mediation involves a private party and more than one agency, ORS 36.28 bars confidentiality unless all the mediating agencies' have rules providing for confidentiality.
- C. The agency's rule for confidentiality in mediation will agree with the state's laws and policies on open government.

The Simplified Workplace Interpersonal Dispute Rule

The "Combined Rule" covers mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. An agency may also have an interest in using mediation to resolve interpersonal workplace disputes within the agency. Confidentiality may be useful in that employees are often reluctant to participate in mediation if they believe that whatever they say could be taken out of context and shared with their co-workers or supervisor.

Candor in mediation may be fostered through employment policies that make it clear that employees are expected not to share information from interpersonal workplace mediations with their co-workers. Alternatively, an agency may adopt the "Simplified Workplace Interpersonal Dispute Rule (7/16/1998)." This rule allows the parties to agree in writing to limit what they may later disclose or use in court from the mediation of disputes among agency employees. This rule can be easily adopted along with the Combined Rule.

Even after an agency adopts the "Workplace Rule," the rule requires an agency to exercise its discretion in determining which disputes are mediated confidentially.

Whether or not an employee makes accusations of inappropriate or discriminatory behavior, the agency should consider whether confidentiality for mediation communications might preclude the agency from identifying patterns of inappropriate behavior or from acting on discriminatory or dangerous behavior. The agency should also consider whether confidentiality is advisable when matters that are the subject of an

interpersonal workplace dispute are also before another forum, such as an equal rights complaint.

Large, Multi-Party Mediation Rule (Rule T)

The mediation of disputes involving a large number of parties presents special problems. Securing an agreement to participate in a confidential mediation (which generally is required by the rules developed by the Attorney General) may be impractical in mediations involving dozens of parties. The mediations may extend for many months and not all of the mediation "sessions" may need the same degree of confidentiality. Some sessions may also be subject to open meetings laws, making confidentiality impractical. To accommodate these types of mediation, the Attorney General has developed Rule T specifically for large, multi-party mediations.

Other Mediation Confidentiality Rules (Rules A - S)

While DOJ and DAS have recommend that all agencies adopt the "Combined Rule," other rules are available to state agencies with special needs and circumstances. Rules A to S were published in the Oregon Bulletin in January and February 1998, and may be adopted in a variety of combinations to meet the needs of agencies that wish greater or lesser confidentiality than provided in the "Combined Rule." These rules are arranged in sets and cover mediation confidentiality and inadmissibility, caucus sessions communications and workplace interpersonal dispute mediation. Instructions for the adoption of these rules are found in the January 1998 Oregon Bulletin. An agency wishing to adopt any of these rules should work with their assigned counsel.

Links To Mediation Confidentiality Rules Online:	
Combined Rule	http://www.doj.state.or.us/ADR/combo.htm
Simplified Workplace Rule	http://www.doj.state.or.us/ADR/WORK.htm
Rules A - S	http://www.doj.state.or.us/ADR/RULEA-S.HTM
Rule T	http://www.doj.state.or.us/ADR/RULE-T.htm

Steps for Adoption of Mediation Confidentiality Rules Pursuant to ORS 36.224

These instructions are the same as those found in the August 1998 Oregon Bulletin for adoption of the "Combined" and "Workplace Rule."²

1. Modify the Rules as Permitted

When adopting the mediation confidentiality rules, an agency may not modify the rules except where indicated by blanks or italicized text in brackets in the rules. In the case of the "Combined Rule," the permitted changes include additional exceptions to mediation confidentiality and limitations and what types of mediation the rule applies to. References in the rule such as "OAR [this rule](7)" must be replaced with the appropriate agency rule number (e.g., OAR 999-018-0200(7)).

2. Submit Request to Governor

After editing the rule as permitted, but before publishing a notice of rulemaking, or adopting temporary rules, the agency must obtain approval from the Governor for adoption of any mediation confidentiality rules. The agency must submit to the Governor's Office a "Request for Approval to Adopt Mediation Confidentiality Rules." The request must include: a complete set of the rules the agency proposes to adopt, a description of the types of cases or matters the agency anticipates will be mediated, the name of the agency contact person and his/her phone number. If the agency opts to exclude certain mediations or additional mediation communications from the rule, the request must also include an explanation of how the proposed rulemaking balances the public interest in facilitating effective and efficient dispute resolution and the public interest in open government. The agency must send copies of its request simultaneously to the Department of Justice (DOJ) ADR Coordinator and the

² Instructions for adoption of:

- Rules "A - S" are in the January 1998 Oregon Bulletin (at http://arcweb.sos.state.or.us/rules/0198_Bulletin/0198_mediation_bulletin.html) and
- Rule "T" is in the February 1998 Oregon Bulletin (at http://arcweb.sos.state.or.us/rules/0298_Bulletin/0298_mediation_bulletin.html.)

Dispute Resolution Commission (DRC) Public Policy Coordinator.

3. DOJ and ODRC Advise Governor

In all cases, the DOJ ADR Coordinator and the DRC Public Policy Coordinator will make a recommendation to the Governor within 10 business days, whether or not to approve the request. Any recommendations not to approve the request will include reasons for that recommendation and suggestions for curing any deficiencies.

4. Governor's Decision

The Governor will make a decision on the Request for Approval within 30 days of the agency's submission of the Request for Approval. Because the Combined Rule and Simplified Workplace Interpersonal Dispute Rule provide for the confidentiality of mediation communications while preserving the state's policy of open government, the Governor's office has indicated that approval of the agency's request should be routine if the agency has made no changes to the rule. If the request is denied, an explanation of the reasons why it has been denied will be attached. The explanation may include suggested changes that may assist approval in the future.

5. Rulemaking Action

If approved by the Governor, the agency may proceed to take rulemaking action to adopt the mediation confidentiality rules. The agency must follow the rulemaking procedures in ORS 183.325 to 183.355. The agency may adopt the rules as temporary rules, if the agency satisfies the requirements of ORS 183.335(5).

6. Notify ODRC

The agency must notify the Dispute Resolution Commission upon adoption of mediation confidentiality rules. DRC shall maintain a list of all agencies that have adopted such rules. ORS 36.224(5).

The Mediation Confidentiality Rule in Practice

	IF THE PARTIES (as defined in ORS 36.234)	AND THE MEDIATOR (as defined in ORS 36.110(10)) IS	THEN CONFIDENTIALITY IS
1	Are all private parties	Private, public body (other than state agency) or state agency that has no regulatory authority over matter in mediation	Assumed
2	Include a public body (other than a state agency) and a private party	Private, public body (other than state agency) or a state agency that has no regulatory authority over matter in mediation.	Assumed
3	Include a public body (other than a state agency) and a private party	A state agency with regulatory authority over matter in mediation.	Only available if agency adopts an approved rule
4	Include a state agency and a private party	Any type	Only available if agency adopts an approved rule
5	Include public bodies (one of which has non-confidentiality policy/law) and a private party	Any type	Not available
6	Are all public bodies	Any type	Not available

Mediators Cannot Also Be Parties

ORS 36.220 to 36.238 apply only to "mediation" facilitated by a "mediator" as those terms are defined in ORS 36.110(6) and (10). If the agency has a direct interest in the controversy, agency staff would not be a "third party" and therefore would not meet the definition of a "mediator." For example, if a licensing agency uses its staff to facilitate the settlement of a matter in which the agency has proposed to revoke a license, the staff would not be a "third party" because the agency has a direct interest in the controversy. If the agency wanted a confidential mediation of this licensing matter, the agency could use a private mediator or a mediator from another agency; the mediation would then be confidential to the extent provided in the agency's confidentiality rules.

Mediator Disclosures Treated Differently than Disclosures by Parties

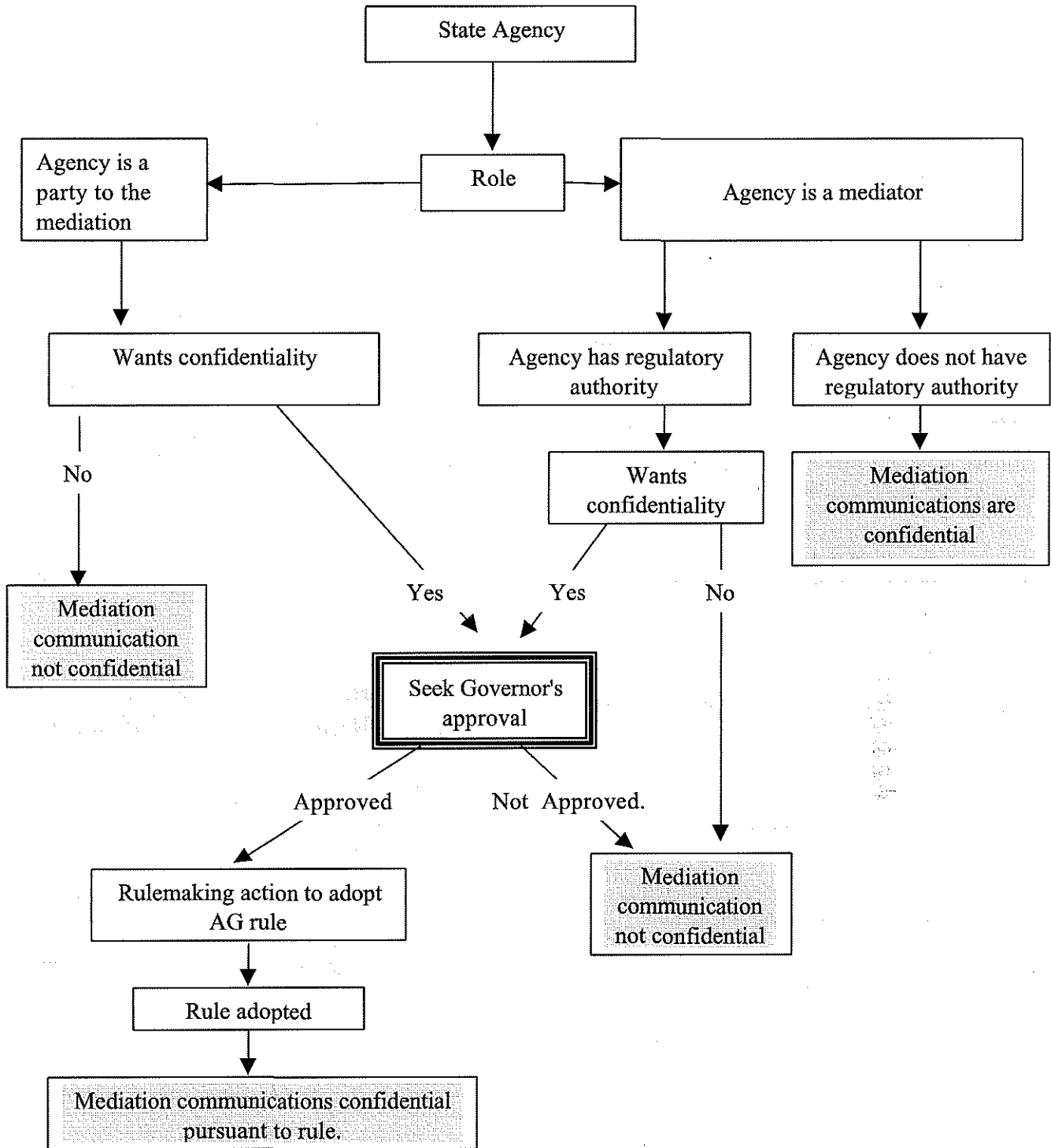
The "Combined Rule" and "Workplace Rule" treat disclosures by mediators differently from disclosures by the parties to a mediation. This is consistent with confidentiality statutes, and the practice of most mediators, to limit disclosures by the mediator, regardless of whether or not the parties may disclose mediation communications. These limitations on mediator disclosures are viewed as important both to preserve the mediator's impartial status and to ensure that discussions with a mediator cannot be taken out of context and used later in the mediation or in subsequent proceedings. The parties' behavior with the mediator may also be artificial or guarded if they know that the mediator may later be called on to offer his or her opinion as to the sincerity of the parties' negotiations or the strength of their positions.

Use an "Agreement to Mediate" Incorporating Provisions of ORS 36.224.

Since mediation is a process that can vary widely in how it is implemented, an Agreement to Mediate or a pre-mediation agreement is commonly used to memorialize the ground rules and conditions of the mediation as understood and established by the mediators and parties. A sample agreement is available in the 1997 edition of the Attorney General's Administrative Law Manual and is available on the DOJ web site at www.doj.state.or.us/ADR. The sample agreement to mediate fulfills the confidentiality notice requirements of ORS 36.224 and incorporates: (1) the elements of a pre-mediation agreement (also known as an "agreement to collaborate") described in the Attorney General's Model Rule OAR 137-05-0030; and (2) a confidentiality agreement as required by the rules developed by the Attorney General pursuant to ORS 36.224.

Flowchart - Confidentiality of Mediation Communications for State Agencies under ORS 36.224

(Assumes no other public bodies are parties to the mediation)



Terms and Concepts Defined

Refer to ORS 36.110 for a definition of "mediator," "mediation," "public body," "state agency" and other terms. Refer to ORS 36.234 for a definition of the term "party."

Agreement to Mediate - refers to the agreement executed prior to a mediation and that specifies the ground rules and confidentiality under which the mediation will be conducted. The agreement to mediate should not be confused with the "mediation agreement" as the latter is the agreement at the conclusion of a mediation that resolves the issues in controversy.

Admissible - refers to those documents, statements and other materials that properly may be submitted into evidence in an adjudication. Oregon Evidence Code Rule 408, "Offers of Compromise," is an example of a rule of evidence that makes inadmissible certain offers of compromise. Such offers are not confidential but are inadmissible as evidence.

Discovery - refers to the devices that may be used by one party in a litigation or in certain administrative proceedings to obtain information from another party in order to assist in the preparation of one's case. A confidentiality rule or statute that makes certain communications not subject to discovery is usually included with provisions making the communication inadmissible. Such provisions effectively say that disclosure of mediation communication cannot be compelled and, if disclosed, the communication cannot be admitted into evidence.

Mandatory reporting - is a duty to report something. This is different from non-confidentiality - in which a person is not obligated to keep a communication confidential but is also not required to report the communication. For example, a "mandatory reporter" such as a registered nurse is obligated to report child abuse under ORS 419B.010.

Mediation communication - is defined in ORS 36.110(8) and does not include the "mediation agreement."

Disclosure - The Public Records Law is an example of a law that requires the "disclosure" of certain records in response to a public records request. In the case of mediation, disclosure involves the sharing of mediation communications with persons who were not a party to the communication.

Public Meetings - ORS 192.610 to 192.690 establish

Oregon's policy of open decision-making by governing bodies by providing public access to certain governmental meetings. Many mediations are not required to be open to the public under the provisions of the Public Meetings Law.

Public Records - ORS 192.410 to 192.505, the Public Records Law, gives the public a right to inspect any nonexempt public record containing information relating to the conduct of the public's business. This is different from "mandatory disclosure" in that the public body does not have a duty to report or publish the record, only to make it available for inspection upon request. Note that ORS 192.502(9) exempts from disclosure "public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." Because ORS 36.224 expressly authorizes confidentiality rules, mediation communications made confidential by adoption of the rules developed by the Attorney General would be exempt from public records disclosure.

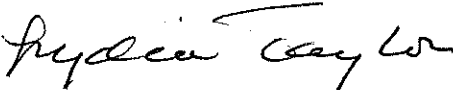
Privileged Communication - is a communication between an individual and a specified person in professional confidence (i.e., attorney-client, physician-patient) that the professional is not permitted to disclose. ORS chapter 40 recognizes these evidentiary privileges. ORS 36.220 to 36.238 and the rules developed by the Attorney General permit a party to disclose a confidential mediation communication to another person so long as the disclosure is a privileged communication under ORS chapter 40.

Don't Get Confused... Model Rule OAR 137-005-0050

The Attorney General's Model Rule OAR 137-005-0050 is captioned "Confidentiality of Collaborative Dispute Resolution Communications." This rule is different from and does not affect the rules developed by the Attorney General pursuant to ORS 36.224. The Model Rule does not directly govern the confidentiality of mediation communications, but clarifies which confidentiality rules or law apply to mediation and to collaborative processes other than mediation. Model Rule 137-005-0050 defines "mediation" and "party" differently from how those terms are used elsewhere in the Model Rules to conform to the definition of those terms in ORS 36.110 and 36.244.

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State of Oregon
Department of Environmental Quality Memorandum

Date: November 1, 2000
To: Environmental Quality Commission
From: Lydia Taylor 
Subject: Agenda Item L, Repeal of Rules Regarding 401 Certification for Grazing on Federal Land, EQC Meeting: December 1, 2000

Background

On August 15, 2000, the Director authorized the Department to proceed to a rulemaking hearing on proposed rules which would repeal rules which provided the procedures for certification of grazing permits on federal land.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on September 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 August 15, 2000.

A Public Hearing was held September 19, 2000 with Susan Greco serving as Presiding Officer. Written comment was received through September 22, 2000. The Presiding Officer's Report (Attachment C) summarizes the oral comments presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.) No comments were received on this rulemaking package and no changes have been made to the rules as proposed.

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

Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the state must provide the licensing or permitting agency a certification of compliance with water quality requirements and standards. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to

Memo To: Environmental Quality Commission

**Agenda Item L, Repeal of Rules Regarding 401 Certification for Grazing on Federal Land,
EQC Meeting**

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provide 401 Water Quality Certification before issuing or renewing grazing permits. DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing 401 certifications for grazing on federal lands. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. The Department is now proposing to repeal the rules regarding 401 certification for grazing on federal lands.

Relationship to Federal and Adjacent State Rules

Section 401 of the Federal Clean Water Act requires states to certify that projects or activities subject to federal permits or license requirements will not violate applicable water quality requirements and standards. The 9th Circuit Court of Appeals has determined that federal grazing permits do not require a 401 certification so no federal requirements are applicable to this situation.

Authority to Address the Issue

The Commission has authority under ORS 468.035.

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

The Department relied on the 1998 9th Circuit Court decision published at 172 F3d 1092 in deciding to repeal these rules. No advisory committee was used since the Department has no discretion in deciding whether to continue to issue 401 certifications for grazing activities.

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

Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the state must provide the licensing or permitting agency a certification of compliance with water quality requirements and standards. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to provide 401 Water Quality Certification before issuing or renewing grazing permits. DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing 401 certifications for grazing on federal lands. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. The Department is now proposing to repeal the rules regarding 401 certification for grazing on federal lands.

Summary of Significant Public Comment and Changes Proposed in Response

No public comments were received regarding this rule package and no changes have been made since the rule repeal was first proposed.

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

There is no implementation required regarding the repeal of these rules since the Department has not been issuing 401 certifications for grazing activities since the 9th Circuit Court decision.

2

Memo To: Environmental Quality Commission

**Agenda Item L, Repeal of Rules Regarding 401 Certification for Grazing on Federal Land,
EQC Meeting**

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Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding 401 certification of grazing permits on federal lands 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

Report Prepared By: Susan M. Greco
Phone: (503) 229-5213

DIVISION 48
CERTIFICATION OF COMPLIANCE WITH WATER
QUALITY REQUIREMENTS AND STANDARDS

340-048-0010

Definitions

As used in these rules unless otherwise required by context:

(1) "Certification" means a written declaration by the Department of Environmental Quality, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Public Law 92-500, as amended.

(3) "Coast Guard" means U.S. Coast Guard.

(4) "Commission" means Oregon Environmental Quality Commission.

(5) "Corps" means U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means Oregon Department of Environmental Quality.

(7) "Director" means Director of the Department of Environmental Quality or the Director's authorized representative.

(8) "Local Government" means county and city government.

~~(9) "Agricultural Water Quality Management Area Plan" means an ODA approved plan for the prevention and control of water pollution from agricultural activities and soil erosion in a management area whose boundaries have been designated under ORS 568.909.~~

~~(10) "Federal permitting agency" or "federal agency" means those agencies that grant federal grazing permits such as the United States Bureau of Land Management, Fish and Wildlife Service, Forest Service and National Park Service.~~

~~(11) "Grazing Permit" means a document authorizing grazing use of lands managed by a federal agency, including grazing leases. Grazing permits specify all authorized use including livestock grazing and suspended use. Permits specify the maximum number of animals and months apportioned, the area authorized for grazing use, or both. In the case of the Bureau of Land Management (BLM), the term "grazing permit" is used to designate those areas within a grazing district, while the term "grazing lease" is used to designate those areas outside an established grazing district.~~

~~(12) "High Quality Waters" has the meaning given in OAR 340-041-0006.~~

~~(13) "Livestock" means any type of animal for which a grazing permit may be issued by a federal permitting agency and includes but is not limited to horses, mules, asses, cattle, sheep, goats, swine, and fowl.~~

~~(14) "ODA" means the Oregon Department of Agriculture.~~

~~(105) "Ordinary high water mark" means the point on the streambank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other recognizable characteristics.~~

(1016) "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.

~~(17) "Potential Natural Community," for the purposes of grazing certification only, means the biotic community that would become established if all successional sequences were completed without interference by human beings under the present environmental conditions. Natural disturbances are inherent in development. PNC's can include naturalized non-native species.~~

~~(18) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, wet meadow, muskeg or ephemeral, intermittent or perennial stream.~~

~~(19) "Riparian Pasture" means a management unit (paddock or pasture) covering a riparian area that may be managed differently than upland units within a permit area. This management is keyed to characteristics which may differentiate riparian areas from upland areas such as plant community composition, plant development, soil conditions, and forage composition.~~

~~(20) "Site Potential," for the purposes of grazing certification only, means the highest ecological status an area can attain given no political, social, or economical constraints; often referred to as the "potential natural community" (PNC).~~

~~(1221) "Vegetative Cover" means live plants, and plant litter and residue.~~

~~(101322) "Water" or "waters of the state" has the meaning given in ORS 468B.005(8).~~

~~(2423) "Water quality limited" has the meaning given in OAR 340-041-0006.~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97; DEQ 1-1998, f. & cert. ef. 3-3-98~~

340-048-0020

Application for Certification

(1) Completed applications for project certification shall be filed directly with the DEQ. This rule does not apply to applications filed with Division of State Lands pursuant to OAR 340-048-0022 ~~or applications for federal grazing permits pursuant to OAR 340-048-0120 to 340-048-0160.~~

(2) A completed application filed with DEQ shall contain, at a minimum, the following information:

- (a) Legal name and address of the project owner;
- (b) Legal name and address of owner's designated official representative, if any;
- (c) A description of the project location sufficient to locate and distinguish proposed project facilities;
- (d) Names and addresses of immediately adjacent property owners;
- (e) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials;
- (f) Name of involved waterway, lake, or other water body;
- (g) Copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements;

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(h) Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project;

(i) An exhibit which:

(A) Identifies and cites the specific provisions of the appropriate local land use plan and implementing regulations that are applicable to the proposed project;

(B) Describes the relationship between the proposed project and each of the provisions identified in paragraph (A) of this section; and

(C) Discusses the potential direct and indirect relationship to water quality of each item described in paragraph (B) of this section.

(D) If specific land use compatibility findings have been prepared by the local planning jurisdiction, these findings should be submitted as part of this exhibit and may be substituted for the requirements in paragraphs (A) and (B) of this section.

(j) For hydroelectric projects, an exhibit which:

(A) Identifies and cites the applicable provisions of ORS 469.371 and 543.017 and implementing rules adopted by the Energy Facility Siting Council and Water Resources Commission;

(B) Describes the relationship between the proposed project and each of the provisions identified in paragraph (A) of this section; and

(C) Discusses the potential direct and indirect relationship to water quality each item described in paragraph (B) of this section.

(k) An exhibit which identifies and describes any other requirements of state law applicable to the proposed project which may have a direct or indirect relationship to water quality.

(3) The DEQ reserves the right to request any additional information necessary to complete an application or to assist the DEQ to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

(4) The Department shall notify the applicant by certified mail of the date the application is determined to be complete. The application will be immediately deemed complete if a preliminary review indicates that all information required by section (2) of this rule is provided and the exhibit required by subsection (2)(i) of this rule contains findings of the local planning jurisdiction. If findings of the local planning jurisdiction are not included, the Department shall forward the exhibit submitted in response to subsection (2)(i) of this rule to the local planning jurisdiction for review and comment. The application shall not be deemed complete until the local planning jurisdiction provides comments to the Department, or 60 days have elapsed, whichever occurs first. If no comment is received within the 60 day period, the Department will continue to seek information from the planning jurisdiction, but will deem the application complete and proceed with evaluation of public notice as provided in section (5) of this rule.

(5) In order to inform potentially interested persons of the application, a public notice announcement shall be prepared and circulated in a manner approved by the Director. Notice will be mailed to adjacent property owners as cited in the application. The notice shall tell of public participation opportunities, shall encourage comments by interested individuals or agencies, and shall tell of any related documents available for public inspection and copying. The Director shall specifically solicit comments from affected

state agencies. 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 received during the 30-day period shall be considered in formulating the Department's position. The Director shall add the name of any person or group upon request to a mailing list to receive copies of public notice.

(6) 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 certification applications. If the Director determines that new information may be produced thereby, 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.

(7) In order to make findings required by OAR 340-048-0025(2), the Department's evaluation of an application for project certification may include but need not be limited to the following:

- (a) Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility;
- (b) Potential impact from the generation and disposal of waste chemicals or sludges at a proposed facility;
- (c) Potential modification of surface water quality or water quantity as it affects water quality;
- (d) Potential modification of groundwater quality;
- (e) Potential impacts from the construction of intake or outfall structures;
- (f) Potential impacts from waste water discharges;
- (g) Potential impacts from construction activities;
- (h) The project's compliance with plans applicable to Section 208 of the Federal Clean Water Act;
- (i) The project's compliance with water quality related standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 (ORS 543.017 and 469.371) and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards.

Stat. Auth.: ORS 468

Stats. Implemented: 33 USC 1341 & ORS 468B.035

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 1-1987, f. & ef. 1-30-87; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97; DEQ 1-1998, f. & cert. ef. 3-3-98

~~340-048-0100~~

~~Certification of Grazing Activity — Background and Purpose~~

~~(1) Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the United States, must provide the licensing or permitting agency certification from DEQ of compliance with water quality requirements and standards. The DEQ and ODA jointly developed rules to provide the authority and process for certifying federal grazing permits that will not violate state water quality standards and other applicable requirements of state law.~~

~~(2) Rules 340-048-0100 to 340-048-0160 apply to water quality certification of livestock grazing on lands managed by federal agencies within the State of Oregon as required under Clean Water Act § 401 (33 USC § 1341).~~

~~NOTE: A federal district court entered judgment on November 29, 1996, that requires 401-Water-Quality-Certification for US-Forest-Service-grazing-permits. Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191 Stats. Implemented: 33-USC-1341 & ORS 468B.035 Hist.: DEQ-1-1998, f. & cert. of. 3-3-98~~

~~340-48-0110~~

~~Certification of Grazing Activity — Policy and Options~~

~~(1) Any person seeking a grazing permit from a federal agency may request water quality certification from DEQ.~~

~~(2) Following ODA review and evaluation of the application described in Section 340-048-0120, DEQ may issue an individual or general certification based on a finding that there is reasonable assurance that the activity will be conducted in a manner that will not violate water quality standards and other appropriate requirements of state law.~~

~~(a) If a grazing area includes or is adjacent to water quality limited waters, certification may be granted if the proposed activity, as conditioned, is conducted in a manner that does not further degrade water quality and will allow the site characteristics that influence the water quality parameters of concern to improve.~~

~~(b) If a grazing area includes or is adjacent to water quality limited waters, certification will be denied if the proposed activity is expected to maintain or further degrade the current site conditions where those conditions influence the water quality parameters of concern.~~

~~(c) If a grazing area includes or is adjacent to high quality waters, certification may be granted if the proposed activity is expected to meet DEQ's antidegradation policy.~~

~~(3) Water quality certifications are valid for the term of the permit except as provided elsewhere in these rules.~~

~~(4) Individual Certification: A person who does not qualify for a general certification as specified in section (5) below may apply for individual certification of their proposed activity.~~

~~(5) General Certifications:~~

~~(a) An applicant may request to be certified under a general certification. The applicant must identify the general certification that covers the proposed activity and provide to DEQ the information specified under OAR 340-048-0120(2) below. DEQ/ODA must determine within 30 days whether an individual certification will be required and notify the applicant if an individual certification is required and of the additional application requirements.~~

~~(b) A federal agency may request the development of a general certification of all its grazing permits within a specified geographical area or categorical description as specified below. The federal agency must submit the proposed conditions of the general certification along with information supporting the proposition that the activity conducted under these conditions will comply with applicable water quality standards and other appropriate requirements of state law.~~

~~(c) General certifications may be issued under one or more of the following circumstances:~~

~~(A) For areas where a water quality management plan has been approved by DEQ or ODA.~~

~~(B) For permits within the watersheds of high quality waters within a specified geographic area where grazing has been an on-going land use and the federal plans in place are preventing degradation of water quality.~~

~~(C) For areas where the permit requires that one or more of the following management strategies is applied to all the intermittent or perennial streams on the area affected by the permit:~~

~~(i) Riparian pasture where utilization of the riparian pasture is specifically designed to meet stream and riparian restoration goals established for the purpose of attaining water quality standards.~~

~~(ii) Riparian corridor fencing that excludes livestock from the riparian area and stream, except for limited access for watering purposes; or~~

~~(iii) Rest or closure.~~

~~(D) For areas where the pollution prevention and control measures and standards and guidelines contained in the applicable federal agency plans, decision notices and/or records of decision, meet or exceed the certification criteria described in section 340-048-0140 of these rules, a general certification can be issued for permits within a specified geographic area covered by those plans.~~

~~(d) DEQ will provide an opportunity for public comment of not less than 45 days on draft proposed general certifications prior to the issuance of the general certification.~~

~~(e) DEQ or ODA may require an individual certification of any permit applicant within an area covered by a general certification if DEQ or ODA determine that there is a need for an individual certification due either to particular characteristics of the allotment or the proposed activity which make the general certification insufficient, or due to the compliance history of the applicant on matters relevant to water quality.~~

~~(f) General certifications may be revised or voided at any time DEQ and ODA determine such action is needed and shall be reviewed no less than once every 5 years to ensure that the provisions and conditions of the general certification are adequate to protect water quality. The provisions and conditions of the updated general certification will be incorporated as conditions of the grazing permits when those permits are issued, renewed, or otherwise open for review and amendment.~~

~~(6) Persons proposing to graze areas that have no waters of the United States within or adjacent to the grazed area and that have no significant chance of discharge to such waters are not required to obtain a water quality certification.~~

~~(7) Following consultation with the federal permitting agency, permittees who have received a water quality certification and are grazing under a federal permit shall notify DEQ if the nature of the certified activity changes significantly in a manner that may adversely impact water quality. DEQ, at its own discretion and in consultation with ODA, may revise or withdraw the certification based on the proposed changes in grazing activity.~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. ef. 3-3-98~~

~~340-048-0120~~

~~Application Requirements and Review for Grazing Certifications~~

~~(1) An application for individual water quality certification shall be submitted to DEQ and must include the following information:~~

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- ~~(a) Legal name and address of the applicant;~~
- ~~(b) Legal name and address of the designated official representative of the person seeking a federal grazing permit, if any;~~
- ~~(c) Name of the federal agency with authority to approve the grazing permit;~~
- ~~(d) Identification of significant waterbodies and those listed as water quality limited under the Clean Water Act Sec. 303(d) in the area of the permitted activity, and the parameters of concern for listed waters. Statement of how the proposed grazing activity will comply with State of Oregon water quality requirements and address waterbodies listed as water quality limited under the Clean Water Act Sec. 303(d);~~
- ~~(e) Description of the grazing activity. Included in this description will be a reference to type, number and class of livestock, the season and duration of use and the grazing system proposed.~~
- ~~(f) Statement of current upland, riparian and water quality conditions, and identification of historic and present livestock contributions to water quality limitations. Include identification of assessments and monitoring programs used to develop this statement as well as the most recent inspection report. Other material that might be used to evaluate the application include aerial photographs, PFC assessments as referenced in Bureau of Land Management Technical Reference Publication 1737-9, 1993, Revised 1995, and utilization information.~~
- ~~(g) Description of present and proposed site condition objectives and pollution prevention and control measures to be utilized to protect water quality. The description should include identification of identified range improvement projects and funds needed.~~
- ~~(h) Identify elements to be monitored to document implementation of the proposed grazing program, trend in stream, riparian and site conditions related to water quality and progress toward achieving the objectives stated under (g) above. Summarize the federal agency monitoring program used to document change, trend and rate. Management objectives can be used to design and implement the monitoring effort and gauge the degree to which compliance is taking place.~~
- ~~(i) Map of the grazing area showing locations of significant waterbodies and any 303(d) listed waterbodies.~~

~~(2) Any person seeking water quality certification under a general certification must include the following information in their application to DEQ:~~

- ~~(a) Legal name and address of the person seeking a federal grazing permit;~~
- ~~(b) Legal name and address of the designated official representative of the person seeking a federal grazing permit, if any;~~
- ~~(c) Name of the federal land management agency with authority to approve the grazing permit;~~
- ~~(d) Any information necessary to determine that the proposed grazing permit qualifies for coverage under the specified general certification.~~

~~(3) DEQ and ODA may request information on and consider an applicant's compliance history when deciding whether to certify the proposed activity, or to certify under a general certification. A permittee's compliance history is relevant to the finding that the State must make that there is reasonable assurance that the activity will be conducted in a manner that complies with water quality standards and other appropriate requirements of state law.~~

~~(4) The applicant will be notified by certified mail of the date the application is determined to be complete.~~

~~(5) If DEQ or ODA determine that an application is not complete or that additional information is necessary to adequately evaluate the activity's impact on water quality, DEQ shall notify the applicant and:~~

~~(a) Return the application as incomplete; or~~

~~(b) Request additional information.~~

~~(6) In order to inform potentially interested persons of an application for individual certification, a public notice shall be prepared and circulated. Public notice for general certifications shall be issued in accordance with OAR 340-048-0110(5)(d) above at the time of development of the general certification. Interested persons, including local governments, special districts, and agencies of the state or federal government, may request to be notified of applications for certification. DEQ will mail or electronically transmit a copy of a complete application to persons requesting an application within seven days after such a request is made. DEQ and ODA will consider written comments received by the Department within 30 days from date of DEQ mailing of the public notice.~~

~~(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 public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. There shall be public notice of such a hearing.~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. of. 3-3-98~~

~~340-048-0130~~

~~Contents of Certification of Grazing Activity~~

~~(1) The certification of grazing activity on federal lands shall include:~~

~~(a) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards and other appropriate requirements of state law, and~~

~~(b) A statement of any conditions which the ODA deems necessary in order to make the finding in (a) above.~~

~~(2) For grazing activity, the contents of certification specified in this rule supersede OAR 340-048-0025(2).~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. of. 3-3-98~~

~~340-048-0140~~

~~Grazing Certification Evaluation Criteria~~

~~(1) ODA will use the following criteria to evaluate all activities authorized by new and renewed grazing permits for lands managed by federal agencies within the State of Oregon that require certification under Clean Water Act § 401 (33 USC § 1341). ODA will determine the necessary conditions of certification and recommend to DEQ whether to grant or deny certification of the activity.~~

~~(2) These criteria are based on objectives which guide the site specific management of individual grazing permits. These objectives will integrate Best Management Practices (BMPs) in order to fully address water quality standards. Best Management Practices include stipulations regarding season of use, number of animals, intensity of use, kind and class of livestock, types of grazing systems applied, the spatial distribution of grazing, and others. The manner in which these BMPs are applied will depend on local conditions and site potential.~~

~~(3) The effects of actions resulting from activities specified in the grazing permit are the responsibility of the permittee.~~

~~(a) Grazing management practices:~~

~~(A) All grazing management practices shall be based on site potential and a site's ability to respond to management actions.~~

~~(B) The season, timing, frequency, duration and intensity of livestock grazing use shall be managed to improve the following components on water quality limited waters and maintain or improve these components on waters that are not water quality limited:~~

~~(i) Vegetative cover and soil conditions that promote water infiltration, conserve soil moisture and maintain soil stability in upland areas;~~

~~(ii) Vegetative cover and plant community structure to promote streambank stability, debris and sediment capture, shade to moderate water temperature, and floodwater energy dissipation in riparian areas;~~

~~(iii) Diverse riparian plant populations and communities that enhance soil stability and increase water infiltration and storage.~~

~~(b) Rest From Grazing: Rest from grazing is an appropriate alternative to improve riparian conditions.~~

~~(c) Livestock Dispersement Activities: Livestock dispersement practices such as fencing, herding, water development, and the placement of salt and supplements shall be used where appropriate to:~~

~~(A) Promote livestock distribution; and~~

~~(B) Maintain the integrity of riparian areas and other areas sensitive for the purpose of protecting water quality and minimize livestock influence on streambank erosion. In certain prescribed cases, short-term concentrations of livestock may be called for in the grazing system.~~

~~(d) Livestock Handling Activities:~~

~~(A) Existing livestock handling facilities (corrals, water troughs) within riparian areas shall be managed to ensure no placement, delivery, or sloughing of sediment into waters of the state.~~

~~(B) Future development shall avoid placement of livestock handling facilities in riparian areas.~~

~~(C) Livestock management activities including trailing, bedding, watering, loading, salting, and other handling activities shall be limited to those areas and times that shall not reduce the quality of waters of the state below the quality standards established by rule for such waters by the Environmental Quality Commission.~~

~~(e) Monitoring Activities:~~

~~(A) Parameters must be selected to demonstrate trend in stream, riparian and site conditions related to water quality and monitored as a condition of the certification. These parameters and a monitoring plan shall be included in the certification application.~~

~~(B) Water quality trend data can be a condition of general certification and can be included in a Memorandum of Agreement with the federal agencies.~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. of 3-3-98~~

~~340-048-0150~~

~~Compliance Monitoring for Grazing Certifications~~

~~(1) The federal permitting agency is responsible for ensuring that all permit conditions, including the conditions of the water quality certification, are implemented and achieved. Any monitoring necessary to accomplish this task is the responsibility of the federal permitting agency. DEQ or ODA may request reports on this information.~~

~~(2) Where federal agency standards and guidelines are identified as the water quality certification conditions, monitoring of the PACFISH or INFISH Riparian Management Objectives, the Aquatic Conservation Strategy Objectives and/or other standard and guide parameters, as applicable, shall be part of the compliance monitoring responsibility of the federal permitting agency.~~

~~Stat. Auth.: ORS 468B.020, ORS 468B.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. of 3-3-98~~

~~340-048-0160~~

~~Enforcement for Grazing Certifications~~

~~(1) Enforcement of the grazing permit terms and conditions is primarily the responsibility of the federal permitting agency. The water quality certification and any conditions included in the certification are incorporated as conditions on the federal grazing permit. Where there is a violation of permit conditions, the federal permitting agency is authorized to cancel or suspend the permit in accordance with permit terms and conditions and federal grazing regulations.~~

~~(2) If a permittee violates the conditions of the water quality certification, or as otherwise provided in OAR 340-048-0040, DEQ may, in consultation with the ODA, revise the certification or revoke or suspend the certification as provided in OAR 340-048-0040.~~

~~(3) DEQ may, at its discretion, conduct random surveys or audits of federal agency compliance data to determine compliance with 401 certifications. If compliance problems are identified, DEQ, in consultation with ODA, may either revoke certifications or deny further certifications until the compliance issues are resolved.~~

~~(4) Nothing in these rules is intended to limit the authority of DEQ, ODA or the Environmental Quality Commission under other applicable law.~~

~~Stat. Auth.: ORS 468B.020, ORS 468.035, ORS 561.190 & ORS 561.191~~

~~Stats. Implemented: 33 USC 1341 & ORS 468B.035~~

~~Hist.: DEQ 1-1998, f. & cert. of 3-3-98~~

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

Chapter 340
Administrative Rules Chapter Number

Susan M. Greco
Rules Coordinator

(503) 229-5213
Telephone

811 S.W. 6th Avenue, Portland, OR 97213
Address

<u>September 19, 2000</u>	<u>2:00 pm</u>	<u>811 SW 6th Avenue Rm 3A</u>	<u>Susan Greco</u>
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?
 Yes No

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 340-048-0010, 340-048-0020

REPEAL: 340-048-0100, 340-048-0110, 340-048-0120, 340-048-0130, 340-048-0140, 340-048-0150, 340-048-0160

RENUMBER:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

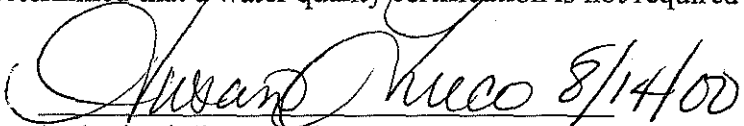
Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468B.035 and 33 USC 1341

RULE SUMMARY

This rulemaking repeals the Department's rules relating to the requirement of a water quality certification for those persons possessing a grazing permit that authorizing grazing of livestock on federal lands. The 9th Circuit Court has determined that a water quality certification is not required for these permits.

September 22, 2000
Last Day for Public Comment


Authorized Signer and Date

Attachment B-I

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Repeal of Rules regarding 401 Certification for Grazing on Federal Lands

Fiscal and Economic Impact Statement

Introduction

Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the state, must provide the licensing or permitting agency a certification of compliance with water quality requirements and standards. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to provide 401 Water Quality Certification before issuing or renewing grazing permits. DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing 401 certifications for grazing on federal lands. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. The Department is now proposing to repeal the rules regarding 401 certification for grazing on federal lands.

The repeal of these rules will have no fiscal impact on either the general public, small or large businesses or other government entities. Additionally it will have no fiscal impact on the Department since certifications have not been issued since the 9th Circuit Court decision.

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
Repeal of Rules regarding 401 Certification for Grazing on Federal Lands

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the state, must provide the licensing or permitting agency a certification of compliance with water quality requirements and standards. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to provide 401 Water Quality Certification before issuing or renewing grazing permits. DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing 401 certifications for grazing on federal lands. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. The Department is now proposing to repeal the rules regarding 401 certification for grazing on federal lands.

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

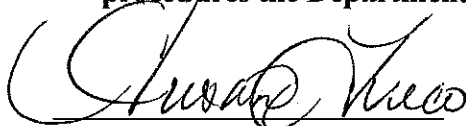
a. If yes, identify existing program/rule/activity:

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

c. If no, apply the following criteria to the proposed rules. In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The proposed rules have been determined not to constitute a program affecting land use. The rules that are being repealed apply only to grazing activities on federal lands. The Department has concluded that local governments do not have the authority to prohibit or condition these land uses.

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

**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?** Section 401 of the Federal Clean Water Act requires states to certify that projects or activities subject to federal permits or license requirements will not violate applicable water quality requirements and standards. The 9th Circuit Court of Appeals has determined that federal grazing permits do not require a 401 certification so no federal requirements are applicable to this situation.
2. **Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?** N/A
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)** N/A
8. **Would others face increased costs if a more stringent rule is not enacted?** N/A
9. **Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?** N/A
10. **Is demonstrated technology available to comply with the proposed requirement?** N/A
11. **Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?** N/A

**State of Oregon
Department of Environmental Quality**

Memorandum

Date: August 15, 2000
To: Interested and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements - Repeal of Rules regarding 401 Certification for Grazing on Federal Lands

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to amend and repeal rules regarding 401 certification for grazing on federal lands. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to repeal rules.

Under this proposal the Department would repeal rules regarding 401 certification for grazing on federal lands. After a federal District Court, in 1996, ordered that the U.S. Forest Service must require a 401 Water Quality Certification prior to issuing or renewing grazing permits, DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing these certifications. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. This proposal will repeal rules and portions of rules that are no longer necessary since the Department cannot require 401 certifications following the 9th Circuit Court decision. The Department of Agriculture is also proposing to repeal their rules at this time.

The Department has the statutory authority to address this issue under ORS 468.035. These rules implement ORS 468B.035.

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: September 19, 2000

Time: 2:00 p.m.

Place: 811 S.W. 6th Avenue, Portland, Oregon - Room 3A (3rd Floor)

Deadline for submittal of Written Comments: September 22, 2000

This will be a joint hearing with the Department of Agriculture. Susan Greco will be the Presiding Officer at the hearing.

* PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ'S TDD NUMBER AT 503-229-6993.

THIS PUBLICATION IS AVAILABLE IN ALTERNATE FORMAT (E.G. LARGE PRINT, BRAILLE) UPON REQUEST. PLEASE CONTACT DEQ'S PUBLIC AFFAIRS AT 503-229-5317 TO REQUEST AN ALTERNATE FORMAT.

Attachment B-5 (3 pages)

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Memo To: Interested and Affected Public
Repeal of Rules regarding 401 Certification for Grazing on Federal Lands
Page 2

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 submitted.

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.

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 during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is December 1, 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.

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Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

Section 401 of the Federal Clean Water Act requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge to waters of the state must provide the licensing or permitting agency a certification of compliance with water quality requirements and standards. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to provide 401 Water Quality Certification before issuing or renewing grazing permits. DEQ and the Department of Agriculture adopted joint rules to provide for the authority and process for issuing 401 certifications for grazing on federal lands. In 1998 the 9th Circuit Court of Appeals reversed the District Court decision. The Department is now proposing to repeal the rules regarding 401 certification for grazing on federal lands.

How was the rule developed

The Department relied on the 1998 9th Circuit court decision published at 172 F3d 1092 in deciding to repeal these rules. No advisory committee was used since the Department has no discretion in deciding whether to continue to issue 401 certifications for grazing activities.

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 Department has not been issuing 401 certifications for grazing activities since the 9th Circuit court decision in 1998. The repeal of these rules will not have any effect on either the public, the regulated community or other agencies.

How will the rule be implemented

There is no implementation required regarding the repeal of these rules since the Department has not been issuing 401 certifications for grazing activities since the 9th Circuit Court decision.

Are there time constraints

There are no time constraints regarding the repeal of these rules.

Contact for more information

If you would like more information on this rulemaking proposal or would like to be added to the mailing list, please contact: Susan Greco, 811 S.W. 6th Avenue, Portland, OR 97204
Telephone: (503) 229-5213 or TDD (503) 229-6993

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**State of Oregon
Department of Environmental Quality**

Memorandum

Date: September 19, 2000

To: Environmental Quality Commission

From: Susan Greco

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: September 19, 2000, 2 p.m.
Hearing Location: 811 S.W. 6th Avenue, Portland - Room 3A
Title of Proposal: Repeal of Rules Regarding 401 Certification for Grazing on
Federal Lands

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.

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Ninetieth Meeting

**November 29, 30 and December 1, 2000
Summit and Regular Meeting**

On November 29, 2000, the Environmental Quality Commission (EQC) held a summit with senior Department of Environmental Quality (DEQ) staff at the Heathman Hotel, 1001 SW Broadway, Portland, Oregon. On November 30 and December 1, 2000 the Commission met for its regular meeting at DEQ headquarters, 811 SW Sixth, Portland, Oregon. The following Environmental Quality Commission members were present on all three days:

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

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice (DOJ) on November 30 and December 1, 2000; Stephanie Hallock, Director, Department of Environmental Quality (DEQ); and other staff from DEQ.

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

The summit began at 10:00 a.m. November 29, 2000. Jennifer Yocum facilitated the meeting. A summary of the day's proceedings is attached. The summit ended at 3:55 p.m.

The regular meeting was called to order by Chair Eden at 10:05 a.m. on Thursday, November 30, 2000. The following topics were discussed.

A. Action Item: Contested Case No. WMC/T-ER-107 Dan's Ukiah Service

Larry Knudsen, Commission legal counsel, introduced the contested case. No Commissioner had a conflict of interest with this case. A Proposed Final Order prepared by Ken L. Betterton, Hearings Officer, in the matter of Daniel Vincent doing business as Dan's Ukiah Service was reviewed. The Hearings Officer had conducted a hearing on Mr. Vincent's appeal of the Notice of Violation, Department Order and Assessment of Civil Penalty which DEQ had issued to Mr. Vincent. The Proposed Order would dismiss the Department Order, finding that Mr. Vincent could not comply or had already satisfactorily complied with the Order. It would also uphold penalties DEQ assessed of \$57,200 for storing gasoline and diesel fuel in underground storage tanks and periodically dispensing such fuels from the tanks without first obtaining an underground storage tank general operating permit registration and \$6,600 for failing to permit a DEQ representative to have access to Mr. Vincent's records to underground storage tanks. DEQ was represented by Les Carlough, Manager of the Statewide Enforcement Section. Daniel Vincent was represented by his father, Doug Vincent. The Commission heard both parties.

A motion was made by Commissioner Malarkey to uphold the Hearings Officer's report with no alterations. There was seconded by Chair Eden. A role call vote was taken: Commissioner Malarkey, yes; Vice Chair Van Vliet, no; Commissioner Reeve, no; Chair Eden, yes. The motion failed. During further deliberations, the Commission had additional questions for Mr. Vincent, who had left the meeting before its conclusion. A motion was made by Vice Chair Van Vliet to hold over making a final decision until the January meeting. It was seconded by Commissioner Malarkey and carried with four "yes" votes.

The Commission directed that, in the interim, Mr. Vincent be recontacted to determine if he would be willing to submit financial records in support of his claim of financial incapacity.

B. Action Item: Contested Case No. WMC/SW-NWR-98-249 Stark Trucking Inc.

Larry Knudsen, Commission legal counsel, introduced the contested case hearing decision in the Stark Trucking, Inc. case. No Commissioner had a conflict of interest in this case. DEQ issued the company a Notice of Civil Penalty assessing Stark Trucking a \$8,850 penalty for operating a solid waste disposal site without a permit in Salem, and ordered removal of the waste. The company appealed, and the Hearings Officer upheld the order and ruled that the company owed a penalty of \$8,600. Larry Cwik, Environmental Law Specialist with the Statewide Enforcement Section, represented DEQ. The EQC also asked some questions of Bob Barrows, manager of DEQ's Western Region Solid Waste Program. Duane Stark, president of Stark Trucking, represented the company.

After hearing both parties and after deliberation a motion was made by Vice Chair Van Vliet to uphold the Hearings Officer's finding that the company was in violation, and ruled that the company was liable for the \$8,600 penalty decided by the Hearings Officer. The Commission modified the hearings officer's order to provide that the company was to come into compliance with the Department's solid waste permitting requirements within 20 days or operate under rules that do not require a permit. The motion was seconded by Commissioner Reeve and carried with four "yes" votes. The Commission asked that the Order be signed by Stephanie Hallock, DEQ Director, on their behalf.

C. Informational Item: Presentation by Bonneville Power Administration Regarding Power Marketing and Water Quality

This item was postponed until the March 2001 EQC meeting.

D. Action Item: US Fish and Wildlife Services Request for a Waiver to the Total Dissolved Gas of the Water Quality Standard

Mike Llewelyn, Water Quality Division Administrator, and Russell Harding, Columbia River Coordinator, Water Quality Division presented this item.

Fred Olney, Senior Fisheries Specialist and Steve Olhaussen, Principal Biologist from the U.S. Fish and Wildlife Service requested a variance to the total dissolved gas water quality standard for a ten-day period in March 2001. At that time, approximately 5.3 million fall Chinook salmonid smolts will be released from the Spring Creek National Fish Hatchery. The variance is required to enable water to be spilled to assist these outmigrating smolts past Bonneville Dam. These fish are important to the U.S.-Canada treaty ocean fisheries, as well as to Columbia River commercial/Tribal and recreational fisheries. Having these fish available for harvest results in fewer threatened and endangered Columbia and Snake River fish being taken. The U.S. Geological Survey will conduct physical monitoring of total dissolved gas levels for the period of this spill to ensure compliance with the variance. Additionally, biological monitoring of fish will be conducted on two days during the spill. Specimens will be collected by beach seining and will be examined by variable power dissecting microscopes.

The Commission noted the ten-day period approved for 2000 had been truncated by the action agencies due to operational considerations. The Commission expressed its concern that when they grant these requests for variances for a ten-day period they expect it be implemented fully. Staff indicated a multi-agency technical management Committee meets weekly to make these decisions. Ultimately, however, these decisions rest with the U.S. Army Corps of Engineers.

A motion was made by Commissioner Reeve to adopt the findings and to adopt the order attached to the staff report with the modification that the U.S. Fish and Wildlife Service notify the Director 24 hours prior to the beginning of the spill. Commissioner Malarkey seconded the motion and it carried with four "yes" votes. Stephanie Hallock, DEQ Director, will sign the order on the Commission's behalf.

N. Director's Report

A new position has been created in the Director's office to serve the dual role as special assistant to both the director and the Environmental Quality Commission (EQC). This position should be filled within two months. The person in this position will supervise the Director's office support staff. They will handle all administrative matters for the EQC and the Director's office and will supervise rules coordination work. Kitty Purser will move into a new role of affirmative action outreach for DEQ within Human Resources.

The Enforcement Section will move to the Director's Office from Northwest Region to provide cross media coordination, integration with program compliance activities, and personal oversight by the Director. The Deputy Director is managing the transition, scheduled to be complete by early spring.

The Director has requested the Department of Administrative Services appoint Joni Hammond and Kerri Nelson to permanent positions as Division Administrators (DA) in DEQ's Eastern and Western regions. Both Joni and Kerri, who competed internally for the positions, have been serving in interim capacity for some time. Paul Slyman will remain as acting DA in the Environmental Cleanup Division through the legislative session when DEQ will know if the agency is provided with an additional DA position as requested in the budget. Sally Puent will remain as acting DA in Waste Prevention and Management through the legislative session.

DEQ is waiting for an analysis on Measure 7 by the Attorney General. The Department has been advised not to speculate publicly on potential impacts.

Portland Harbor was listed on the National Priorities List (NPL) on November 30 in the Federal Register. Taylor Lumber & Treating (Sheridan) will be proposed for listing on the NPL in the same issue of the Federal Register. The proposal marks the start of a formal 60-day public comment period.

The Oregon State Police served a search warrant on November 14 to Thomas William Higgens, 35, a former DEQ vehicle inspector suspected of falsifying vehicle emission tests. Over the past five months, DEQ and DMV have been working with the State Police in an ongoing investigation of potential forgery of certificates required for vehicle registration. In May 1999, DEQ fired Higgens for falsifying test certificates at a vehicle test station. The Vehicle Inspection Program was the source of another news story when Portland station KATU-TV did a report about DMV issuing multiple trip-permits to vehicle owners who do not pass the DEQ test. DMV is proposing legislation in 2001 that would limit the number of trip permits issued to a single vehicle. DEQ supports efforts made by DMV to make sure that trip permits serve their intended functions and are not abused.

The Governor's Budget is scheduled for release on December 1. DEQ is hopeful that cuts to general fund in the water quality program will be restored. Even with general fund restorations, fee increases will be needed in several programs, if the Governor includes DEQ fee-related packages in his budget. The Department will brief the EQC on the Governor's recommended budget at the January meeting.

M. Commissioners' Reports

Commissioner Malarkey reported on the meetings she had been attending in the Eugene area. Commissioner Reeve as the Commission's representative to the Oregon Water Enhancement Board (OWEB) is encouraging a joint meeting with the EQC and OWEB. Chair Eden is continuing to participate in the Governor's Executive Review Panel on the Commission's behalf.

E. Approval of Minutes

The following corrections were made to the minutes from the September 28-29, 2000 meeting. On page 6, Commissioners' Report, line 3 should read "...staff on their interactions with the community. She also indicated that *she attended the Eugene/Springfield Metropolitan Wastewater Treatment Plan meeting.*" A motion was made by Vice Chair Van Vliet to approve the September 29-30, 2000 minutes as corrected. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

A motion was made by Vice Chair Van Vliet to approve the minutes of the November 6, 2000 meeting. The motion was seconded by Commissioner Malarkey and carried with four "yes" votes.

K. Rule Adoption: Mediation Confidentiality Rules

Dawn Jansen, Personnel Officer, presented the rule adoption requests for Confidentiality and Inadmissibility of Mediation Communications, and Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications. She described what types of mediations the two rules would cover. Presently mediations involving state agencies are not confidential unless the agency has adopted these rules allowing for confidentiality. The rules were written by the Department of Justice and major modifications to the rules were not authorized. The rules apply only to mediations, and simply give the agency the option of making mediation communications confidential and do not require confidentiality.

Although the agency has not had much experience using mediation, when the occasion has risen, the parties were not interested in participating since confidentiality could not be offered.

Commissioner Van Vliet asked if arbitration proceedings were different, and legal counsel responded that arbitration was a separate process.

A motion was made by Vice Chair Van Vliet to adopt both sets of rules as presented. It was seconded by Commissioner Malarkey and carried with four "yes" votes.

L. Rule Adoption: Repeal of the Water Quality Certification Rules for Grazing Activities

Mike Llewelyn, Water Quality Division Administrator, and Susan Greco, Rules Coordinator, presented a request to repeal rules that established a program of issuing 401 certifications for grazing on federal lands. In 1996 a federal district court entered a judgment directing the U.S. Forest Service to require permit applicants to receive 401 water quality certification before issuing or renewing grazing permits. The Department and Oregon Department of Agriculture adopted joint rules to provide for the process for issuing these certifications. In 1998 the 9th Circuit Court of Appeals reversed the district court decision. These rule changes delete all rules and portion of rules which related to these certifications.

A motion was made by Vice-Chair Van Vliet to adopt the rule changes as proposed by the Department. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

The meeting recessed for the evening; it resumed at 8:35 a.m. on December 1, 2000.

F. Informational Item: Discussion on Total Maximum Daily Loads (TMDLs) and an Update on the Tualatin River Basin Rule

Dick Pedersen, Manager of the Watershed Management Section, provided an update of the TMDL program. The TMDL schedule was included in an agreement with the Environmental Protection Agency signed in February 2000. In July 2000, Federal District Judge Hogan signed a consent order settling a lawsuit between EPA and Environmental Organizations. That order further binds EPA to ensure TMDLs are established per the Oregon schedule.

Dick reported that EPA approved the Upper Grande Ronde TMDL in the Spring of 2000. The Tualatin TMDL public comment period recently closed and the Department is reviewing comments from approximately 60 individuals and organizations as it prepares the final TMDL for submittal around the first of the year. The public comment period for TMDLs for the Umatilla Basin and South Fork Coquille has closed. The Department anticipates submitting them to EPA for final approval shortly after the first of the year. TMDLs for the Upper Klamath, Sprague, Williamson, Hood, and Tillamook will soon be out for public review and comment. The Willamette Basin TMDLs are on track for completion by the end of 2003. The Department received funding from the last legislative session to hire 5.5 FTEs to complete TMDLs for 9 of the 12 Willamette Sub-basins and the mainstem Willamette River on this more aggressive schedule. Staff has been hired and is working to complete the task on time. The Department is seeking continued funding from the legislature to finish this task.

The Department will be working on a general TMDL rule that will be scheduled to go before the Commission in the later part of 2001. This is following direction from the Commission in 1990 that suggested all individual TMDLs do not need to be in rule. The reasons included standards in rule are the basis for TMDLs; waste load allocations are regulated through NPDES permits; the Department has agreements with the Oregon Department of Agriculture and the Oregon Department of Forestry on implementing TMDL load allocations on agricultural land and state and private forests; and just the numerous TMDLs to be completed over the next several years would overload the Commission. Some other issues that could be addressed in the general rule are consistency with the EPA Agreement and Court Order; public involvement; what a Department TMDL Order would look like; EQC review or other EQC roles; format of Record of Decision or Findings document; any specific rule making needs; and other policy issues that may come up.

Andy Schaedel, Northwest Region TMDL Manager, discussed the proposal to repeal the Tualatin TMDL rule. The draft Tualatin TMDL public comment period ended October 27, 2000. The proposed TMDL is a package that includes revision of Phosphorus and Ammonia TMDLs and new TMDLs for temperature, bacteria and Total Volatile Solids. The Department has proceeded with rule making to repeal the existing

Tualatin TMDL rule for ammonia and phosphorus, which would take effect with EPA approval of new/modified TMDLs. In 1988 the Tualatin TMDL was the first one established in Oregon, and was also established in the following by rule (OAR 340-41-0470(9)):

- the total phosphorus and ammonia Total Maximum Daily Loads (TMDLs), expressed in terms of monthly median concentrations at the mouths of tributaries and along the mainstem of the Tualatin River (which were submitted to the Environmental Protection Agency (EPA) and subsequently approved);
- requirements for program plans to be submitted to the Department; and
- a date for achieving the concentrations.

The rule repeal package is out for public comment from November 15 to December 19 with a hearing on December 18. The Department will come back to the January EQC meeting for the repeal of the Tualatin Rule. The reason for suggesting rule repeal is to put the Tualatin on similar basis as other TMDLs, implementing through a Department Order and using programs that have been subsequently developed for implementation including storm water permits, SB1010 plans, FPA and other authorities.

G. Consideration of Tax Credit Requests

Larry Knudsen, legal counsel to the Commission, told the Commission that the Portland General Electric Order for preliminary certification of the Independent Spent Fuel Storage Installation was not complete. There was little or no legal ramifications to the delay because PGE would not be able to take advantage of the tax credit until after final certification. The Order will be ready for the January EQC meeting.

Maggie Vandehey, Tax Credit Manager, presented this item. She also indicated that John Ledger distributed the Topic discussion document on deadline for filing applications on September 19th to the AOI membership. This is the same document that was part of the July 14, 2000 agenda. The Commissioners agreed upon December 19, 2000 for the annual tax credit year-end special telephone meeting.

There were 61 applications presented in the Staff Report and it's Addendum. The Addendum corrected Leupold & Stevens' application number 5423. Staff asked to remove Western Bank application numbers 5471 and 5491 from the agenda. The required written notice of the EQC meeting did not reach the applicant and she would include the applications in the telephone meeting.

The deadline for submitting Pollution Prevention tax credit applications is December 31st of this year. It was a 4-year pilot program established by the 1995 Legislature. The program focus was to provide an incentive to eliminate chemicals that cause significant health effects; specifically as used by dry cleaners, electroplaters and halogenated solvent users.

APPROVALS

Ms. Vandehey discussed Willamette Industries application number 4979, and Smurfit Newsprint Corporation application number 5236. These applications had been on previous EQC agendas.

Mr. Thomas R. Wood, counsel for Smurfit Newsprint Corporation and Mr. Mike Hibbs, Manager of Technical and Compliance Services for Smurfit, presented the applicant's position regarding application 5236. Mr. Wood presented oral testimony consistent with the letter included with the Staff Report (Thomas R. Wood to Ms. Maggie Vandehey dated September 26, 2000).

Chair Eden asked if any Commissioners need to recuse themselves. Vice Chair Van Vliet indicated he had a conflict of interest on application number 4979; Commissioner Reeve had a conflict of interest on application number 5480 and Chair Eden had a conflict of interest on application number 5345.

A motion was made by Vice Chair Van Vliet for approval of the tax credits found in attachment A excluding application numbers 5471, 5491, 4979, 5480, and 5345. It was seconded by Commissioner Malarkey and carried with four "yes" votes. A motion was made by Commissioner Malarkey to approve application number 4979. It was seconded by Commissioner Reeve and carried with three "yes" votes. Vice chair Van Vliet abstained. A motion was made by Vice Chair Van Vliet to approve application number 5345. It was seconded by Commissioner Malarkey and carried with three "yes" votes. Chair Eden abstained. A motion was made by Vice Chair Van Vliet to approve application number 5480. It was seconded by Commissioner Malarkey and carried with three "yes" votes. Commissioner Reeve abstained.

Application No.	Media	Applicant	Certified Cost	Percent Allocable	Value	Action
4979	Air	Willamette Industries, Inc.	\$ 638,662	100%	\$ 319,331	Approve
5236	Air	Smurfit Newsprint Corp.	\$ 24,184	100%	\$ 12,092	Approve
5271	Air	Eagle-Picher Minerals	\$ 1,415,430	100%	\$ 707,715	Approve
5314	Plastics	Agri-Plas, Inc.	\$ 48,891	100%	\$ 24,446	Approve
5332	Noise	Oregon Steel Mills, Inc.	\$ 99,246	100%	\$ 49,623	Approve
5333	Noise	Oregon Steel Mills, Inc.	\$ 244,495	100%	\$ 122,248	Approve
5345	Water	Van Beek Dairy	\$ 98,823	100%	\$ 49,412	Approve
5361	FB	Indian Brook, Inc.	\$ 155,970	100%	\$ 77,985	Approve
5402	Air	ESCO Corporation	\$ 531,950	100%	\$ 265,975	Approve
5406	Water	Doherty & Russell	\$ 8,774	100%	\$ 4,387	Approve
5408	Air	REXAM Graphics	\$ 847,898	100%	\$ 423,949	Approve
5409	FB	McKee Farms	\$ 14,857	100%	\$ 7,429	Approve
5413	Air	Lanz Cabinet Shop, Inc.	\$ 154,264	100%	\$ 77,132	Approve
5414	SW	Lanz Cabinet Shop, Inc.	\$ 3,300	100%	\$ 1,650	Approve
5415	SW	Lanz Cabinet Shop, Inc.	\$ 55,000	85%	\$ 23,375	Approve
5416	Air	LANZ Cabinet Shop, Inc.	\$ 390,000	91%	\$ 177,450	Approve
5417	Air	LANZ Cabinet Shops, Inc.	\$ 13,000	100%	\$ 6,500	Approve
5421	FB	James Van Leeuwen	\$ 13,772	100%	\$ 6,886	Approve
5422	USTs	Robert E. Miles	\$ 107,437	99%	\$ 53,181	Approve
5423	Water	Leupold and Stevens, Inc.	\$ 42,360	100%	\$ 21,180	Approve
5424	Water	Rejuvenation, Inc.	\$ 79,909	100%	\$ 39,955	Approve
5426	Water	Portland General Electric	\$ 81,781	100%	\$ 40,891	Approve
5431	Air	Fujimi America Inc.	\$ 61,356	100%	\$ 30,678	Approve
5432	Air	Times Litho, Inc.	\$ 284,119	100%	\$ 142,060	Approve
5433	Perc	Thomas Joseph, Inc.	\$ 7,867	100%	\$ 3,934	Approve
5436	USTs	Traughber Oil Company	\$ 75,465	79%	\$ 29,809	Approve
5438	USTs	Cornelius Fast Serv	\$ 493,653	94%	\$ 232,017	Approve
5442	Plastics	Denton Plastics, Inc.	\$ 12,600	100%	\$ 6,300	Approve
5443	USTs	Truax Harris Energy LLC	\$ 324,491	93%	\$ 150,888	Approve
5444	USTs	Truax Harris Energy LLC	\$ 275,020	93%	\$ 127,884	Approve
5445	USTs	Truax Harris Energy LLC	\$ 324,162	93%	\$ 150,735	Approve
5446	USTs	Truax Harris Energy LLC	\$ 304,129	96%	\$ 145,982	Approve
5449	SW	Newberg Garbage Services	\$ 1,000	100%	\$ 500	Approve
5451	USTs	Stein Oil Co., Inc.	\$ 7,758	100%	\$ 3,879	Approve
5452	USTs	Stein Oil Co., Inc.	\$ 36,037	100%	\$ 18,019	Approve
5454	USTs	The Jerry Brown Co., Inc.	\$ 153,195	92%	\$ 70,470	Approve
5455	CFC	Dailey's Tire & Auto	\$ 1,800	100%	\$ 900	Approve
5457	USTs	Stein Oil Co., Inc.	\$ 6,605	100%	\$ 3,302	Approve
5461	Air	Riverview Abbey Mausoleum	\$ 16,263	100%	\$ 8,132	Approve
5464	Plastics	Ernst Manufacturing Inc.	\$ 45,000	100%	\$ 22,500	Approve
5466	Air	Forrest Paint Co.	\$ 35,840	100%	\$ 17,920	Approve
5469	SW	Rexius Forest By-Products	\$ 49,765	100%	\$ 24,883	Approve
5470	Water	Art & Ann Hop	\$ 38,481	100%	\$ 19,241	Approve
5472	Plastics	BOWCO Industries, Inc.	\$ 6,025	100%	\$ 3,013	Approve
5473	Plastics	BOWCO Industries, Inc.	\$ 140,075	100%	\$ 70,037	Approve

5474	Water	Portland General Electric	\$ 49,984	100%	\$ 24,992	Approve
5475	FB	Neils Jensen Farms Inc.	\$ 278,369	83%	\$ 115,523	Approve
5476	Water	Full Sail Brewing Co.	\$ 211,243	100%	\$ 105,622	Approve
5477	SW	Bert's Auto Salvage	\$ 24,798	100%	\$ 12,399	Approve
5479	USTs	New Pacific Corporation	\$ 57,907	100%	\$ 28,954	Approve
5480	Water	The Halton Company	\$ 89,633	100%	\$ 44,817	Approve
5481	USTs	Seaside Stop & Go, Inc.	\$ 79,338	100%	\$ 39,669	Approve
5482	Plastics	NPI, Inc.	\$ 78,217	100%	\$ 39,109	Approve
5483	Perc	Kim's Cleaners	\$ 35,000	100%	\$ 17,500	Approve
5484	Perc	Thomas Joseph, Inc.	\$ 40,976	100%	\$ 20,488	Approve
5485	Plastics	Agri-Plas, Inc.	\$ 73,438	100%	\$ 36,719	Approve
5486	Plastics	Agri-Plas, Inc.	\$ 85,446	100%	\$ 42,723	Approve
5487	Plastics	Denton Plastics, Inc.	\$ 4,500	100%	\$ 2,250	Approve
5488	Plastics	Denton Plastics, Inc.	\$ 4,975	100%	\$ 2,488	Approve

DENIALS

Commissioner Reeve noted the Department recommended denial of the CyaChem Analyzer presented in application number 5286. He asked if this was because the control require human intervention. Ms. Vandehey said, "yes" and explained that the claimed facility does not reduce or eliminate industrial waste with the use of a treatment works as required by statue. It triggers an alarm for a person to take corrective action. The Commission suggested the Department may want to reconsider that manual intervention as a valid response to taking corrective action to an error condition. Ms. Vandehey suggested removing application 5286 and the Department would provided additional analysis for the Commission. The Commission agreed it was not necessary for this application.

Vice Chair Van Vliet indicated he would have to recuse himself from voting on application numbers 5299 and 5167. A motion was made by Commissioner Malarkey to deny application numbers 5299 and 5197. It was seconded by Commissioner Reeve and carried with three "yes" votes. Vice Chair Van Vliet abstained. A motion was made by Commissioner Malarkey to deny application numbers 5276 and 5286. It was seconded by Commissioner Reeve and carried with four "yes" votes.

5167	Air	Willamette Industries	\$ 38,267	100%	\$ 19,133	Deny
5276	Water	Teledyne Industries, Inc.	\$ 132,705	100%	\$ 66,353	Deny
5286	Water	Teledyne Industries, Inc.	\$ 22,500	100%	\$ 11,250	Deny
5299	Water	Willamette Industries, Inc.	\$ 30,817	100%	\$ 15,409	Deny

REJECTIONS

Ms. Vandehey discussed Mitsubishi Silicon America applications 5049, 5100, 5101, 5102, 5103, 5104, and 5105 presented for rejection. These applications had been on the EQC agenda a number of times.

A motion was made by Vice Chair Van Vliet to reject the following applications. It was seconded by Commissioner Reeve and carried with four "yes" votes.

5049	Air	Mitsubishi Silicon America	\$ 278,399	100%	\$ 139,200	Reject
5100	Water	Mitsubishi Silicon America	\$ 1,599,606	100%	\$ 799,803	Reject
5101	Air	Mitsubishi Silicon America	\$ 37,358	100%	\$ 18,679	Reject
5102	Air	Mitsubishi Silicon America	\$ 95,170	100%	\$ 47,585	Reject
5103	Air	Mitsubishi Silicon America	\$ 145,824	100%	\$ 72,912	Reject
5104	Air	Mitsubishi Silicon America	\$ 146,236	100%	\$ 73,118	Reject
5105	Air	Mitsubishi Silicon America	\$ 128,179	100%	\$ 64,090	Reject
5357	Water	Oregon Steel Mills, Inc.	\$ 174,175	100%	\$ 87,088	Reject

TRANSFERS

Ms. Vandehey presented certificates numbered 4063 and 4067 for transfer. A motion was made by Vice Chair Van Vliet to approve the following transfers. It was seconded by Commissioner Malarkey and carried with four "yes" votes.

Certificate # 4063 to Waste Management of Oregon, Incorporated	Transfe.
Certificate # 4067 to Lebold Business Development	Transfer

H. Rule Adoption: Acid Rain and New Source Performance Standards

Andy Ginsburg, Air Quality Division Administrator, and Mark Fisher, Air Quality staff, presented a summary of the proposed rules for adopting by reference updates to federal Acid Rain and New Source Performance Standards (NSPS). New sources would be informed of the rules during the initial permitting action (e.g., issuance of an Air Contaminant Discharge Permit), which occurs prior to when a Title V or Acid Rain application is due.

Commissioner Malarkey asked whether these rules would also apply to sources in Washington. Staff responded that since these are federal rules they should apply to all sources in the U.S., but it is not known when Washington has or will adopt the revisions as part of their regulations.

A motion was made by Vice Chair Van Vliet to approve the rules as written. It was seconded by Commissioner Malarkey and carried with four "yes" votes.

I. Rule Adoption: Lane County Regional Air Pollution Authority (LRAPA) Title 34, Permit Fees and State Implementation Plan (SIP) Revision

Andy Ginsburg, Air Quality Administrator, and Loretta Pickerell, Air Quality staff presented this agenda item. LRAPA revised its Title 34 permit rules, primarily to raise permit fees, and the Commission now needed to adopt LRAPA's revisions as amendments to Oregon's SIP. LRAPA's fees are slightly lower than those DEQ charges comparable sources elsewhere in the state. DEQ and LRAPA calculate program costs differently and use a different mix of revenue sources to fund their permit programs. LRAPA's Title 34 revisions raised fees in part to bring them closer to DEQ's.

Commissioner Van Vliet further questioned whether LRAPA should continue to exist as the only local air quality authority in Oregon, or whether DEQ should assume its functions. Staff explained LRAPA periodically reviews this issue and has consistently chosen to retain local control of air quality matters, as is its prerogative under Oregon law. They also noted that local air quality authorities are common in other states, including California and Washington, and are encouraged under the Clean Air Act. When asked whether DEQ requires gas-fired boilers operating without oil-fired backup units and emitting below threshold levels of pollutants to obtain permits, staff indicated DEQ does not, and this is one of a few sources for which LRAPA, but not DEQ, requires permits.

A motion was made by Commissioner Reeve to adopt the amendments to the SIP. It was seconded by Vice Chair Van Vliet and carried with four "yes" votes.

J. Rule Adoption: Rules Regarding Open Burning

Andy Ginsburg, Air Quality Administrator, and Kevin Downing, Air Quality planning staff, presented this item. The rules are part of a larger program process improvement review for air quality and are intended to improve environmental protection, harmonize the rules with statutory authority and streamline administration of the program. The Clean Air Act is silent on the practice of open burning but these rules, being in the State Implementation Plan, are a part of the state's commitment to cleaner air in Oregon. In specific circumstances open burning rules have been more closely tied to nonattainment issues. LRAPA has their own set of rules regarding open burning that match the Department's rules for stringency.

When asked how slash burning is managed on private, state and federal lands, Staff indicated it is coordinated through a Smoke Management Plan that describes how burn decisions are to be made and coordinated on state, federal and private lands subject to the plan. This plan is implemented primarily by the Oregon Department of Forestry.

Cooperation with local fire districts occurs when suspected violations of the Department's burning rules are referred to Department staff for follow-up and potential enforcement action. The Department has

limited staff to devote to open burning enforcement and relies heavily on this form of cooperation to make the program work. A significant number of penalties are written to enforce open burning rules. The proposed rules provide an opportunity to delegate all or portions of the open burning program to local jurisdictions when they have expressed an interest and are able to take on that responsibility.

Commissioner Reeve asked about the definition of an agricultural operation. Staff replied that the test was established in rule and required evidence of operations connected to the raising of produce or livestock and at least an intention of making a profit. The Department's definition was based on statutory language in ORS 215 and the Right to Farm laws.

A motion was made by Vice Chair Van Vliet to adopt the rules as presented as an amendment to the SIP. Commissioner Reeve seconded the motion and it carried with four "yes" votes.

There was no public comment. There being no further business, the meeting was adjourned at 11:35 a.m.

Outcomes Report from
Environmental Quality Commission (EQC) /
Department of Environmental Quality (DEQ) Summit
29 November 2000

Purposes: The purpose of this Outcomes Report is to summarize main themes and assignments from the EQC / DEQ Summit meeting. The Summit outlined issue areas and priority actions for DEQ staff to research and present to the EQC over the next 6-8 months.

Present:

Melinda Eden (chair-EQC),
Didi Malarkey (EQC)
Mark Reeve (EQC)
Tony Van Vliet (EQC)
Lauri Aunan (DEQ Legislative Liaison)
Sarah Bott (DEQ Public Affairs)
Marianne Fitzgerald (DEQ Pollution Prevention)
Rick Gates (DEQ Lab)
Andy Ginsburg (DEQ Air Quality Division)
Stephanie Hallock (DEQ Director)
Joni Hammond (DEQ Eastern Region)
Mike Llewelyn (DEQ Water Quality Division)
Helen Lottridge (DEQ Management Services Division)
Neil Mullane (DEQ Northwest Region)
Kerri Nelson (DEQ Western Region)
Sally Puent (DEQ Waste Prevention and Management)
Kitty Purser (DEQ Executive Assistant to the Director)
Paul Slyman (DEQ Environmental Cleanup Division)
Lydia Taylor (DEQ Deputy Director)
Jennifer Yocum (Facilitator)

Issue Areas: Commissioners and DEQ staff discussed several items. The following issues areas generated the most significant discussion and are listed below. (Note: the listing order only reflects order of discussion, not a prioritized ranking.) Summaries on each topic and assignments follow this list.

1. Environmental information and data management
2. Cooperation among natural resource and other state and federal agencies
3. Role of DEQ as a regulatory agency and as a progressive innovator / Point Source and Non Point Source environmental strategies
4. Balance and fairness in enforcement, concerns about East/West, Urban/Rural splits
5. Connections between water quality and water quantity / Harmonizing needs for environmental protection, economic advancement and energy
6. Suggestions for improving EQC and DEQ interactions (process issues)

1. Environmental Information and Data Management

Concerns: Right now, a great deal of environmental information is collected and managed by several public entities throughout the state and region. Much of the data in these systems is unavailable due to technical and cultural barriers. There is also a great deal of concern about data quality and resiliency (the ability to use data collected for one purpose in another application.) While commissioners and DEQ staff agree that more data, and a more effective use of data, is necessary for developing policy and making science-based decisions, significant time and money are needed to realize this desire. Thus far the Legislature has not been very supportive of single-agency information system efforts, although multi-agency efforts may be more successful. Statewide leadership is needed.

Assignments: **Helen Lottridge** will develop a proposal that will look at current plans around state agency information exchange and develop options for DEQ's role in improving data access and use for the environment. This proposal will include potential projects outlined for scope and resource needs. The proposal will be communicated to the EQC as a part of the Director's report at the January meeting. Additionally, **Andy Ginsburg** will present a draft of DEQ's Environmental Results Management System (ERMS) initiative for EQC input/brainstorming in May.

2. Cooperation among natural resource and other state and federal agencies

Concerns: Related to problems with information exchange referenced above, the many lines drawn between and among state and federal agencies charged with aspects of looking after the environment often get in the way of effective and efficient environmental management. Relationships between these entities are often tense and several examples of attacks on credibility (mostly related to science) were described. While the Community Solutions Team model has been successful, outside of a few integrated efforts on the Oregon Plan for Salmon and Steelhead, no coordinated effort exists to address conflicts in rules, permits or other policy issues.

Assignment: **Mike Llewelyn** will develop a proposal to look at how to improve cooperation and credibility with different natural resource agencies through targeted interactions with other boards, commissions and directors. These discussions will look at mission, philosophy and administration. The proposal will be communicated to the EQC as a part of the Director's report at the January meeting.

3. Role of DEQ as a regulatory agency and as a progressive innovator / Point Source and Non Point Source environmental strategies

Concerns: DEQ's policy and revenue structures are mostly drawn on its role as a permit-issuer and enforcer of environmental laws. However, due to the changing nature of the sources of pollution and a desire to see what environmental gains can be achieved through strategies other than prescribed regulation, DEQ has taken on several other roles including partner, educator, etc. The multiplication of roles diverts already thin resources and may cause confusion among staff and the public as to where our priorities lie. Still, our effectiveness and credibility depend on playing all of these roles to some extent.

Assignment: **Stephanie Hallock** will convene the DA group to examine the priorities listed under the strategic planning theme centered on engaging all Oregonians in protecting and enhancing the environment in their communities. The group will look at how they plan to update the agency's Strategic Plan, and how they might select one specific area for engaging Oregonians (along the lines of recycling) before the next EQC meeting.

4. Balance and fairness in enforcement, concerns about East/West, Urban/Rural splits

Concerns: Our current enforcement penalty matrix has generated concerns about fairness and effectiveness in its application. Different programs use different enforcement tools and philosophies. Some differences may occur across regions. Violators have different levels of access to attorneys and consultants. Fines may not always be the most effective approach in poorer areas.

Assignments: **Neil Mullane** will put together a proposal to evaluate fairness in our enforcement matrix sometime before the May EQC meeting. He will also send out a white paper report on PGE and share information on enforcement trends in Oregon. **Kerri Nelson** and **Joni Hammond** will look at developing differential policy implementation strategies that may be appropriate, also for the May meeting.

5. Connections between water quality and water quantity / Harmonizing needs for environmental protection, economic advancement and energy

Concerns: There is no coordinated effort to look at balances between water quality and water quantity. Some trade off choices are emerging. Trade offs are also a common theme in the discussion about environmental protection, economic advancement and energy needs. While generally we want to find win-win solutions, doing so requires a great deal of conversation early involvement.

Assignment: None

6. Suggestions for improving EQC and DEQ interactions

Concerns: We want to make sure that the EQC has enough information and enough time to make good decisions. Information can be presented more clearly and regular program "check-ins" were proposed.

Assignments: **Paul Slyman** will revise the report forms used for review by the EQC. LFO has a model, also look at Secretary of State's calendar for rule postings. New forms will be used for the May meeting. A template will be reviewed in March. **Sarah Bott** will help. **Stephanie Hallock** will send an email to staff letting them know that EQC members may be contacting them for more information. Stephanie will make sure that EQC members get materials at least two weeks in advance and will create a schedule for program check-ins. Stephanie will also meet with Harvey Bennett to review outcomes from this meeting.